STATE OF THE NATION
Chief Justice Diana Bryant
Family Court of Australia

12th National Family Law Conference
23 October 2006 – PERTH

Family Law Reforms

The Family Court of Australia celebrated 30 years of service this year having commenced operations on 5 January 1976. In that period there has been, on my calculation, sixty-nine Acts of the Commonwealth Parliament of Australia which have amended the *Family Law Act 1975* (Cth).

Amongst the most recent, and possibly most significant to the principles which guide the resolution of parenting disputes and the means by which disputes are resolved, has been the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth).

The Act flowed from *"Every Picture Tells a Story"*, the December 2003 Report of the House of Representative Standing Committee on Family and Community Affairs, which had only recently been released when I last addressed this Conference in September 2004. At that time, the government had also published its framework statement for the reform of the Family Law System. In that statement the government identified four primary areas for reform:-

1. A greater emphasis on shared parental responsibility;
2. The establishment of a network of Family Relationship Centres;
3. The creation of a combined `Family Law Registry' for the Family Court of Australia and the Federal Magistrates Court; and
4. A less adversarial approach to children's cases.

New heads of jurisdictions inevitably come with ideas for change. Mine were shaped somewhat by that framework. I will report on what has been achieved in those two years using the four areas of reform identified by the government which I will reframe in terms of their relevance to the Court.

Legislative change [A greater emphasis on shared parental responsibility]

This was addressed by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* which came into effect on 1 July 2006. It is too early for any discernable trends in decision making or jurisprudence, but at the end of October 2006 the Full Court will hear some appeals arising from interim hearings and the question of whether *Cowling* in its present form survives the amendments.

It is useful when considering the implementation of legislation to remind ourselves of the

independence of the Court from the Executive and the Parliament. In doing so I do not suggest for a moment that the Court is not required to implement the law in a real and substantive way and in a manner in which the Parliament intended it to operate. That I hope is gainsaid.

But it is useful to consider what that independence means, because the Court has a separate and distinct role from that of the Parliament and the Government. The Government's aim is to try to bring about social change, by designing a system which it is hoped will change outcomes over a period of time for a large number of the community, both those who do not seek the assistance of the court and those who do.

The Court has an entirely different role. Its role is to resolve the disputes that come before it and where they proceed to a hearing, to determine each individual case according to the circumstances of that particular case, in the context of the Family Law Act, and in the best interests of the children in that family. There is no question of what occurs in other households or in other families when the factors in the Act are being applied on an individual basis in an individual family. Of course, the Court does not apply the law, much of which is about value judgments, in isolation. It does so in a social context. Much of the criticism of the Court in the past has been, in my view, because of a failure to comprehend that the discretionary nature of the considerations of what is in the best interests of an individual child in an individual family, requires making judgments about **that** child in **that** family, not all children in all families.

But courts <u>are</u> an integral part of the arms of Government. The hardest and most unpopular of decisions that have to be made are, and will continue to be made by the courts.

Of course, the government should expect that the court will apply the law in accordance with and the spirit of the intention of government. But it is important to make these points at this time because the more successful the government's initiatives are in keeping the majority of separating couples out of court, then the more difficult the cases that will end up in litigation in the courts. That is already the case and will be even more so in the future.

This is particularly so in the Family Court when compared with the Federal Magistrates Court. It is those very cases that will be dealt with in the Family Court – cases of violence, abuse and entrenched conflict – which will by their nature be less likely to lead to the cooperative parenting that the government wants parties to have and the kind of orders that would support them. The court accepts its role and the unpopularity that that role will continue to engender, but judging is not about popularity.

I hope only for respect for the work we do, an understanding of its difficulty, and the support of government for the difficult decisions that judges make every day.

The establishment of a network of Family Relationship Centres

On 3 July 2006, fifteen Family Relationship Centres ("FRCs") commenced operation. The full compliment of sixty-five centres will be established by 2008.

They were established in response to a need, recognised by the Government, to support separating families in reaching, where appropriate, consensus about their children and a focus on the needs of the children, particularly their need to form a meaningful relationship with both parents where it is not contrary to their interests.

To the extent that it is anticipated the Family Relationship Centres will help more separating families put aside their differences and reach agreement in the children's interests, the Government is to be applauded. Whether it is achievable in greater numbers remains to be seen but I am optimistic that attitudes can be changed with the right education, support and encouragement.

