

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
FAMILY COURT OF AUSTRALIA

Question No. 22

Senator Ludwig asked the following questions at the hearing on 16 February 2004:

We understand that there is a new pilot project being undertaken by the Family Court in NSW using more of an inquisitorial process in Family Law matters.

a) Can you outline the idea and purpose of this pilot?

The answer to the honourable senator's question is as follows:

A pilot to explore a less adversarial approach to determination of children's cases has been developed by the Family Court of Australia. This has been in recognition of limits in the capacity of traditional adversarial litigation to properly inquire into what will be in the future best interests of the child or children of separating parents, especially because the child is not a party to those proceedings.

The pilot commenced in the Sydney and Parramatta registries of the Court on 1 March 2004. Cases will enter the pilot only after attempts to find a resolution through the Court's mediation service have proved unsuccessful. Cases will only be able to enter the pilot with the informed consent of both parties, to avoid potential legislative and constitutional limitations.

The pilot has been developed on the basis of observations by several judges and officers of the Court of some European courts. The model is based on greater judicial control and direct inquiry and interaction with parties and witnesses. The judge will in consultation with the parties determine the real issues of the case that require a judicial decision. The judge will decide what evidence is necessary and what evidence is unnecessary. Hearings will be conducted in a non-formal manner and, possibly, setting, in the nature of an orderly discussion. The application of mediation techniques in the course of the hearing may assist in resolving the dispute. However, decision making will remain a proper exercise of judicial power which ensures natural justice and procedural fairness.

The process will be more child focussed and future focussed, concentrating on the parties' proposals for the future care of their children.

The details of the way the program will be conducted are set out in the Practice Direction, published by the Chief Justice on 27 February 2004. A copy is attached.

The outcomes of the program are expected to be:

- Shorter Hearings
- Earlier Hearings.
- Simplicity and flexibility, and
- Potential to save costs.

In addition, clients and their children are likely to feel more satisfied with a process in which they have been heard more directly.

Other documentation relating to this pilot is attached. (An information brochure, a consent form and a questionnaire designed to collect preliminary information to assist with determination of issues.)

PRACTICE DIRECTION: NO. 2 OF 2004

The Children's Cases Program

The following Practice Direction will take effect as from this date:

1 March 2004

The Practice Direction immediately following describes a program for children's cases that will operate and be evaluated in the Sydney and Parramatta Registries of the Family Court of Australia beginning 1 March 2004.

**THE HONOURABLE ALASTAIR NICHOLSON AO RFD
CHIEF JUSTICE
FAMILY COURT OF AUSTRALIA**

27 February 2004

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1. INTRODUCTION

- 1.1. This Practice Direction describes a Program for children's cases that will operate and be evaluated in the Sydney and Parramatta Registries of the Family Court of Australia beginning 1 March 2004.
- 1.2. The purpose of the Children's Cases Program ["the Program"] is to examine a new way of conducting family law litigation that is intended to alleviate some of the problems associated with the current adversarial system of determining a dispute. Participation in the Program will require the informed consent of all parties.
- 1.3. It is intended that parties in children's cases will be able to participate in the Program irrespective of whether they are represented by lawyers or not. While the presence of lawyers is highly desirable in all family law litigation, the Court recognises that there are circumstances where parties either do not wish to, or are unable to afford legal representation.

- 1.4. The focus of the Program will be on producing the best outcomes for the child. To this end, it is necessary for there to be a departure from some traditional features of the adversarial process and various provisions of the *Evidence Act 1995 (Cth)* such as the admissibility of hearsay evidence (see section 190 *Evidence Act*) and for all the parties to the proceedings to provide informed consent to this departure. It is believed that the removal of these technical rules will greatly assist in achieving this focus.
- 1.5. The parties' agreement to the different way of determining children's cases will be formalised in a consent order. Parties who are not represented by lawyers will have access to legal advice about giving consent.
- 1.6. Cases will only become eligible to enter the Program after completion of the Resolution Phase of the Court's Case Management system. Most cases involving children are resolved during this phase. Mediated solutions are considered to be the most desirable outcome in most children's cases. The Program is not intended to be a substitute for mediated solutions. It is therefore only when mediation has been unsuccessful or is inappropriate that cases will be eligible to enter the Program.
- 1.7. It is an essential feature of the Program that the Judge is in charge of the case and will play the leading role in relation to the conduct of the hearing, including deciding the issues to be determined, the evidence that is called, the way the evidence is received and the manner in which the hearing is conducted. The Judge will also have the discretion of shifting between the processes of determining contentious material facts and issues and using mediation techniques to assist in determining the case.
- 1.8. The approach will be focussed on the interests of the child and the parties' proposals for the future of the child rather than the past history of the parties' relationships.
- 1.9. The Program is available in relation to all children's cases other than Hague Convention applications, and applications for contempt or contravention. These matters will continue for the present at least, to be dealt with in the existing manner.
- 1.10. The Program aims to provide significant benefits to children and their families and also to lawyers and other professionals through the speedier progression of these cases to determination facilitated by less formal and less costly procedures. It builds upon rather than supplants the highly effective outcomes seen in the settlement of cases by practitioners and Court mediated settlement.

