

Facilitating shared parenting

Introduction

3.1 The terms of reference for this inquiry have asked the committee to have regard to the Government's response to the Report of the Family Law Pathways Advisory Group. That response has made a few key points that have been influential in the committee's consideration of the issues raised in the evidence. First and foremost is the acknowledgement that family separation is associated with conflict, sometimes entrenched and damaging – damaging to the parents and the children. As Catholic Welfare Australia put it in evidence to the committee:

... in separation conflict is a given in about 98 per cent of the cases. It takes two people to agree to marry or to be in a relationship. It takes only one to say, 'I am over and out'. You start from the basis of conflict. ... you can tailor-make around all of these issues but it is going to do nothing about what underlies them because in separation, conflict is a given.¹

3.2 The Shared Parenting Council agrees with this, stating:

... the whole problem is that we are addressing family breakdown as a legal issue. It is not a legal issue; it is a human relationships issue. Two parents who are separating are in conflict and it is obvious, isn't it?²

3.3 Numerous individual submissions, witnesses and community statements related experiences of pain, loss, anger, hurt and often apparently

1 Catholic Welfare Australia (Roots M), transcript, 20/10/03, p 34.

2 Shared Parenting Council (Greene G), transcript, 24/9/03, p 81.

vindictive behaviour by ex-partners. The committee has concluded from all of the emotional outpouring from the community during its inquiry that conflict and relationship issues cannot be ignored. They should not be left to fester while emotionally stressed people struggle with the shock of divorce and separation in a confused state about where to go for help. The most common places people turn for help are still lawyers and courts. Legal services, including courts, are neither designed nor resourced to provide therapeutic interventions to repair the emotional damages of separation. People in this state often are incapable of focussing on their own and their children's future needs while they inevitably are still dwelling on the past.

What's already happening

3.4 The Government's response to the Pathways Report has focussed on three themes:

- early help: connecting people to information and services;
- better outcomes for children and young people; and
- an integrated system that meets families' needs.³

3.5 There is a strong community interest in managing the many issues arising from family separation without resorting to the formal processes of the courts. However, it was apparent that parents do not always know where to look for the kind of support or services they really need. This is particularly the case for men and for rural and regional families. The Family Pathways group said:

What is very evident out there is that many men do not know where to turn. There are no support groups for men in particular. They find themselves very isolated. In particular, emotional support in knowing the directions in which they can go, what they can do and how they can get into other services for assistance is not there. They do not know where to go and how to access help. That is a big problem for them.⁴

3.6 The services that do exist are not sufficient across the board to meet the demand nor at the time they are needed.

3.7 The committee heard about and observed a small number of valuable initiatives designed to assist separating families cope with their emotional

3 *Government response to the Family Law Pathways Advisory Group Report*, Attorney-General's Department and Department of Family and Community Services, Canberra, May 2003, p 8.

4 Family Pathways (Bennet P), transcript Gunnedah, 27/10/03, p 31.

and family transition. Many of these initiatives help parents to focus on the needs of their children at this difficult time.

- 3.8 This chapter briefly looks at what is already happening and some areas where more can be done to assist families to reach their own arrangements in a non-legal environment. Such an approach is more likely to enable families to address their conflict issues, deal with the pain and hurt that often emerges, and move on to positive future child focussed shared parenting.
- 3.9 The committee believes Government should do everything it can to:
- strengthen the network of what, for the purposes of this report, are referred to as early intervention services which already exist;
 - support strategies for encouraging separating families to access them early; and
 - expand those which are known to be proving effective but still only available to a very small proportion of separating families.
- 3.10 The Pathways Report identified that there are parts of the family law system, particularly around counselling and mediation services, that are working well.⁵
- 3.11 Currently the Family Relationships Services Program (FRSP) funded jointly by the Department of Family and Community Services (FaCS) and the Attorney-General's Department provides a range of services supporting families. In 2003-04 the government has allocated \$56m to this whole program. In 2001-02 the program assisted approximately 130,000 clients. The services aim to:
- enable children, young people and adults in all their diversity to develop and sustain safe supportive and nurturing family relationships; and
 - minimise the emotional, social and economic costs associated with disruption of family relationships.⁶
- 3.12 The services address a range of family relationship needs to varying degrees through a range of services providing mediation, counselling, parenting skills, men in family relationships, supervised child contact, and others. Their locations are spread across Australia but the services are still

5 Family Law Pathways Advisory Group, *Out of the maze: Pathways to the future for families experiencing separation: Report of the family Law Pathways Advisory Group*, Commonwealth Departments of the Attorney-General and Family and Community Services, Canberra, July 2001, p 9.