Let me, however, add a word of caution. Any genuine change of this kind in my view will inevitably take years to be fully realised. In my own experience in practice, it took about ten years after the passing of the Family Law Act for the general community to accept that no fault divorce was appropriate. Even today, there are those who continue to hold the view that adults should not be permitted to leave a marital relationship, absent good cause, without some sanctions but these voices are now few and society has moved on. Indeed the fact that there are many people who do not marry at all has probably assisted in this process.

It is important therefore in my view for the government to be patient about its reforms. Genuine reform takes time and it would be difficult indeed if these initiatives which promise much were to be seen as failures because they were evaluated in too short a time frame. Commitment is required to let the winds of change blow for sufficiently long to have a lasting impact on the climate.

The creation of a combined `Family Law Registry' for the Family Court of Australia and the Federal Magistrates Court.

This was one of the four areas for reform identified when the Government published its Frame Work Statement for the reform of the Family Law system in 2004.

Without being critical of the Government the Courts were left to interpret what a Combined Registry might mean and to implement it. There are a number of features to what is obviously and appropriately the Government's desire to create a rational and seamless framework for the operation of the two Courts, a superior Court and a lower Court who have to a large measure concurrent jurisdiction.

The Courts understand the concept of a `combined registry' to have several distinct elements. The first is the Combined filing Registry in respect to which there were sixteen projects which have now largely been completed. At a session later this morning the CEO

of the Family Court of Australia, Mr Richard Foster, and the CEO of the Federal Magistrates Court, Mr John Mathieson, will deliver a paper on these projects and what they mean for the litigants and lawyers involved with the Court and the way in which the Courts have integrated the provision of Client Services. Some of them are extremely significant initiatives but I will leave it to them to describe them.

The second area involves the governance of the Courts. There is some overlap with the Federal Court but governance issues involve the sharing of the Family Court's budget in the family law related activities of the Federal Magistrates Court, the need to have a structure for decision making about how resources would be shared when needs outweigh capacity and the need to make arrangements for accommodation of Federal Magistrates in Commonwealth Court buildings as the court continues to grow and requires additional space for chambers and requires court rooms. Some of these areas are complicated by the fact that whilst there are Federal Magistrates appointed to do predominately general Federal work they are doing family law and the practical desirability of locating both court rooms and chambers in the same area even though they might involve both family law and non family law appointed Federal Magistrates.

I make these remarks not to suggest that there is any lack of cooperation between the Courts but simply to emphasise that some of these issues are not so neatly pigeon holed into family law and non family law resource sharing. In order to provide a structure for decision making and governance, the Courts established the Family Law Courts Board which consists of the two Chief Executive Officers and the two heads of jurisdiction, myself and the Chief Federal Magistrate. The Board holds regular meetings and has to determine the issues concerning workload allocation, budget allocation and resource sharing of individuals such as Registrars and Family Consultants, chambers and court rooms.

It is incumbent upon the Courts to utilise public monies in the most appropriate way for both Courts. I will however not hesitate nor will I am sure the Chief Federal Magistrate, to seek resources for the Courts where we consider they are necessary.

The third issue confronting the Courts is the allocation of work between the two Courts. In early 2005 I arranged for three workshops to be held throughout Australia involving both Courts, the profession and other relevant stakeholders to discuss the kind of model that the Courts might ultimately work to. The model for a single point of entry emerged. In this model, subject to a critical mass of Federal Magistrates being appointed, much of the work will be filed in the Federal Magistrates Court and transferred to the Family Court if it fulfils the criteria for complex work. There has not been a critical mass in any registry so far, but with the retirement of Justice Murray in December 2006, there will be a need to pilot this arrangement in Adelaide in early 2007.

There is an ongoing debate and the need for some resolution of exactly what the more complex work should be. To some extent this depends upon the relative sizes of the Courts. In order to implement a streaming system by which most of the work was filed in the Federal Magistrates Court the addition of between 12 and 16 Federal Magistrates was

identified. As such appointments could not be immediately made the present system continues. However, since that time there have been additional appointments to the Federal Magistrates Court and it has been clear that a streaming model whereby most of the work commenced in the Federal Magistrates Court is now in contemplation. I have mentioned the Adelaide Registry as requiring this to happen in 2007 whether or not a judge is appointed to replace Justice Murray.