2. RULES OF COURT

- 2.1. Subject to any orders that the Judge may make, the 2004 *Family Law Rules* will apply to Program cases, including cases which are accepted into the Program before the Rules come into effect.

3. PATHWAY FOR PROGRAM CASES

- 3.1. At the Case Assessment Conference parties will receive an information brochure, pro-forma consent form¹ and Questionnaire².
- 3.2. At the Case Assessment Conference the Mediator and/or Deputy Registrar will provide answers to specific questions about the Program.

¹ Annexure 1 to this Practice Direction.

² Annexure 2 to this Practice Direction.

- 3.3. To be admitted to the Program all of the parties must sign the consent form and complete the Questionnaire.
- 3.4. Before signing the consent form parties are advised to take independent legal advice.
- 3.5. The Legal Aid Commission will provide a solicitor to explain to self-represented parties the effect of the consent except where a Commission solicitor is at that time representing the other party.
- 3.6. Cases will not enter the Program prior to the end of the Resolution Phase which is where otherwise a Trial Notice would be issued.
- 3.7. Where all parties decide to enter the Program the case will be listed before a Judge as the next event after entering the Determination Phase.
- 3.8. Each party's signed consent form and completed Questionnaire is to be provided to the other side as soon as possible after completion and prior to the hearing or as directed by the Judge.
- 3.9. Cases can also be referred to the Program by a Judge, Judicial Registrar, Registrar or Deputy Registrar at any time. The case is to be listed before a Judge on a nominated day or on the day that the referral is made if the parties are ready and a judge is available.
- 3.10. Mediators may recommend that the parties be involved in the Program where the mediator is satisfied that the case is unlikely to settle and a judicial determination is required. In those circumstances a mediator may refer the case to the Program.
- 3.11. Where the parties inform the Judge, Judicial Registrar, Registrar or a Deputy Registrar, that they wish to enter the Program, and the case is one which requires a Child Representative, then, if appropriate, an order will be made for the appointment of a Child Representative. The usual criteria for the appointment of a Child Representative will apply.
- 3.12. Registry Managers should invoke the protocol with the Legal Aid Commission for speedy notification to the Commission. It is the Court's expectation that the Child Representative will be available to attend the first hearing before a Judge provided sufficient notice is given to the Commission.
- 3.13. Once the parties have entered the Program, they may not withdraw from the Program except with leave of the Judge hearing the case. Agreement to this condition will be part of a consent order made in the case.

4. HEARINGS

- 4.1 The Court Setting
 - 4.1.1 The hearing may be conducted in an ordinary courtroom or in a conference room or at some other place at the discretion of the Judge. The layout of the hearing venue will be determined by the Judge in a manner that he/she considers will best meet the needs of the case. In this regard, attention will be paid to cultural and family violence issues.
 - 4.1.2 There will be no formal requirements as to where lawyers as distinct from parties should sit in the courtroom.
 - 4.1.3 Lawyers are not required to wear wigs.

