

“Making Children’s Interests More Visible – the Australian Experience”

Speaker: Robin Purvis, Social Worker, Australia

Today I will be talking about the challenges in representing children’s interests in separating families and discuss some of the initiatives to assist the Court, parents and supporting professionals to achieve better outcomes for children.

I will be speaking as a social scientist and will address issues confronting the separating population in the context of social and cultural change with increasing visibility and incidence of family dysfunction.

I have a social work background and have been professionally involved in the area of family law since 1980, though have had less involvement in the past decade.

The meeting of children’s needs in this area continues to be a challenge.

Family Law in Australia is a singular jurisdiction specifically tasked with overseeing legal issues relating to separation and divorce.

I thought it would be helpful to begin with a brief historical overview of the development and evolution of family law in Australia and the social change shaping the approach to separating and divorcing families.

1970’s

The mid-1970’s saw Australian divorce law reform. The Family Law Act 1975 resulted in the establishment of the Family Court of Australia – a Federal Court designed specifically to deal with separation and divorce.

No Fault Divorce

The intent of ‘No Fault Divorce’ was to enable people to separate and divorce with dignity.

The focus was on encouraging couples to work together to achieve a mutually agreeable separation, parenting and property arrangements.

The clientele was married couples only.

While there were couples living in de facto relationships, living together was not socially acceptable at that time in the 1970’s.

A world leader

This legal reform and the establishment of a specialised FAMILY COURT, a federal court, incorporating a social science arm with the purpose of assisting couples to work toward child-focussed solutions in parenting arrangements, was unique.

Initially, where there was dispute, the social science practitioners of the Court (psychologists and social workers) conducted family assessments making recommendations about children’s issues, which were reportable to the court.

However, the area was fraught

The reform – legalising divorce, giving women equal rights legally - was ahead of the social change.

As late as 1974 married women were not allowed to work in government, teaching, public institutions. It was not socially acceptable for married women with children to work.

Men in particular had difficulty coming to terms with the fact that their wives could initiate a separation – as late as the mid-80's phone calls 'my wife is leaving me – is she allowed to'?

This was in a context of 70% of separations being initiated by women

With the result there were some violent outcomes most particularly involving a series of bombings resulting in the death of a judge, a judge's wife and other injuries.

1980's saw beginning of counselling-mediation conflict resolution models

In the early 1980's the Court Counselling Service as it was known developed a model whereby couples who were making applications to the court could have up to 3 confidential counselling sessions to assist them to resolve matters between them with consent orders formalised by the court.

This was the beginning of counselling-mediation conflict resolution models

1990's – increasingly conflict resolution preferred alternative to court

In the 1990's Conflict resolution increasingly became a preferred alternative to court determinations, to reduce court lists and expensive court processes as well as to assist couples to facilitate their own best outcomes

This decade saw an increasing focus on mediation as a preferred conflict resolution model and saw the beginnings of outsourcing conflict resolution from the Court Counselling arm.

The development of community-based models for resolving parental disputes and property has evolved over the past 2 decades reducing significantly, the population in need of court determinations.

In the early 90's De facto relationships were incorporated into the Family Court's jurisdiction

This change in clientele combined with increasing exposure resulted in increased complex problem presentation

With separation came increasing disclosure of family dysfunction in particular domestic violence and child sexual abuse in a context of increasing social breakdown.

A 2011 report, “For Kids’ Sake” (Patrick Parkinson) refers to the population of “Fragile Families” in Australia and outlines factors contributing to fragility in families which, result in heightened vulnerability in their children including:

- Family conflict;
- Cohabiting parents;
- Separated families;
- Single parent families;
- Blended and step-parent families;
- Lack of constructive father involvement.

The report found

- Poor mental health outcomes for Australian children;
- Significant deterioration (25%), particularly for girls, over the past decade;

It noted that the fragility of Australian families over recent generations was a major contributing factor to these poor outcomes for children.

These findings, a decade ago, were a comment on the complex, multi-problem nature of ‘fragile’ families and identified systems difficulties for intervention to meet the challenges.

These families represent a significant proportion of the Family Court Clientele. A decade on families presenting to the Court typically present with significant needs across multiple disciplines:

Characteristic are allegations of:

- Domestic violence;
- Child sexual, physical, emotional abuse;
- Parent/s with drug and/or alcohol problem;
- Parent with a diagnosed mental illness;
- Parent with criminal history;

And not unusually a combination of these factors

Drug use, Ice/ methamphetamine in particular, as many western countries are experiencing, is significantly contributing to the concerning social breakdown that we are witnessing.