6 Department of Family and Community Services, sub 1702, p 1. The details of all the elements of the Program are listed in Department of Family and Community Services, sub 1251, p 22, Attachment A.

not comprehensively available.⁷ Their location within local communities helps them to be accessible and family friendly but their capacity to meet the need is limited by their resources, especially in rural and remote areas.⁸ Most services under the FRSP charge a fee on a sliding scale according to income. Most of the following innovative programs fall under this program.

Cooperative parenting

3.13 If the presumption proposed in Chapter 2 is to be effective at promoting shared parenting after separation and increasing the incidence of it, some means of building capacity for that outcome in families is clearly required. The submission from the Australian Institute of Family Studies (AIFS) referred to research around joint physical custody which showed the personal characteristics with which parents can successfully support shared care as:

- commitment
- flexibility
- mutual co-parental support
- ability to reach agreement on implicit rules.⁹

3.14 The AIFS goes on to discuss the constraints on shared parenting and concludes from the research that:

With appropriate mediation and counselling assistance to parents, except in the most extreme situations, some of these constraints may be ameliorated or modified to enable some degree of shared parenting of children.¹⁰

...

The support of alternative interventions to litigation, such as mediation and conciliation, and parent education, may facilitate reaching and implementing the most appropriate parenting arrangement in the best interests of the child.¹¹

7 See Department of Family and Community Services website for service details, viewed 12/12/03, www.facs.gov.au/frsp

8 Department of Family and Community Services, sub 1702, Attachment A (location maps).

9 Australian Institute of Family Studies, sub 1055, p 15.

10 Australian Institute of Family Studies, sub 1055, pp 19-20.

11 Australian Institute of Family Studies, sub 1055, p 22.

3.15 Evidence before the committee confirmed that many parents need help to achieve co-operative parenting, especially when they are still coping with the relationship breakdown. Dads in Distress put it as follows:

Alongside any reform process we need a resourcing mechanism for separating parents. It is our belief that most parents can achieve cooperative parenting relationships. However, they need a framework that supports and assists them. They need time to come to an understanding of their changed roles beyond separation. They need time to process and accept the reality of those changed relationships. They need a place to do it in, and they need people to do it with.¹²

3.16 Organisations like Dads in Distress are able to contribute to this outcome.

3.17 For many parents, arrangements they have in place are fragile. They start off cooperatively but co-operation falls apart over time. There are well-known stressors on maintaining post separation parenting arrangements – new relationships, relocation, change in employment and new children in second families.

3.18 The committee believes that a range of strategies to support separated parents to achieve co-operative shared parenting is likely to be necessary. This is complex social policy with funding implications. Some recommendations were made to the committee by FRSP service providers working in the field.¹³ The committee has seen that successful and innovative work is happening but appears to be only available in few locations and achievements appear limited by the resources and funding arrangements.¹⁴

Contact orders program

3.19 One particularly successful program which the committee has looked at is part of the FRSP and known as the Contact Orders Program. It

'helps ... very conflicted non-compliant adults move towards a more co-operative stance about child contact with their former partners'. Benefits include learning about the positives of parenting and communication skills.¹⁵

12 Dads in Distress (Lenton R), transcript Coffs Harbour, 27/10/03, p 48.

13 Relationships Australia, sub 1054, 31p various app; Catholic Welfare Australia, sub 1022, 13p; Family Services Australia, sub 1023, 26p.

14 Catholic Welfare Australia (Beaver D), transcripts, 20/10/03, p 37.

15 Attorney-General's Department, *The Contact Orders Program: A summary of the independent evaluation of the Contact Orders Pilot, July 2000 to April 2002*, Attorney-General's Department, Canberra, 2003, p 2.