- 4.1.4 During the hearing parties that are not legally represented will normally be allowed to have a support person sit with them. The extent of the support person's involvement in the hearing will be at the discretion of the Judge.
- 4.1.5 A Court appointed mediator may sit in on the hearing and, as directed by the Judge, may assist the Judge or the parties to resolve the issues.
- 4.1.6 All proceedings will be recorded and the Judge (or the parties at their own expense) may order transcript as required.
- 4.2 Outline of the Court Proceedings
- 4.2.1 The hearing commences when the case first comes before the Judge.
- 4.2.2 The hearing will proceed as expeditiously as possible at such times and places as the Judge considers appropriate.
- 4.2.3 Each party has the right to be heard in keeping with the rules of natural justice and procedural fairness.
- 4.2.4 Each party has an obligation to make full and frank disclosure of all issues relevant to the child and his/her best interests.
- 4.2.5 On the first day of the hearing all parties will be administered an oath. Thereafter anything said by the parties to the Judge during the hearing is part of the evidence.
- 4.3 At the beginning of the hearing the Judge will identify and clarify the following matters with the parties (including the Child Representative):-
- the current arrangements for the parenting of the children and the proposals of each party specified in the answers to the questionnaire.
 - any material non-contentious facts.
- 4.4 The Judge will determine and clarify with the parties (including the Child Representative) the contentious facts and issues that are material to the proposals of each party. The Judge may be assisted by a Court appointed mediator in resolving the issues.
- 4.5 The relevant non-contentious facts, contentious facts and the issues for determination resolved by the Judge will be embodied in the court record. The record may take the form of a document signed by the parties and the Judge, or an oral statement by the Judge where the agreement of the parties is acknowledged on the record. If a Child Representative is appointed after this time then a further opportunity will be given to the Child Representative for input to the issues. The record of the settled issues for determination can be amended at any time by adding or removing issues for determination if approved by the Judge.
- 4.6 Orders will then be made by the Judge in accordance with the signed consent orders³.
- 4.7 The Judge may continue to hear and determine the case regardless of whether he/she makes findings in relation to issues during the hearing. The exercise of this power by the Judge shall not provide a basis for his/her disqualification from continuing the hearing.

³ See Annexure A.

- 4.8 Judgment may be given in specific parts rather than in one event at the conclusion of the hearing.
- 4.9 The time for lodging an appeal against any order made, otherwise than by consent, will not commence to run until the conclusion of the hearing and the making of the last orders in the hearing, unless the Judge otherwise orders.
- 4.10 The rights of a party to appeal against an order are not affected except that he or she will not be allowed to complain about matters to which he or she has agreed and, in particular, his or her consent to participating in this Program.

5. EVIDENCE AND THE POWERS OF THE JUDGE

- 5.1. The powers of the Judge described in this Practice Direction are intended to supplement and in no sense detract from the existing powers of a judge.
- 5.2. The Judge may direct the parties (or any other appropriate person) to make inquiries and obtain evidence on any issue the Judge determines is relevant to his or her decision. The Judge may direct this to occur irrespective of what the parties contend, including what reports are required and from whom and whether or not a Child Representative should be appointed.
- 5.3. In the context of this Program, “issues” are disputed facts on which findings need to be made in order to decide what orders should be made in the best interests of the child.
- 5.4. The Judge will determine:-
 - 5.4.1. what evidence is to be given in relation to the issues.
 - 5.4.2. the method of receiving evidence and the manner in which it is given.
 - 5.4.3. what witnesses are to be called and the issues about which a witness will give evidence.
- 5.5. The parties will normally give their evidence by an affidavit unless otherwise directed by the Judge. The affidavit should only address the issues for determination settled by the Judge.
- 5.6. Unless otherwise directed by the Judge all evidence by other witnesses (with the exception of experts) is to be given orally and where appropriate by telephone or videolink. The Judge may direct that an outline of the evidence in respect of each witness is to be filed and served within a reasonable time before the evidence is scheduled to be called. The Judge may decide that on the basis of the outline of evidence, a witness is not required.
- 5.7. All evidence is to be conditionally admitted. The Judge will determine the weight to be given to the evidence.
- 5.8. Parties to cases in the Program do not waive their right to appeal an order on the ground of inappropriate weight having been given to evidence (or any other usual ground).
- 5.9. No objections are to be taken to the evidence of a party or a witness or the admission of documents, photographs, videos, tape recordings etc other than on the grounds of privilege, illegality, or other such serious matter.
- 5.10. The Judge will determine the order, sequence and manner of questioning by the parties. The hearing in some circumstances may proceed as an orderly discussion between the Judge, the parties and their legal representatives (if any) and a witness or witnesses, rather

than a traditional style of oral examination by cross-examination and re-examination. In other cases a more traditional approach will be used. It is entirely in the discretion of the Judge whether cross-examination is permitted and the Judge may set limits on the length and nature of the cross-examination.

