

House of Representatives Standing Committee
on Family and Community Affairs

Submission No: 1668

Date Received: 27-10-03

Secretary:

FAMILY PATHWAYS

BN97960644

FAMILY MEDIATION SERVICES

Justice of the Peace (Court Support) McKenzie's Friend

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Member, Law Council of Aust. (Family Law Section)

Marion Bennet

House of Representatives Standing Committee
of Family and Community Affairs
Parliament House
Canberra
ACT 2600

27th October 2003

Dear Sirs,

Re; Schedule 1 – Amendment of the Family Law Act 1975.

Second Submission.

I have been asked to give evidence to the committee I have put together some other information that may be of assistance to you in making your assessment. I gather what you seek is information from the 'coal face' as to what the difficulties are. I am sure you will find this interesting.

Firstly, I have provided an outline of my business, which is in line with the recommendations of the Report of the Family Law Pathways Advisory Group. This has been accepted by both local Members, John Cobb MP, Federal Member for Parkes and Tony McGrane State Member for Dubbo along with a number of community groups. There has been resistance from the Women's Legal Service, the local Legal Aid Office, the Local Court and a couple of Family Law firms to an extreme extent. I had received permission from the Family Court Counselling Service to place my brochures and poster in the Dubbo Court to make people aware of this unique service.

Secondly, attached are a number of newspaper letters to the Editor in the local Daily Liberal, which will outline the hostility with the issue. Other than the letters I have not received one negative response to my input. In fact I have had Interrelate and Centacare

along with a number of other groups contact me to offer support and their preparedness to work with us.

Thirdly, The Women's Legal Service along with at least one Legal firm have made a complaint to the NSW Law Society to try and stop me operating. My response is also attached. I have a letter from the Women's Legal Service sent to Tony McGrane to confirm their involvement. As a Federally funded group I did not feel it appropriate that the Women's Legal Service should be involved in political issues.

The Women's Legal Service has canvassed all support services requesting that they reject the proposed changes as it will expose to many children to the risk of domestic violence. This is far reaching. Some local figures tell us that the Orana Regional Command of NSW Police has reported 765 DV orders being taken out in the past year. This amounts to 355 per 100,000 or .36% of the community. (3.6 per 1000). It is also pertinent to note that the majority (in excess of 70%) are in relation to the Aboriginal community, which is an issue which needs to be dealt with separately.

Fourthly, on a visit to the Family Court in Dubbo I noticed that the poster had been removed and was informed that Justice Collier had removed it. I have written to him and that letter and his response are attached.

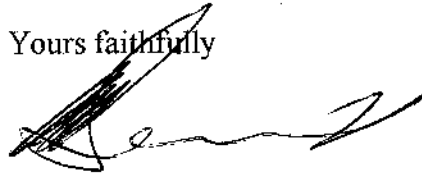
My concerns here are, while His Honour had no problems with the way I conducted myself through the hearing of *Death and Devonish* and actually thanked me on two occasions for my assistance and stated to Ms Devonish that she 'in no way disadvantaged herself through out the hearing'. I felt that this issue has been dealt with in an improper manner. Mr. Berry the opposing barrister, who is also my ex wife's barrister, opposed my involvement on the basis of my current Family Court orders. However, His Honour allowed me to continue. My understanding is that the orders apply to all parties even those acting on their behalf. I have suggested that if His Honour were to 'order' that the poster be removed, a proper hearing needed to be held. This was not done and His Honour has rejected any requirement for this. He has also rejected any consideration for the current orders and the proper course through 'the rule of law'. Is this perversion of justice? I have had considerable difficulties with the administration of justice through the Family Court and the liberties that Judges take from time to time. My last major appearance in my own case in the courts was before Justice Collier where we encountered considerable difficulties. These difficulties were consistent with this action.

Having said this, the court has obviously taken a different approach to fathers involvement with their children in the last few years. In my case I have not seen my daughter for 9 years and my oldest boy I seen only intermittently over the past two years. My younger two, with who I have restricted regular contact are under considerable pressure not to contact me. The court in *Death and Devinish* was prepared to separate siblings and give residency to the father. However, the recommendation of the Legal Aid Child Representative still had an overbearing effect on the result. This was regardless of the fact that lack of substantial evidence on a child abuse ruling was not to be allowed to be presented to the court. It appeared that this ruling was made to justify the final orders.

Section 121 of the *Family Law Act 1975* is still a problem in the system. While it's purpose is to protect the identities of the children and indeed should so, it needs to be substantially modified to allow open scrutinising of the proceedings in the Family Court. It's major role has been, even though it is a surrogate one, the protection of the judiciary and the 'personal values' that they may individually hold. These value judgements and abuse of the legal process must be eliminated from the Family Court system. The process must be more accessible to the community with cost still being a major hurdle to many.

Lastly I have attached a report that I completed in 2000 on the many cases that I was involved. This report was submitted to the Family Law Pathways Advisory Committee and formed part of their recommendations.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Paul Bennet', written over a horizontal line.