- 3.20 The most valuable part of the Contact Orders Program has been its focus on children. The evaluation commissioned by the Attorney-General's Department reported that:
- The most powerful activity of all, in creating an impetus for change in the parents, is feeding information back to parents about what their own children have said their worries and feelings are, and about the effect the conflict is having on them.¹⁶
- 3.21 The program provides a child inclusive approach to resolving parental difficulties around parenting after separation.
- 3.22 The components of the program include the facilitated feedback to parents from children previously outlined, mixed gender adult groups and group sessions for children. One provider of this program, Unifam said:
- ... staff have been remarkably successful in changing the focus from who lives with whom and for how much of the time, to what are the best interests of the children, and how can parents work to reduce conflict and to ensure improved relationships between the children and both their parents, resident and non-resident.¹⁷
- 3.23 Unifam also described it as a program which provides an alternative to courts which 'empowers parents to decide their children's living arrangements'. These are parents who have been unable to resolve their problems even after spending up from \$50,000 in legal fees through multiple court visits.¹⁸
- 3.24 The committee visited Unifam's service at Parramatta and met with clients who had been in the program. The program works closely with the courts at Parramatta and many clients are referred who the courts have found they can assist no further. The positive impact the program had on their previously entrenched conflict behaviour, so that they could now focus on their children, was patently obvious to the committee.
- 3.25 This program, which began as a pilot but is now on-going, currently operates from three locations only – Parramatta, Hobart and Perth. During 2002-03 approximately 860 clients used these services and they have significant waiting lists.¹⁹ The government response to the Pathways Report has continued the funding for these and expanded the program to two other locations – Melbourne and South East Queensland.²⁰ Funding allocated for 2003-04 is \$1.2m.
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16 Attorney-General's Department, *The Contact Orders Program*, p 6.

17 Unifam Counselling and Mediation, sub 505, p 7.

18 Unifam Counselling and Mediation, sub 505, p 7.

19 Department of Family and Community Services, sub 1702, p 4.

20 *Government response to the Family Law Pathways Advisory Group Report*, p 11.

Conclusion

3.26 The committee has heard from many people whose evidence showed that they would undoubtedly have benefited from this kind of assistance. With the ongoing rate of divorce and separation, and the level of conflict amongst this population previously mentioned, there is clearly a critical need for more of this kind of intervention. The committee strongly urges the government to make the contact orders program available across the whole of Australia as a matter of priority. Given the relevance of the service for families struggling with court orders and their aftermath, it would be appropriate to locate services near each registry of the Family Court.

Post separation parenting skills

3.27 Parenting skills, as mentioned in Chapter 2, are stressed by separation. Catholic Welfare Australia reported that services in this area funded under the FRSP by FaCS are not widespread and funding is very small.²¹ In some states similar services are funded by State governments.²² The Family Relationships Skills Training Program promotes positive parenting and non-violent problem solving by providing families with parenting and family functioning skills. Forty of these services are currently funded under the FRSP - \$2.4m in 2003-04. They saw approximately 3000 clients in 2001-02 (45% male, 55% female).²³ The committee is aware that this program is not particularly focussed on post separation parenting skills. However, it may be an appropriate place from which to build such programs in the future.

3.28 Some practical advice on how to manage separated parenting has been made available through a publication developed by the FCoA, FaCS and the Child Support Agency- "*Me and My Kids: parenting from a distance*". This booklet is available free from the agencies involved (and on some of their websites) and is also used by many of the FRSP providers working with separated parents. In correspondence to the committee and in evidence this publication has received mixed reaction.²⁴

Child inclusive mediation

3.29 A second area of focus for the Government response to the Pathways Report has been giving more attention to the needs and voices of children

21 Catholic Welfare Australia (Roots M), transcript, 20/10/03, p 40.

22 Catholic Welfare Australia (Beaver D), transcript, 20/10/03, p 40.

23 Department of Family and Community Services, sub 1251, p 23, Attachment A.

24 Val, transcript Blacktown, 1/9/03, p 56.

in post separation parenting decision making processes. Both the Pathways Report and the Government Response to it emphasised the importance of a child focus in the system one of whose principles is that the best interests of the child are paramount. Since the 1995 reforms to the FLA, there has been a growing body of work around developing child inclusive practice in family relationships services, as well as in legal services. The response has defined child inclusive practice as ‘explicitly taking into account the needs of children when working with families in conflict.’²⁵