- 5.11. The Judge is able to use mediation techniques to assist in determining the matter where he/she sees fit and is not thereby disqualified from continuing to hear and determine the case. Anything said or done while the Judge is using mediation techniques is not privileged.
- 5.12. The Judge may speak with and address questions to the parties, whether they are legally represented or not. Additionally, the Judge may hold private discussions with the parties subject to the same being recorded and copies of the transcript being made available to the other parties if required.

Experts

- 5.13. Unless a specific Direction is made, all experts other than court staff will be required to comply with the Family Law Rules relating to expert witnesses.
- 5.14. Reports are to be limited and in short form, with recommendations and a short summary of reasons in dot points. The expert will expand the report orally if required.

Subpoenas and Discovery

- 5.15. No subpoena is to be issued without leave of the Judge. Where possible subpoenas are to be settled on the day the issues for determination are settled.
- 5.16. Leave to issue subpoenas can be sought by telephone attendance upon the Judge.
- 5.17. The Judge may release documents for inspection by an order made in chambers.
- 5.18. An order will be made specifying the final day for inspection of subpoenaed documents before any hearing day. This is to avoid the circumstances when parties and lawyers seek to inspect documents at the hearing.
- 5.19. Any documents sought to be tendered, where the documents are a file or an accumulation of documents, must have the pages and portions of pages sought to be relied upon flagged or readily identifiable.

Children

- 5.20. The Program will provide opportunities for the child to be heard in a manner which is consistent with her/his wishes, developmental level and the circumstances of the case. This will usually be by way of a Family Report or through an expert appointed under the Rules ("Court Expert").
- 5.21. In the discretion of the Judge, and in appropriate cases, the Judge may interview the child. This should normally be done only with the consent of the child. The Judge may direct that other persons, such as the Child Representative, may be present at such an interview.
- 5.22. The Judge should consult any relevant Report Writer or expert involved in the case on these issues. It is open to the Judge to act on the views expressed by the children in such interviews.

Procedural

- 5.23. A Case Co-ordinator will be assigned to the Program Project team in each Registry and will be responsible for:-
- 5.23.1. Checking that all time limits have been complied with and in cases of non-compliance to bring it to the attention of the Judge.
 - 5.23.2. Where a request is made for a case to be relisted for case management directions, to arrange for the hearing to be conducted by way of telephone link.
- 5.24. The parties and Child Representative are encouraged to bring to the attention of the Judge circumstances where time limits have not been complied with by the parties and where non-compliance may interfere with the further hearing of the case.
- 5.25. The parties and the Child Representative may re-list the matter for case management directions at any time by arrangement with the Case Coordinator and such an appointment may be conducted by telephone link up.

6. CHILD REPRESENTATIVES

- 6.1. The Practice Direction 2003/02 Guidelines for Child Representatives apply to cases in the Program.
- 6.2. Where a Child Representative is appointed for a case in the Program, the Legal Aid Commission is to be provided with copies of documents filed in the proceedings, the Questionnaire forms and, if available at the time of appointment, the Court record of the background facts, the non-contentious issues and the issues for determination.
- 6.3. The Child Representative will be able to list the matter for any reason at any time by arrangement with Case-Coordinator.
- 6.4. Child Representatives have the following particular roles and responsibilities in the Program:
- To have input to the identification of the background facts, the non-contentious issues and the issues for determination in consultation with parties or otherwise.
 - To make recommendations as to whether a Family Report or a Court Expert report should be ordered.
 - To liaise with the mediator or the Court Expert generally to ascertain whether any further evidence should be obtained for the hearing.
 - To liaise with the mediator and the Court Expert to ensure that those persons have a clear idea of all the configurations of residence and contact orders which may be made in the case. This is in order to ensure that the children have had an opportunity to consider those proposals and have a say about each should they choose to do so. The Child Representative should also brief the mediator or Court Expert as to any particular matters which might be canvassed with the children for the purpose of being able to put specific evidence before the Judge.
 - To ensure that the child's views are properly recorded and provided to the Judge.

- To appraise the Judge of any request made by the child in the proceedings to speak in court or to see the Judge.
 - To make recommendations at any stage during the hearing process.
- 6.5. Any Rule which requires the disclosure of any communication between the Child Representative and a Court Expert is inoperative in relation to the Program.
- 6.6. Child representation ceases when final orders are made. However, at the time that final orders are made, a Child Representative will usually confirm arrangements for referral to post-order programs.