This again requires a reconsideration of the kind of work each Court should be doing. Planning for the future is not easy when the Courts virtually have concurrent jurisdiction and it is not known how large each of them will be. I have previously said that the Courts are entitled to expect some leadership from the Government in this area and I do ask that the Attorney-General gives some fairly urgent consideration to consulting through whatever process he might think appropriate to provide a blueprint for the future of the Courts over the next five years. The Family Court has already reduced in size since the commencement of the Federal Magistrates Court. The question of how large or how small it should ultimately be is one that really needs to be addressed. It is difficult to plan for without knowing what you are planning for.

There are many considerations. At the moment most of the work done by the Federal Magistrates Court is limited to those matters which do not take longer than two days. If the size of the Family Court reduces considerably and I use Adelaide as an example, there may have to be some reassessment of whether the Federal Magistrates Court should be doing cases longer than two days. I doubt that the Family Court Judges could reasonably get through the workload of all those cases over two days with only three Judges. This in turn requires a fundamental reconsideration of what kind of work the Federal Magistrates court is to do. Is it simply to do those cases which do not take longer than two days leaving all of the rest to the Family Court? If so I suspect that there would not be much further capacity for diminishing the number of Family Court Judges. However, if on the other hand if it is to do longer cases then on what basis are they to be differentiated ?

I pose the question, for example, of whether it is appropriate for a superior Court to be hearing long, fact intensive, but jurisprudentially unimportant cases with self represented litigants or whether that is more appropriate with the lower level Court.

These are not easy matters to address but they do need to be addressed and the Courts should not be left to sort these planning issues out alone.

Whatever the government plans for the future of the Family Court is unquestionably its prerogative. There are models to consider. The High Court in England is a useful model in my view. It is a superior Court which mainly hears appeals but also the most complex work. But it is time for an indication by the government of what is the longer term plan for the Court and if there is none, to conceive a blueprint. The failure to do so is bad for morale within the court and could affect recruitment of potential judges.

At the same time it would be appropriate I suggest to consider the existing structure of federal courts in a wider context, especially if the Family Court is to reduce further in size.

The remaining elements of the Combined Registry is to have one form and some rules harmonisation about initiating applications I am reliably informed that we are very close to the finalisation of the one form.

I want to thank the Chief Federal Magistrate for his cooperation in the establishment of the Family Law Courts Board and the manner in which on behalf of the Federal Magistrates Court he has approached the difficult issue of resource sharing between the Courts. The Federal Court has increasingly been involved in some of these issues. For example provision of space in buildings might be made easier with the assimilation of libraries between the Federal Court and Family Court there is an initiative at the present time for libraries to be shared. We have already achieved agreement in Adelaide.

The Less Adversarial Approach

One of the most radical, and exciting departures from previous practice has been the development of the Less Adversarial Approach within the Family Court of Australia.

The government put to one side a tribunal model, recommended in "Every Picture Tells a Story" partly on the basis that the Court would continue to embrace a less adversarial means of resolving parenting disputes. The pilot program, Children's Cases Program ("CCP"), had commenced prior to the release of the framework statement and was an initiative of my predecessor Alistair Nicholson. From its incarnation, the pilot was the subject of extensive evaluation by Professor Rosemary Hunter and Dr Jennifer McIntosh.

The nature of Less Adversarial Trial has meant a change in the manner in which hearings are conducted by Judges. All of the Judges of the Court have received training in what are essentially different communication skills and I thank all of them for their embracing of a new way of hearing cases. It is a significant change and will require ongoing support. A session held during the recent Judge's Conference enabled those more experienced to share their experiences with those who had not been doing trials in this way for long. It is an evolutionary process and I am sure we still have much to learn. I am grateful to all of the Judges for their willingness to embark on this journey. The profession too, participated in workshops conducted by the Family Law Section to familiarise them with the process and assist them to take an effective part.

The Less Adversarial Trial is the manner by which the Family Court has chosen to give effect to the requirements of Division 12A of the Act, and will apply across the board to all children's cases initiated pursuant to Part VII of the Act after 1 July 2006 and by consent to financial matters.

It is premised on the Children's Cases Program ("CCP") model which was the trialled in the Court's Sydney and Parramatta registries throughout 2004 and 2005. The model was also rolled out in the Melbourne registry in late 2005. Following requests from the legal profession, the program was continued beyond the pilot in all registries. A study was

undertaken by Dr Jennifer McIntosh, titled `The Children's Cases Pilot Project: An exploratory study of impacts on parenting capacity and child well being', and released in March 2006. The study was intended to sit within the broader evaluation undertaken by Professor Rosemary Hunter, which was released in July 2006.