- 3.30 The advancement of child inclusive practice in the FRSP has been incremental. In 2001 a series of practice forums were held to share providers’ ideas, experiences and concerns to further develop expertise by examining ‘good practice’ examples.²⁶ The work was about the aim for community based family relationships workers to be looking for the best way to ‘facilitate the child’s voice being heard’.²⁷
- 3.31 A ‘Children in Focus’ professional development program has been initiated since for counsellors and mediators with funding from the Attorney-General’s Department. This was developed by Professor Moloney and Dr McIntosh²⁸, who described child inclusive mediation as:

Where the mediation process works exceptionally well is in the child inclusive version of it. In the model that Jen and I have been teaching, a separate child interviewer works with the children and then goes back into the mediation session and talks to the parents about not so much what the children want but how they are doing and how they are seeing the situation. The parents negotiate as well as their own needs, which are typically up on a whiteboard or something, John’s needs and Mary’s needs, and they become part of the equation. That has a dramatic impact on the way parents cooperate.²⁹

25 *Government response to the Family Law Pathways Advisory Group Report*, p 12.

26 Mackay M, *Through a child’s eyes: Child inclusive practice in Family Relationships Services: A report from the Child Inclusive Practice Forums, held in Melbourne, Brisbane, Newcastle, Adelaide and Sydney from August to September 2000*, Department of Family and Community Services, Canberra, May 2001, ix 49p.

27 Mackay M, p 5.

28 McIntosh J, transcript, 20/10/03, p 22; Moloney L, transcript, 20/10/03, p 22.

29 Moloney L, transcript, 20/10/03, p 6.

- 3.32 The skills and training of the people working with the children is critical to its success.³⁰ Also sensitivity to the children's desire to be involved would be important.
- 3.33 Clearly as children are the most impacted upon by separation and divorce and by parental conflict it is important that they have an influence in the decisions which affect them. As mentioned elsewhere in this report, the committee heard that there is widespread support for giving children a voice. This is as important in the non-legal setting as it is in the legal setting.
- 3.34 This model has been described by some as therapeutic mediation.³¹

Children's contact services

- 3.35 Many parents who have difficulty managing their contact arrangements after separation for reasons of conflict or violence are able to maintain relationships with their children. Some are able to access the assistance of Children's Contact Services. These services provide supervision of contact when parents need help to develop a relationship with the child and sometimes when there are unresolved allegations of child abuse. They also provide facilitated changeovers which enable children to be transferred from one parent to the other in a safe and supportive environment. The services are all child focussed and incorporate the child's views in the way they provide the service.³²
- 3.36 There are currently 35 of these services nationally funded under the FRSP. In 2003-04 the government has allocated \$4.1m to the program which assisted 6000 clients in 2001-02.³³ There are also an unknown number of unfunded services. Most families who use these services have been through litigation and are referred by courts or lawyers to the service as a way of managing the ongoing conflict in the parental relationship. Essentially these parents have been unable to reach an agreement around contact arrangements. Relationships Australia said of their service:

Our objective always is to attempt to ... have the parents focus back on the needs of their children and to provide role models, where possible. We aim to have contact continue with both parents on a consistent basis regardless of protracted periods of

30 McIntosh J, Child-inclusive divorce mediation: Report on a qualitative research study, *Mediation Quarterly*, vol 18, no 1, Fall 2000, p 59.

31 Family Services Australia (Hannan J), transcript, 20/10/03, p 32; Moloney L, transcript, 20/10/03, p 5.

32 Relationships Australia (Smith J), transcript, 29/8/03, p 5.

33 Department of Family and Community Services, sub 1702, p 2.

conflict, be it in the courts or outside the courts through other means.³⁴

- 3.37 Courts and lawyers frequently refer families to these services as they provide a valuable support for orders that are likely to cause difficulty, where there are unresolved abuse allegations in the interim stage and where there is some violence the risk of which can be managed in a safe environment.³⁵
- 3.38 Maintaining contact with children in difficult circumstances has been a significant issue for many parents who have given evidence to the committee. Disputes over handovers appear to commonly interfere with the capacity to manage shared arrangements smoothly. Some parents have had to resort to McDonalds or police stations.³⁶ Often these disputes become problematic for the ongoing relationship between the child and the contact parent. There may be a range of ways, other than Children's Contact Services, in which these disputes can be avoided, such as having one parent drop a child off at school and the other pick them up at the end of the day.
- 3.39 The Attorney-General's Department suggested there is value in making Contact Services available at an earlier stage.³⁷ This is likely to expand the client group and increase demand on services which already manage extended waiting times. The Children's Contact Services are a valuable adjunct to the Contact Orders Program.