7. MEDIATION AND FAMILY REPORTS

- 7.1. Program cases may be allocated to selected mediators who may perform both mediation and family reporting functions.
- 7.2. Anything said or done by the parties in the course of receiving assistance from a Mediator during the hearing process is not privileged unless otherwise ordered by the Judge and may therefore be included in a family report.
- 7.3. Mediators may recommend a course of counselling for the parties which addresses parental and child education and the Judge may make orders accordingly.
- 7.4. Mediators appointed to prepare a Family Report will actively pursue settlement with the parties. If a settlement is reached with unrepresented parties then the matter is to be referred to a Judge on that day. The mediator will accompany the parties to Court to advise the Judge of the settlement and to assist the Judge in the formulation of the orders.
- 7.5. The order for the preparation of the Family Report is to be restricted to those matters absolutely necessary to be reported upon.
- 7.6. Family Reports are to be prepared within no more than four weeks of the date of order.
- 7.7. Reports may be ordered at any stage of the hearing and additional Reports may be ordered at any time.
- 7.8. Reports are to be limited to the matters set out in the order for preparation of the Report, but additional matter may be included if the report writer considers that it is relevant to the child's best interests.
- 7.9. The Report is to be available within a reasonable time before the hearing at which the report is to be considered.
- 7.10. The report writer is to be provided with the court record of the background facts, the non-contentious issues and the settled issues for determination.
- 7.11. The Report is to have a specific section which addresses the children's wishes in relation to residence and/or contact, if relevant, and to specifically seek the children's views on the proposals of each competing party together with the children's independent views. The report will also contain a section which records any comments the children may wish to convey to the Judge, if they so desire.
- 7.12. The report should contain a brief summary of facts on which any opinion of the report writer is based.

- 7.13. In the event of the report writer identifying issues which are not referred to in the court record of the settled issues for determination, the reporter will provide an urgent report to the Judge identifying the issue together with a short statement of the reason it is seen to be important. The Judge then will arrange a “Case Management” telephone conference with the parties and the Child Representative.
- 7.14. The Judge may direct that the nature of the orders made and the reasons for decision are to be explained to the children, by a mediator or such other person as the Judge considers to be appropriate.
- 7.15. Where the Judge considers it necessary, use will be made of section 65L of the *Family Law Act* to order mediators to have a supervising role for the Court orders.

The Program will be evaluated independently by Professor Rosemary Hunter of Griffith University in Queensland. Details of the evaluation plan for the program are still being finalised but the aim is to measure results against the anticipated outcomes above. Reports from the evaluation will be made available to the Committee as they become available.



The Children's Cases Program:

A New Way of Working with Parents and Others in Children's Cases

The Family Court of Australia is trialing a new program in its Sydney and Parramatta registries. The program is intended to reduce the adversarial nature of the proceedings and treat disputes about children in a more child focussed way than the traditional adversarial system allows.

This program aims to reduce the complexities of children's cases and respond to their special nature and the needs of children. A major feature of it is the active role taken by the Family Court Judge allocated to the case in how the hearing is conducted. This is designed to encourage the parties (who are most often, but not necessarily, the parents) to concentrate on the interests of the children and to consider ways in which the dispute may be resolved at all stages of the proceedings.

This brochure tells you about this new program, including:

- its major features
- the potential benefits of being involved;
- how you can become part of it; and
- how the case will progress if you do.

What is this new program?

The program is a new way of handling trials of cases involving disputes about children. It is available for a limited time at Sydney and Parramatta. The experiences of the clients who agree to be involved, the court processes and the results will be monitored, evaluated and compared against other cases that go through the Court in the normal 'adversarial' way. If this new way is successful, the aim will be to introduce it permanently for all children's cases heard in the Family Court of Australia.

What is different?

Traditional adversarial hearings (proceedings) resemble a contest between the parties. The parties, or their legal representatives, are responsible for deciding how they prove their claims to the court and the judge takes no responsibility for this. Often each party provides the Court with evidence about the other person's past behaviour in the hope of convincing the Judge that he or she would be a better parent in the future. This can be destructive to the parties' future relationship with each other and with their children. It can also be lengthy and expensive, and often requires knowledge of complex and apparently rigid rules about what information the Court can and cannot take into account. The adversarial system allows parties to provide the Court with unnecessary material which does not assist Judges in their task of deciding which outcome will be best for the children concerned.