The report of Dr McIntosh specifically explored the impact of CCP on parenting capacity and child wellbeing. The report compared data from parents participating in CCP with similar data from parents in a control group of cases that were finalised in the same period. The CCP sample reported:

1. more satisfaction with post-court living arrangements, including for the children;
2. significantly less difficulty in managing conflict a positive impact of the court process on themselves as parents;
3. significantly less damage to the parenting relationship post-court and to the parent child relationship, and
4. greater contentment and emotional stability in children after court.

The CCP group reported significantly lower levels of psychological hostility in their relationship with their ex-partner than the mainstream group three months after court. They reported significantly less damage and a more positive impact of the Court process on them as a parent. The overall picture was one of greater contentment and emotional stability in their children after court, compared with 'mainstream' parents.

A final evaluation report prepared by Professor Rosemary Hunter of Griffith University in Queensland, similarly found that as a less adversarial and more child focused process the CCP has the potential to assist parents to parent more cooperatively.

Professor Hunter also found that parties who had participated in CCP were generally more satisfied with that process than parties whose dispute was determined using a traditional adversarial approach. Professor Hunter noted that CCP was designed to be a more active and engaging process, with Judges and mediators confronting and challenging parents about the impact of their conflict on their children. Other benefits identified by Professor Hunter included the incidence of parties speaking to the Judge, whether or not represented. The reduction in the nature of evidence filed to that relevant to the issues in contest had the effect of reducing both conflict and cost to the parties.

Case Management

The Less Adversarial Trial ("LAT") is a radical departure from the previous practice of this Court and other civil jurisdictions throughout Australia. It was suggested by Justice Stephen O'Ryan, during his recent address to the Australian Institute of Judicial Administration Conference, that the LAT model offers significant potential as a more contemporary vehicle for the future of litigation in both our own Court and other civil jurisdictions. Courts are increasingly focused on ensuring the litigation is controlled by the

judge and the issues the parties are permitted to litigate. This message was made time and again at the recent AIJA Conference by both Australian and overseas speakers. The LAT model combines all these features.

The nature of the hearings has necessitated a significant change in case management. Recognising the importance of the first day of the hearing when issues are discussed and settled by the judge, it seemed inevitable that the best case management features of parenting cases would translate into the management of property trials.

There have been criticisms of the present system for being to prescriptive and event based rather than being case specific. The corollary of a documented pathway for all cases is a more flexible system which has its own challenges but the need to change the Case Management Procedures as a result of the less adversarial trial process has resulted in the Court reappraising its current Case Management Pathway. I established a Committee chaired by Justice Rose to consult with the profession and to report on whether current Case Management System should be retained or whether we should move to a different system which would constitute an individual docket system.

At their annual conference last week the Judges agreed upon some significant changes to management of property cases. The detail is yet to be finalised and consultation with the profession will follow. The case assessment conference will still take place but there will be no mandatory court–based conciliation conference and instead a Registrar managing the file will be able to direct parties to appropriate PDR interventions either within the Court or externally. The file will be actively managed by a Registrar pending its first listing before a judge who will then settle the issued to be determined, and ensure the affidavits are only directed to the matters in dispute when fixing it for hearing.

The Court has also committed to implement an individual docket system in place of the current case management system.

The Court already has a series of judicial dockets which are likely to expand given the substantial increase in recent years of children's cases. Those mini dockets include:

1. part-heard CCP cases;
2. the LAT model currently implemented due to the provisions of Division 12A and the overall success of the CCP model;
3. long complex cases; and
4. Magellan cases list.