Paul Bennet

FAMILY - PATHWAYS

BN 97960644

FAMILY BREAKDOWN MEDIATION and SUPPORT SERVICES

PURPOSE OF THIS SERVICE

This program has been developed to minimise the trauma experienced by families going through parental separation. The key issues that are addressed in this program are set out below and are in line with the recommendations of the Family Law Pathways Advisory Group, which was commissioned by the Minister for Family and Community Services.

The development of this program has followed a number of recommendations from the committee in providing this facility⁽¹⁾.

KEY ISSUES

- 1) That agreements are reached in line with Section 60B of the *Family Law Act* 1975. The best interests of the children will be considered paramount.
- 2) The safety of all parties will be given major priority.
- 3) Mediation will be undertaken in a non-court room environment.
- 4) The Aim is to reach a settlement in the cheapest possible way.
- 5) Ongoing support will be provided to assist the parties after the initial agreement to prevent further expensive litigation.

Agreements;

Section 60B of the *Act* says, The object of this part is to ensure that the children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of the children. However, agreements will be based upon each family's situation and their needs, as they see them.

Agreements will encapsulate, adequate orders to cover as many of the issues as possible. However provision will be made to allow simple changes in the future in a speedy and economical environment on a local basis thereby avoiding Family Court proceedings as much as possible.

Safety;

Safety of all parties is essential. Provision will be made to address any possible breaches of violence whether they be physical, sexual, emotional/psychological or from neglect. Any allegations will be dealt with quickly so as to establish their validity, severity and possible effects on the care and welfare of the children. Provisions in the *Family Law Act*

1975 allow for injunctions to be made for the protection of family members. As the orders are indorsed through the Federal Magistracy, any breaches can be dealt with locally.

Where there are allegations of violence mediation will take place in a safe environment. Security arrangements can be made if required. Mediation will take place with the parties in the same room. Any outbursts of violence will not be tolerated. The parties may consult their legal advisors prior to the mediation. However, legal advisors will not be permitted to take part in the mediation process. If agreement cannot be reached on orders that are workable and safe, the matter will be referred back to court for a formal hearing.

The mediation process is essentially a Family Law process and whatever is said in the mediation remains confidential and cannot be used in future court proceedings except for breaches of violence and either parties refusal to mediate. The protection of the parties will be treated seriously. Violators will be referred to behavioural counsellors to assist them with their problems. Provisions will be made in the orders that any false allegations will be treated harshly. These can usually be sorted out in this process.

Following any Domestic Violence hearing the parties can return back to mediation for the determination of Family Court orders.

Non-Court Room Environment;

It is important that the mediation be conducted in a non-court room environment. Although the mediation will be an adjunct to the Federal Magistrates Court⁽¹⁾ it will be conducted in a non formal environment so as to present the parties with the full opportunity to make these important decisions with the least amount of stress possible.

Courts by their adversarial nature tend to be over formal and intimidating environments. The Family Court is certainly no exception. As parents are making extremely important decisions about the future of themselves and their children, they need to be in as comfortable a situation as possible, under the circumstances. The process is not a criminal process, it is just coming to a civil working agreement between two people who cannot get along in each others company. This also frees the courts to enable them to deal with matters that should be before the courts.

Economy;

The aim is to present to parties, an economical and affordable service to allow them to reach an agreement, which is within their control and financial means. There is enormous cost in the formal Family Court preparations not only in the erosion of hard earned assets, but in time and emotional strain, particularly on the children.

The mediators are experienced and qualified to assist you in your agreements.

Uniformed Security Guards are provided for security in the mediation on a user pays basis with min 2 hours (neg. for health care card holders) of around \$28.00/ hour.

Off duty uniformed police may also be provided if required however the rate is \$82.00/hour.

Mediations will take place in three sessions of 1 hour, 2 hours and then 1 hour over three days.

Session 1; This will outline the basis of the mediation process and give the parties direction on how they should go about reaching an agreement and then allow them time to prepare their proposals for discussion and ultimate settlement. This session can also be used to determine if an agreement can be reached or whether any matters such as violence allegations should go to a hearing.

Session 2; This will allow the parties to come to an agreement as quickly as possible and provide a workable plan to present to the Family Court for registration. If more time is required then arrangements can be made.

Session 3; This is for the finalisation of the agreement and the signing of papers to present to the Family Court.

Further sessions can be arranged if required.

Ongoing Support;

That the mediation program be used as a first place of return for any difficulties that may arise in regard to orders that have been agreed upon. This again will reduce the time problems and the expense of going through the court system. The court remains the last resort facility. Referrals will be made at these times where necessary to provide the maximum non adversarial assistance possible.

The mediations will be conducted in a proper and effective manner. However, there needs to be considerable flexibility so that changes can be made to fine tune the process as it progresses.

Records of the progress of the program will be maintained to display the legitimacy and credibility of the mediators and to display the worthiness for future funding applications. Cooperation between the mediators and other support services is desirable.