Conclusion

- 3.40 It was evident to the committee that Children's Contact Services are invaluable to helping separated families unable to support their own arrangements to maintain parent/child relationships through difficult times.

Aboriginal and Torres Strait Islander family consultant program

- 3.41 During the committee's hearing in Cairns evidence was presented on the FCoA's Aboriginal and Torres Strait Islander family consultant program. The program employs indigenous staff to provide services which assist peaceful and dignified resolution of family conflict as an alternative to

34 Relationships Australia (Smith J), transcript, 29/8/03, p 3.

35 Women's Services Network WESNET Inc, sub 159, p 8.

36 Jo, transcript, 29/8/03, p 44; Witness 1, transcript Knox, 28/8/03, p 25; McIntosh J, transcript, 20/10/03, p 7.

37 Attorney-General's Department, sub 1257, p 26.

confrontation and possible litigation, intimidation and violence.³⁸ The FCoA annual funding to this program is \$588,000 serving the indigenous populations of North Queensland and the Northern Territory.³⁹ Urban aboriginal people do not currently have access to the program, except in the limited way described below. 2001 Census data identifies regions with the largest Indigenous populations as Sydney (37,557), Brisbane (34,809), Coffs Harbour (32,122), Wagga Wagga including Dubbo (20,966) and Perth (20,506).

- 3.42 A strong focus of the program is building capacity within the communities to manage their own family affairs. The Court provides assistance through this program 'in developing skills and enhancing ... existing traditional skills of dealing with family problems.'⁴⁰ The aim is to keep families away from the legal court processes. It has been very successful at doing this, but there are only six consultants located in pairs at Cairns, Darwin and Alice Springs. These same consultants assist the rest of the Court in other States as required and usually from a distance.⁴¹ This necessarily limits their achievements in those other locations.
- 3.43 In North Queensland the consultants have developed the Peacemaker Course which is a generic mediation training program delivered in indigenous communities.⁴²
- 3.44 The committee also heard in Darwin about the good work done by the Indigenous family consultants employed by the Court in the Northern Territory.⁴³ The Strong Families program there 'aims to promote improved family functioning through relationship education that is founded on community involvement and participation.'⁴⁴

38 Family Court of Australia, *Nomination for AIJA Excellence in Judicial Administration Award 2002: The Aboriginal and Torres Strait Islander Family Consultant Program*, unpublished, FCoA, Canberra, p 8.

39 The FCoA is unable to provide data on the number of indigenous families assisted by the program, particularly in NT. 29% of the national ATSI population reside in Queensland. The funding covers significant travel and support costs for the outreach and community development work involved.

40 Family Court of Australia (Stubbs J), transcript, 5/9/03, p 42.

41 Family Court of Australia (Stubbs J), transcript, 5/9/03, pp 40-41.

42 Family Court of Australia, *Nomination for AIJA Excellence in Judicial Administration Award 2002: The Aboriginal and Torres Strait Islander Family Consultant Program*, p 12.

43 Top End Women's Legal Service (Hughes C), transcript, 25/9/05, p 39.

44 Family Court of Australia, *Nomination for AIJA Excellence in Judicial Administration Award 2002: The Aboriginal and Torres Strait Islander Family Consultant Program*, p 10.

Conclusion

- 3.45 The Pathways Report recommended expansion of the program and the committee strongly supports this.⁴⁵

Relationship support

- 3.46 The FRSP provides some relationship education services – 160 services with 22,000 clients (both male and female) in 2000-01.⁴⁶ This inquiry has made it obvious to the committee that relationship breakdown is having a significant negative impact on communities and individuals. It is becoming more important that relationship support is needed before relationships are formed and while they are intact, as well as when they are going through separation and after.