The potential benefits of a docket system include:-

1. Judicial control of compliance through a docket may assist in reducing the widespread and entrenched culture of non-compliance;
2. The historical response to Judge management of cases has been a reduction of issues, tightly controlled directions for both affidavit and oral evidence and improved compliance with such directions;
3. The opportunity for a Judge to reduce and define the real issues immediately a

matter may be placed in that Judge's docket following the resolution phase, would enable a course to be better charted in terms of management of cases and advance planning for pre-trial and fixing dates for trial whilst maintaining appropriate levels of flexibility;

4 The opportunity for a 'case specific team approach' to be implemented utilising a Registrar more closely with a Judge. Judicial Registrars would continue to have duty lists and hear interim applications as part of the 'team approach', as well as having their own docket;

5 Increased confidence in the system, by both the legal profession and litigants, due to a Judge having familiarity with the litigation history and issues in a particular case;

6 More flexible planning for judgment writing time at the anticipated conclusion of the trial;

7 Greater harmonisation of resources given the increasing number of individual dockets that now apply due to the LAT model;

8 Enhanced review of judicial workload due to the requirement for monthly docket reports; and

9 Reduction in court time in the hearing of trials due to more active case management and pre-trial procedures.

We will now embark upon consultation with the profession throughout the country in relation to designing the best model that we can. The Family Law Section made a significant submission to the Case Management Review Committee urging that there be different approaches in different cases and we will continue to consult with them in the design of a new Case Management process.

Family Violence Guidelines

The Family Law Violence Strategy is part of the government's changes to the family law system and the strategy was launched in February 2006 by the Attorney-General. The Attorney-General has stated that the strategy aims to take a practical and informed approach combining a series of new efforts and existing resources to ensure concerns about family violence and child abuse that arise in family law proceedings are investigated and resolved appropriately.

The Attorney has expressed on many occasions his concern about false allegations of violence and abuse, and about false denials, as he has his concern that cases should not drag on while family members are exposed to the risk of violence, and alternatively that allegations should not be unresolved indefinitely without an effective process to establish the facts. Those imperatives are well known to all of those who practice family law. The government has developed a number of initiatives and has engaged the Australian Institute of Family Studies to conduct independent research on how allegations of violence are raised and addressed in the family law system.

The Family Law Council has been asked to examine strategies to make sure Commonwealth and State and Territory laws and agencies can work together better in these cases. I venture to say the Court's Magellan project is an excellent example of the relationships that can develop between the courts and the Commonwealth and State and Territory authorities. The cases that are within the Magellan guidelines relate to serious allegations of child abuse. Magellan should act as a model for the project but it is resource intensive and the priority it gives to the cases in the program means that others will not receive the same priority.

Protecting children from the harm caused by abuse or violence, or by exposure to abuse or violence, is now one of the objects of Part VII of the Act. Family courts have particular obligations imposed on them under section 60K to consider and make appropriate orders to protect children and parties, and to facilitate evidence gathering, when allegations of violence or abuse are raised.

The Family Court has been active in the area of family violence for many years in order to protect vulnerable parents and children and there is a comprehensive family violence strategy in place. Following adoption of the strategy, the Court has developed a range of programs and policies to give effect to key areas of the strategy. Our last is the development of family violence guidelines to assist the Court's decisions makers. Fortuitously, drafting of these guidelines has coincided with the amendments to the Act, particularly section 60K, and enabled us to integrate violence and section 60K into the guidelines.

Justice Moore, who is the chair of the Court's Family Violence Committee and also the chair of tomorrow's plenary session, has together with the Committee developed draft guidelines. Comment on these is being sought from the Judges at present and there will be an external consultation process with relevant organizations prior to adoption of the guidelines. The English courts have had guidelines in place now for some time and the Committee has been informed by their work.

Child Responsive Program

In direct response to the Government's decision to establish family relationship centres and to fund those centres in the community sector for the purposes of post separation counselling and mediation the Court reappraised its privileged counselling and mediation services. Given the expertise that now exists in the community sector and the Family Courts focus on the most difficult cases it seemed obvious to tailor the Court's mediation services differently. Once the sole repository of experience in post separation counselling that work is now done in the community sector and with a great deal of experience and sophistication. The Court's own pre-action protocols require that litigants attend mediation prior to filing in most cases so it was a natural evolution for the Court to change its direction.

I am also pleased to advise that the evaluation of the Child Responsive Program ("CRP"),

trialled from October 2005 to October 2006 in the Melbourne and Dandenong Registries, has been completed by Dr Jennifer McIntosh. CRP has been engineered to trial a more intensive “front-end” to the LAT process. The mediation processes in the new model are not privileged, unlike the present Case Assessment Conferences. Whilst intended to facilitate a meaningful agreement between the parties prior to the involvement of a Judicial Officer, in the absence of that agreement under the CRP model the Family Consultant will remain an enduring presence in the life of each family.