In Court proceedings, limitations of the adversarial contest where children’s issues are presented in a mode of counter allegations about parenting shortcomings, compound dilemmas for judicial officers, legal advocates and expert witnesses.

Further inhibiting factors in making determinations ‘in the best interests of the child’ include difficulties in meeting evidentiary requirements of proof, a legal culture that until recently advised against raising issues of family violence in evidence, and constraints on available Court time for hearing these complex matters.

As Goldner pointed out “In the counselling and mediation context, assessing the nature of the problem can be difficult as these relationships are frequently characterised by extreme polarities of blame and denial, love and hate, exaggeration and minimisation.” (*Goldner, 1992*)

There has been increasing criticism of and challenge to the Family Court’s handling of children’s matters in these circumstances.

The Family Court is not a child protection court

It is an adversarial system whereby adult parties argue about adult interests.

Judges, legal advocates and frequently family report writers are not trained or skilled in assessing for child risk

There has been a lack of recognition of DV and child abuse

In view of the Family Court’s lack of specialisation the Australian Law Reform Commission in 2019 recommended that the State Courts would be more suited to managing the complex, child protection issues that now form the basis of the Family Court clientele

2000’s

Of the separating population in Australia, approximately 70% of couples resolve matters themselves. Of the 30% who make applications to the Court 70-80% have complex problem presentation.

In the past 2 decades the court system has continued to evolve building on initiatives with the intent to assist separating families with complex problems.

Initiatives to assist assessment include:

- Family Reports – Family Evaluations have been a consistent medium of independent representation of children’s interests since the Court’s inception and continue to be a critical factor providing independent assessment
- ICL – Independent Children’s Lawyer (1990’s)
- Supervised Contact Centres (pre and post Covid)
- Magellan List early-2000’s – special tracking for applications where there are allegations of sexual abuse

- Lighthouse Project –Triage where allegations of risk to children assess best course of action and best systems response

Post-parenting support

Children and parents navigating separation confront a complexity of issues and problems to be resolved.

There can be many sources of conflict between parents:

- *Arguments about property settlement or parenting arrangements;*
- *Litigation;*
- *Ongoing arguments about child support;*
- *Different approaches to discipline, diet and bedtime may be a source of friction;*
- *Parents don't have the same need to reach agreement on these matters as they would in an intact family;*
- *Unresolved issues about the breakup may cause continuing tension and hostility;*
- *Mothers forming new intimate partnership;*
- *New partners may arouse feelings of resentment or jealousy;*
- *Frequent moves;*
- *Security of tenure in the private rental market is not guaranteed;*
- *As parent's lives move in different directions, there may be serious conflict concerning primary caregiver's desire to relocate;*

Parenting education programs have developed and evolved over time and can address a range of material to assist parents understanding of their children as well as focusing on constructively co-parenting.

Attendance can be a requirement in children's matters presenting to the Court.

Parenting co-ordination

A child-centred dispute resolution process relevant for parents who are in high conflict post separation and divorce. PC offers a structured dispute resolution process for an extended duration and assists parents who need ongoing assistance in following their parenting plans or who need small parenting plan adjustments over time.

In some cases, Parenting Coordinators assist post separated parents to develop their initial parenting plans.

Child Inclusive mediation – Prof Jennifer McIntosh

Child Inclusive Mediation & Counselling (CIMC) an evidence based intervention for separated parents in dispute, has become a helpful and constructive adjunct to mediation processes. It is designed to support and powerfully realign co-parenting, by focusing on the experiences of their children.

Seminars and training for legal and social science practitioners.

As an example the topics covered in a seminar series being presented currently include:

- **Outlining the Court's Expectations of Mental Health Practitioners**
- **Family Court Decision Making and Orders: Capacity to Parent and a Child's Wishes in the Face of Parental Mental Health Issues and Drug and Alcohol Allegations**
- **Family Violence:** Navigating Your Obligations Where There are Allegations of Family Violence or Family Violence Related Orders are Made
- **Coercive Control:** Exploring How the Family Court Deals with Allegations Involving Coercive Control and What You Should Include in Reporting or Communications
- **Understanding and Navigating Informed Consent from Children and Parents**

Conferences

Indicative of the search for more effective interventions to assist child outcomes is the title of next year's Australian Chapter AFCC conference in Brisbane:

When a Child Rejects a Parent: Are We Part of the Problem or the Solution - AFCC conference 2021

Which suggests a self-examination occurring in efforts to get it more right for the children.

Conclusion

Achieving a constructive and realistic child focus is an ongoing challenge. It is of note and encouraging that the professionals involved have become increasingly conscious of these challenges and there is genuine effort to develop understanding and work toward systems that provide the best outcomes for children.