Men and family relationships

- 3.47 Substantial evidence was presented to the committee about the impact of separation and loss of contact with their children on fathers. The Lone Fathers Association and others have suggested that the rate of male suicide in Australia is associated with family breakdown problems.

A large proportion of male suicides are associated with family law related problems.⁴⁷

... 5.5 men a week commit suicide ...⁴⁸

There is no doubt that separation, and everything that goes with separation, does influence suicide rates in males ...⁴⁹

- 3.48 The committee considers that male suicide is an issue that goes beyond the reach of this inquiry as there are no reliable statistics available on why men commit suicide. The committee has made considerable efforts to obtain this information but it is not available. However, what is clear is that there are vulnerable men who need targeted support, especially when their relationships break down. Strategies that help them to keep connected with all their family members and particularly with their children are vital.

45 Family Law Pathways Advisory Group, p 75.

46 Department of Family and Community Services, sub 1251, p 23.

47 Lone Fathers' Association (Aust) Inc, sub 1051, p 11.

48 Dads in Distress (Lenton R), transcript Coffs Harbour, 27/10/03, p 52.

49 Department of Family and Community Services (Sullivan M), transcript, 17/10/03, p 34.

3.49 More particularly, many fathers also have difficulties maintaining their relationships with their children through the current family law system and this is distressing for them. Dads in Distress reported:

Those [dads] are telling us that the difficulties faced in gaining access, through the present system is the source of much animosity. Fathers feel locked out of their children's lives. Many lose all contact with their children by the time their children reach their early teens ... the emotional issues of separation grief, and recovery, are made ten times more difficult as a direct result of the physical isolation from children⁵⁰

3.50 The FRSP includes 85 services who provide support targeted to men helping them to manage their family relationships, including with their children.⁵¹ The Men and Family Relationships program evaluation report published in November 2002 indicated that it had been 'very successful in providing innovative services which take into account men's particular needs.'⁵² With respect to separated men, the report sums up as follows:

Men who are living with the pain of separating from their partners, and particularly separated fathers, are at an extremely vulnerable point in their lives. The men's services have demonstrated that this group of men can benefit greatly from service intervention. Separated fathers are particularly interested in gaining information and skills around maintaining close relationships with their children.⁵³

3.51 As a result of the findings of the evaluation the program has now been given on-going funding. In 2001-02 funding was \$2.2m, assisting 7500 clients, and this was increased in 2003-04 to \$6.1m. Mr Sullivan (FaCS) reported:

... The interesting issue that came out of the evaluation is that, with good counselling and good support services, you see a decrease in the suicide rate of males who are maintaining their child support payments. That is not conclusive but it is more suggesting that it is the issue of separation and the trauma of separation which probably needs to be addressed most significantly. We are seeing, out of those 10 or so services, significant positive results and certainly enough for the

50 Dads in Distress, sub 974, p 1.

51 Department of Family and Community Services, sub 1251, p 7.

52 O'Brien C & Rich K, *Evaluation of the Men and Family Relationships Initiative: Final report and supplementary report*, Department of Family and Community Services, Canberra, Nov 2002, p 4.

53 O'Brien C & Rich K, p 63.

government to decide to now put in place continued funding for those services ...⁵⁴

Conclusion

3.52 The committee is disturbed that the preventative area of family relationship service provision has such a low priority. The committee believes more could be done to prepare people better for marriage and parenthood and to support relationships throughout their continuum.

Defusing conflict

3.53 In Chapter 4 the committee looks more closely at reshaping the family law system to ensure families are helped to resolve their separation disputes in ways that minimise their need for lawyers and courts. When people separate there is inevitably some conflict, what is required is help for them to resolve it and move on, and not make it worse. Addressing the conflict and hurt of separation enables parents to move on and focus on their future responsibilities for their children. This is what the Contact Orders Program appears to be achieving. However, earlier, possibly therapeutic interventions, such as counselling are important as well.

Mediation before litigation

3.54 The idea of mediation as a way of resolving family disputes appears to be widely favoured. Evidence to the inquiry also supported the suggestion that it be made compulsory.⁵⁵

3.55 Once a person commences proceedings in the FCoA, mediation is compulsory in parenting matters.⁵⁶ However, by this stage they are possibly already too far down the litigation track. The committee is convinced that mediation would be more effective if it happened before litigation commenced.