There are five key CRP stages. The first is an information session geared to explaining the CRP process with multi-media information about post-separation conflict. A parent assessment meeting then takes place to enable the allocated family consultant to explore individually with each parent the history of the conflict between the parties and any other issues which impact upon the wellbeing of children and the dynamic between the parties. The Family Consultant then meets with any school aged children, in a play therapy orientated session to explore their core needs and views. Feedback is orally provided to the parents on the day of interview about what is concerning the children, their feelings and their needs in relation to the resolution of the dispute.

A preliminary report is then prepared by the Family Consultant and disseminated to the parties. A formal feedback meeting is held with the parents, their legal representative and a Court Registrar after sufficient time is given for the consideration of the preliminary report. The intention of the feedback meeting is to restate the core themes expressed by the children with a view to encouraging effective dispute management and cooperation with an increased understanding of the needs of the children. Should the parties' resolve their dispute, a registrar is present to make any orders sought by consent. If necessary, the registrar is also present to set the matter down for a Less Adversarial Trial.

The program was developed and trialled with the assistance of a grant from the Attorney-General's Department. The evaluation undertaken by Dr McIntosh was completed this month. Whilst a resource intensive model, the evaluation indicates that the Child Responsive Model “provided a strong motivating force for parents to understand the impacts of their discordant ways upon their children, and that adequate cooperation in the care of their children became of paramount concern”.

In fifty to sixty percent of matters explored in this study, the CRP process was able to settle the dispute, without the matter proceeding to trial. It was further noted by Dr McIntosh that the group of Family Consultants whom were involved with CRP in Victoria reported that the majority of lawyers who came into the CRP process did so with positive intentions and over time emerged to be both a supportive and helpful presence in the CRP feedback meeting.

Dr McIntosh's findings also included:-

1 The majority of parents reporting positive experiences for themselves and their children in having the children involved at an early stage;
2 The majority of parents found the feedback they received about their children's

needs and views to be of value for the dispute resolution process. Significantly, forty-four percent of parents said the feedback from their children was the most influential aspect of their court process;

3. There was a trend reflecting a reduction in minor conflict, acrimony and distrust is evident between the parents in the study;
4. Ninety percent of the sample left the CRP with a strong sense of how to carry on from that point, in the management of their separation and dispute; and
5. CRP provides an important opportunity for the detection of children who require early therapeutic intervention or Child Protection involvement and for adults with personality or mental health difficulties who would benefit from early specialist services to assist in their adjustment to and management of issues post-separation.

There will be a further evaluation undertaken by Dr McIntosh early next year reflecting the experience of the surveyed parties four months after their emergence from the program. The national implementation of CRP is dependent upon the availability of adequate funding.

Judges of the Family Court of Australia

Appointments
1 September 2004: The Honourable Justice Stephen Thackray
14 April 2005: The Honourable Justice Garry Watts
19 August 2005: The Honourable Justice Robert James Charles Benjamin
30 November 2005: The Honourable Justice Victoria Jane Bennett
31 July 2006: The Honourable Justice Judith Maureen Ryan

Retirements
11 February 2005: The Honourable Justice John Wilczek.
20 September 2005: The Honourable Justice Michael Alexander Hannon
23 September 2005: The Honourable Justice John Spencer Purdy
22 November 2005: The Honourable Justice Thomas Roderick Joske
10 January 2006: The Honourable Justice Alwynne Richard Owen Rowlands, AO RFD, Judge Administrator
24 February 2006: The Honourable Justice Susan Mary Blore Morgan
3 July 2006: Judicial Registrar Jonathan Warwick Ramsden
31 July 2006: Judicial Registrar David Halligan (appointed to the FMC)
31 August 2006: The Honourable Justice Neil John Buckley, Judge Administrator
24 September 2006: The Honourable Justice Nicholas Tolcon (Family Court of Western Australia)

Following the announcement last night of the Attorney-General Mr McGinty MLA of the appointment of Justice Stephen Thackray as the next Chief Judge of the Family Court of Western Australia, I congratulate him on his appointment and welcome Judge Jane

Crisford as a Judge of the Family Court of Australia.

I would also like to take this opportunity to note the retirement of Justice Holden, Chief Judge of the Family Court of Western Australia in February 2007. He was appointed to the Family Court of Western Australia in 1991 and to the appeal division of the Family Court of Australia in 1993. The Family Court of Western Australia has flourished under his leadership and he has made a significant contribution to the appeal division of the Family Court of Australia.