Over the past 8 years I have been involved in assisting over 50 cases as a *McKenzie's Friend* as well as acting as a self advocate on a number of occasions. While receiving most of these cases after considerable problems have occurred I can boast an even number of successful outcomes. About 20 mediations have been conducted with a similar result particularly in dealing with business difficulties. My experience has been with the most difficult 10% of cases.

Apart from the above experience I have over 12 years experience dealing with rural families and their businesses particularly in estate planning. This traditionally has been a difficult area because of the historical nature of the disputes.

Business disputes are much easier to deal with particularly if proper Quality Assurance programs have been put in place.

FAMILY LAW PATHWAYS ADVISORY GROUP RECOMMENDATIONS.

- 1) Recommendation 6.2 That an appropriate template for first point of contact assessment be developed and implemented nationally to match the family with the most appropriate set of services to resolve difficult or outstanding issues. The template should have certain core features, be simple and easy for client and service providers to use, allow customisation for local applicability, and be based on agreed indicators and demographic information, including screening for violence and possible need for child protection.

Recommendation 6.3 That this approach be trialled in a variety of environments with a view to informing future processes that improve assessment, responses and referrals for all separated families. Initial trials should be held:

- a) in a small number of localities with all interested service providers;

Recommendation 7 That access to services of high need groups be expanded, including ;

- a) services specifically to support children in separated families.
b) services for men , specifically services that help them to effectively Co-parent their children after separation
c) services which support the capacity of vulnerable and disadvantaged people to access non-adversarial approaches.
d) services for families experiencing family violence
e) services for families in rural and remote Australia.

Recommendation 8.1 That an integrated family law system ensure fair and equitable treatment for all, and particularly pay attention to the emerging needs of men and fathers.

Recommendation 9.1 That legal aid services be encouraged to;

- a) explore innovative approaches to service delivery , for example unbundles legal services.

Recommendation 15.3 That the role of the non-government sector in the provision of high quality personal counselling be increased and ensure that counselling support is available at key points in families contact with the system where emotional distress and the risk of conflict may be greatest.

Recommendation 18.1 That responses to family violence be managed in accordance with the following principles:

- a) the safety of the children and adults is paramount;
b) where there is a dispute about an apprehended violence order, it should be resolved quickly and fairly.

- 2) Out of the Maze, *Report of the Family Pathways Advisory Group* July 2001 . (Improving awareness of non-adversarial options) Education, information and financial incentives to encourage the use of non-adversarial options need to be explored. The Advisory Group prefers incentives to obligatory participation in particular services or courses of action. Opportunities to develop and promote a range of incentives exist in a number of different places within the system. These need to be explored and developed with the collaborative participation of the courts, the legal profession and the relative community-based organizations.

Recommendation 10.2 - That all government and non-government service providers and professionals in the family law system review their current practices with the view to creating new opportunities and encourage people to pursue non-adversarial options.

Recommendations: 10.3 - That the relative strategies on accessing community-based dispute resolution services recently being put in place by the Family Court of Australia and the Federal Magistrates Service be coordinated and modelled as a shared service to achieve a common purpose, common standards and common outcomes.

FAMILY - PATHWAYS

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FAMILY BREAKDOWN MEDIATION and COURT SUPPORT SERVICES

Phone (02) 6884 0970 - Mobile 0413 465 644

MEDIATION

The mediations are conducted on a user pay basis as we are a non-funded organization.

Costs. Mediation -

Corporate and Business	\$200-00 per hour
Private family	\$66-00 per hour in advance
Health care card holders	\$33-00 per hour in advance
Typing of Agreements	\$22-00 per hour on receipt of documents.

OTHER SERVICES

We also offer support services for people who have been unable to resolve their differences through mediation and are unable to obtain Legal Aid and cannot afford a Lawyer. ***McKenzie's Friend*** - A person who attends court to assist a party to proceedings *McKenzie v McKenzie* (1970) 3 WLR 472.

We act as your assistant in court proceedings and their preparation. We sit with you in the court and assist you with protocol, take notes and advise you through the proceedings as a self represented litigant (litigant in person). We are experienced in assisting parties in Family Law and D.V. proceedings as a McKenzie's Friend.

Note 1. We are not Lawyers therefore we cannot give legal advice or represent you as your adversary. You will be advised to pursue these avenues and Legal Aid first.

Cost of these services;

Consultation prior to hearings	\$ 44.00 per hour or pto
Attending to Short hearings up to 3 hours	\$ 66.00 per hour or pto
Full day hearings	\$ 55.00 per hour to a maximum of \$385.00
Typing of documents	\$ 20.00 per hour

All fees are payable in advance.

Note 2. Due to the possible conflict of interest we can only provide one service to each client. That means, if we mediate, we cannot be your McKenzie's friend or vice versa. Consultants and Mediators; Member - Law Council of Australia - Family Law Section

Paul Bennet. Bachelor Social Science, JP

Alternate Dispute Resolution (UNE)

Bachelor Law (Undergraduate) (UNE)

Family Law, Criminology, (UNE)

Estate (Succession) Planning (ALA)

Cert. Farm Management (Tocal)

Q.A. Auditing

30 years rural and business experience and 8 years court experience.