3.56 National Legal Aid advised that legal aid commissions provide mediation or primary dispute resolution for their eligible clients.⁵⁷ It is largely conducted in-house early in their case and before the Commission will grant them aid to litigate. The availability of further aid is dependent on the convenor's conclusions about the client's reasonable participation in

54 Department of Family and Community Services (Sullivan M), transcript, 17/10/03, p 34.

55 For example: Tony, transcript Coffs Harbour, 27/10/03, p 58; Lone Fathers' Association (Aust) Inc, sub 1051, p 16.

56 Family Court of Australia, sub 751, Appendix 1, Case Management System.

57 National Legal Aid (Reaburn N), transcript, 20/10/03, p 58.

that mediation.⁵⁸ So effectively for legal aid clients it is mandatory before litigation.

- 3.57 Historically the primary dispute resolution sector has resisted moves to make mediation compulsory but the ground may be shifting.⁵⁹ In addition to the Legal Aid Commissions' approach, the FCoA is attempting to introduce some compulsion for pre-filing dispute resolution through the work it is doing on new rules.⁶⁰ The Attorney-General's Department advised:

... Generally, alternative dispute resolution literature suggests that ... primary dispute resolution, in the family law context, works best where parties agree to attend. By making it compulsory, it does not have the same outcomes. Having said that, you might be interested in some proposals that the Family Court ... has drafted. The court is proposing in its new rules—I hasten to add, they are not new rules, they are draft proposed rules—to introduce what are called pre-action procedures. ... parties would have to go through certain steps before they litigate. That would almost certainly include counselling or mediation prior to filing in the court. It is not an unheard of suggestion but it would clearly be a matter for government. We point to the fact that the court is thinking along similar lines in that respect.⁶¹

Conclusion

- 3.58 The committee believes that it is imperative that this be implemented by a provision in the Family Law Act which prevents the filing of a court application without having previously attempted mediation or other forms of dispute resolution. As noted in other chapters of this report, there would need to be a qualification with respect to those families for whom violence or child abuse are issues. However, this does not mean that an appropriate form of mediation would not be available to them.
- 3.59 Mediation should be directed towards the best interests of the child with the outcome being the development of parenting plans wherever possible.

58 Family Law Pathways Advisory Group, pp 38, 41-42.

59 Attorney-General's Department (Pidgeon S), transcript, 15/9/03, p 22.

60 An annotated exposure draft of the rules appears on the FCoA web-site at, viewed 12/12/03, <http://www.familycourt.gov.au/html/newrules.html>

61 Attorney-General's Department (Duggan K), transcript, 15/9/03, pp 7-8.

Mediation instead of lawyers

- 3.60 The committee believes that people must be encouraged to turn to mediation and other means of dispute resolution or support as the first step instead of seeking a legal solution. Lawyers should assist clients into mediation and ensure good links to these kinds of intervention as has been highlighted already in the Pathways Report and the Government Response. Ideally, when people separate they should not be thinking ‘first I need a lawyer’ but ‘where do we find a good mediator?’
- 3.61 There has to be a greater acceptance that it is critical to address the relationship issues at separation rather than through the legal system. Changing behaviour and expectations may be the solution.

Conclusions

- 3.62 The committee has concluded through this inquiry that addressing choices and expectations and behaviours around managing separation issues and maximising the chances of real shared parenting is a complex problem. The Pathways Report has taken development of a comprehensive approach a long way. The committee endorses this work.
- 3.63 During this inquiry the committee has identified four particular areas that need to be given greater attention:
- giving children a say;
 - helping parents who are stuck in conflict to put aside their relationship conflict and focus on their parental role to the benefit of their children;
 - diversion of families from starting with legal options; and
 - addressing community attitudes through broad based education strategies as recommended in Chapter 2.
- 3.64 Adequately resourcing the services identified in this chapter will inevitably require government commitment of funding. The committee has not attempted to assess what level of funding that might be. However, in the face of the obvious costs to the community and to future generations of children of separation and conflict, there is not any choice.
- 3.65 Many service providers and others commented to the committee on the change that has occurred in the ability to provide adequate pre litigation mediation assistance to families since the FCoA has withdrawn from this area. Traditionally family lawyers have referred their clients to this service. As National Legal Aid said:

I think that family law practitioners have been united in dismay at the lack of Family Court counselling now, because pre-filing counselling was very much a part of the everyday practice of family lawyers. You would refer people to see the counsellor and see if they could sort it out first. It was only if they could not resolve it that you would say, 'Come back and we'll start negotiating formally for you.'⁶²

- 3.66 The FCoA itself has expressed regret at the fact it was no longer able to provide this service before filing, although mediation is a requirement of the pathway for a parenting dispute in the Court.⁶³ Since 2001, the community sector is now funded by the Attorney-General's Department to the annual amount of \$1.7m to provide the voluntary pre-filing conciliation services previously provided by the Court. The issues since that time have been around sufficiency of this funding and the limited referrals by the legal profession.⁶⁴
- 3.67 The committee is convinced that money spent on early intervention and preventive relationship services will save money at the crisis end of service delivery. Early intervention will either assist more people to maintain harmonious relationships or provide them with the relationship skills that will enable them to focus on the needs of their children and resolve their parenting responsibilities themselves in the event of separation. Many service providers drew the committee's attention to the pressures on funding for these essential services and raised issues about whether the funding was being appropriately directed.
- The cost of delivering services under the FRSP has significantly increased over the past 7 years. Funding has not kept pace with increases in professional salaries, insurance, property rental and other expenses incurred in delivering services. In real terms the FRSP funding has been reduced over time, especially in relation to its core service, family and relationship counselling. Not only has this meant that the level of service cannot meet demand, but that professional staff salaries are much lower than in other cases of the family relationships field.⁶⁵
- 3.68 The committee considers that an increase in funding to the FRSP is of priority importance but should be preceded by a proper examination of where the areas of need are, what services are of highest demand in terms

62 National Legal Aid (Hughes K), transcript, 20/10/03, p 63.

63 Family Court of Australia (Nicholson CJ), transcript, 10/10/03, p 3.

64 Family Court of Australia (Nicholson CJ), transcript, 10/10/03, p 3; *Government Response to the Family Law Pathways Advisory Group Report*, p 10.

65 Relationships Australia, sub 1054, p 5.

of waiting lists and provide the best value in terms of investment. Value is not measured by number of clients served. The committee is aware that services at the crisis end, such as contact orders programs are resource intensive and will require more funds per client outcome than is usually the case at the early intervention end.

- 3.69 The committee acknowledges that committing expenditure to support separating families may be seen by some as a sign that divorce and separation are acceptable characteristics of today's society. However, strengthening families of the future requires ensuring that children of today's separated families are given the best chance for successful parenting. It is well known that exposure to ongoing conflict is damaging. Helping separated parents to resolve their conflict so they can nurture and care for their children positively and cooperatively will undoubtedly reap savings in the future.

Recommendation 7

- 3.70 **The committee recommends that in support of the legislative presumption for shared parenting recommended in Chapter 2 the government review the community's current access to services which can assist those who cannot achieve and sustain shared parenting on their own to:**
- **develop the skills to communicate effectively around their children's needs and to manage co-operative parenting;**
 - **enable them to resolve their on-going conflict and develop a long term ability to share their parenting responsibilities in the interest of their children; and**
 - **include the perspective and needs of their children in their decision-making, with and without assistance from the family law system.**

Recommendation 8

- 3.71 **The committee recommends in particular the significant expansion of the contact orders program beyond the level addressed in the Government's Response to the Pathways Report, to enable separated families in long term conflict to have access to like services in all states**

and territories and in regional areas. (As a minimum there should be one of these services in each location where there is a Family Court registry.)

Recommendation 9

- 3.72 The committee recommends that the *Family Law Act 1975* be amended to require separating parents to undertake mediation or other forms of dispute resolution before they are able to make an application to a court/tribunal for a parenting order, except when issues of entrenched conflict, family violence, substance abuse or serious child abuse, including sexual abuse, require direct access to courts/tribunal.**

Recommendation 10

- 3.73 The committee recommends that the funding for the Family Relationships Services Program be increased following a review with respect to the appropriate targeting and adequacy of resources for the service types which will provide the most benefit to families' positive family relationships, before during and after separation.**

In this review the committee recommends that consideration be given particularly to a significant further expansion of children's contact services nationally.