Collection of statistical data on outcomes of cases

The Court has not previously collected data on the outcomes of cases. For example, the Court has previously been unable to refute criticism by reference to statistical proof.

Oscar Wilde is quoted as stating that "The only thing worse than being talked about is not being talked about." Well, to those whom have ever found themselves frustrated by media or political comment which trades on a gross generalisation or on the testimony of a dissatisfied litigant, you may well agree that it is far worse again to be spoken of inaccurately.

The dissemination of statistics will enable the Court to address claims regarding the orders that it makes, including any suggestion of bias towards one parent or the other.

There are many reasons why it is essential that the Court use its best endeavours to address inaccurate comment and misapprehensions as to the role of the Court and the nature of its objectivity. It is likely to compound the confusion of a litigant if they lack confidence in the Court because they have been exposed to misleading information. Criticism can further lead to a general lessening of confidence in the law, the erosion of the `rule of law' and discourages those who seek to practice within the Court and in the profession.

Constructive criticism is an essential element in the evolution of the Court and I do not seek to discourage a constructive dialogue, but that dialogue will now be constrained by valid statistical data. Further, the Court has sought advice from the AIFS on data collection issues and will continue to work with the AIFS and other research institutions to refine its data collection system. It is my hope that the Court, the profession and the broader community will benefit from the insight which that data will provide.

Similarly, the present and future Governments will benefit from statistical data in considering any further reform.

Data will be collected from the following categories of final parenting orders:-

1. Parental Responsibility Orders;
2. Parenting Orders, made after contested proceedings, in the nature of `lives with' orders, and `spends time with' orders;

3. Parenting Orders, made by consent, in the nature of `lives with' orders, and `spends time with' orders;
4. In adjudicated matters, the reasons for making the determination (for example, family violence, sexual abuse, drug & alcohol issues);
5. Relocation cases
6. Magellan matters; and
7. s 60K (family violence) matters.

I am committed to the greater publication of first instance judgments and in particular the anonomisation and publication of those judgments which will form part of the statistical group from which the outcomes will be drawn. I would hope that this information will be of vital importance to anyone who would want to research these matters and to inform the Government about its legislation and about uninformed comment. I hope that the availability of the cases which will support the analysis will clearly explain the work of the Court.

Conclusion

Last but not least I would like to thank the profession for their support in CCP now the Less Adversarial Trial. This was an innovative pilot and whilst there was some judicial carrot in obtaining an earlier hearing date the profession in Sydney and Parramatta embraced it and enabled the Court to conduct the pilot. I am delighted to see that having observed the Australian model, the Principal Family Court Judge Peter Boshier has introduced a similar model in New Zealand called the Parenting Hearings Program a pilot scheme that will run for two years in six courts throughout New Zealand. We will of course await with interest the results of their pilot.

I would also like to thank the profession in Melbourne for their support of the Child Responsive Model. I think that there have been some useful changes as a result of feedback from the profession my understanding is that they are highly supportive of it as extremely useful child focussed intervention and I am hopeful we can retain something necessary to provide this model throughout Australia as soon as possible.
I am conscious of delays, of issues regarding not reached cases and over-listing. I am also conscious of the need to utilise court time as effectively as possible by not having down time when cases settle and there are no others ready to proceed.

This aspect of case management is difficult. One has to balance the need for cases ready to be heard against the need for parties to have some certainty about when a case will start particularly in jurisdictions in which they may have to pay Counsel if the case does not proceed on the day on which it is listed. In my view there is no doubt that a rolling list where one case simply follows the other is the most effective case management tool for the Court. I appreciate however, that it has significant impediments for parties who have uncertainty, particularly women who might have part time work and can not obtain the flexibility to simply be available during any given month without a fixed date. Then there is the problem that Counsel who have been in the case will not be available because they will be before another judge. These are not new issues but they continue to be those that

most regularly cause problems. It is very difficult to obtain the exact over-list ratio so that there are always matters to be heard but without creating a situation where there are too many matters that are not reached. I am hopeful that with the implementation of a case management docket system we will consult with the profession as we have done in the past to try to achieve the most efficacious system bearing in mind the needs of litigants it may be that this will require different arrangements in different regions this is a time of considerable change.

The last two years seem to have been filled with significant changes and there are more to come. I hope that during the next two years we can reduce delays, improve case management and have a plan for the Courts.