What is different? CONTINUED

This Children's Cases Program is intended to be less adversarial and more focused on the children and on what is best for their future rather than what happened in the past. The processes will be simpler and less formal than are those used in traditional hearings. The Judge will take a more active role when considering how the parents can provide for the future needs of the child. This means the Judge will concentrate on the major issues in dispute and on what is in the child's best interests.

There may be direct discussion between the Judge, you and the other parties or witnesses. The Judge may also invite you to consider ways in which the dispute may be resolved as the matter proceeds. Importantly, the Judge will decide what is to happen based on the evidence received during the hearing and in the process may assist you to reach an agreed solution.

Although the way your case is heard will be different, the law is the same. The Family Law Act requires the Judge to regard the best interests of the child as the paramount consideration. In determining those best interests he or she must also consider a number of factors, including the child's wishes, protection from physical or psychological harm and the capacity of each parent to provide for the child's needs. Your right to a fair hearing before an unbiased court will not be affected. The principles of natural justice and procedural fairness will continue to be applied rigorously.

What is the Judge's role?

The same Judge will hear your case until a solution is reached, either by agreement or by his or her decision. You will have opportunities to speak directly to the Judge and the proceedings will be less formal than is currently the case.

However, if an agreement cannot be reached, your Judge will be the final decision maker. Very early, with your help, the Judge will decide what your case is about and how the key issues will be dealt with. Should any new child-related issues arise along the way, these will also be able to be dealt with.

Your Judge will try, in a neutral way, to help you reach an agreement. Please be aware that if you do not like how the Judge decides an issue or part of your case, he or she is unlikely to stop hearing the case, even if you ask.

What can this new program offer me?

It is intended to have a number of advantages:

- **Shorter Hearings** – you should need to spend much less time at the Court, with cases expected to be completed in about half the time of those that are not included in this new program.
- **Earlier Hearings** – your case should be decided much sooner after being accepted into the new program than it would be in the current system.
- **Simplicity and flexibility** – rules about process will be kept to a minimum.
- **Potential to save costs** – because there will be fewer and shorter documents required, hearings will be shorter and your case will be completed sooner.

How can my case become part of the new program?

You can become involved if your case has not resolved through mediation and both you and the other parent (party) consent to being involved. The Court will then make the necessary orders for its inclusion. Consent forms are available at the Sydney and Parramatta Registries of the Court.

Can I withdraw from the program once I have given my consent?

NO. Once your case is part of the new program, it will continue there even if you change your mind, unless the Judge decides otherwise.

Can I participate if I do not have a lawyer?

YES. While the Court always encourages people to be legally represented if possible, you do not have to have a lawyer. In this situation you may be able to have a support person sit with you in Court.

Should I get legal advice before I consent to my case being in the new program?

YES. Even if you are not legally represented at the hearing you need to be informed about how the process is different and what that means for you. You should seek independent legal advice from a private solicitor or from a solicitor from the Legal Aid Commission of New South Wales.

How will my case proceed?

As soon as possible after you enter the new program, your Judge will meet with all parties to identify the important issues in dispute. You will have been asked to complete a questionnaire when your case is included in the program, and the information this provides will assist in this process. Around the time of your first meeting with the Judge a representative for the children may be appointed. When the key issues are identified, your Judge will decide what evidence is needed, how it is to be presented and what the next steps will be.

Most likely there will be several meetings (hearings) with your Judge. Each meeting may be quite informal, even at times resembling a 'discussion' rather than the traditional structured questioning that occurs in adversarial hearings.

A special feature of the program is that the Judge may hold private discussions with each party separately if he or she thinks this will be helpful. These discussions are recorded and the other party can have a copy of the transcript of what was said if he or she wishes to do so.

Wherever possible the Court will deal with minor procedural matters by telephone, such as giving leave to inspect documents. This will save you costs and time.

Some Rules of Court will be modified to fit in with the quicker and simpler procedure in this program. This will be made clear to you as your case proceeds.

Where will the evidence come from?

You and the other parties will be the main sources of evidence, with the Judge deciding who else may be called as a witness and on which issues.

If the Judge decides one is necessary, the next most important source of evidence will be the Family Report. It will usually be prepared by a Court employed mediator appointed for the purpose, as early as possible. It will be limited to the issues identified by the Judge and will obtain the views of the children, if the Judge decides this is necessary. The mediator, whilst preparing the report, will also try to assist you and the other parties to resolve your dispute.

You and the other parties will receive a copy of the Family Report. You will have time to consider it before the hearing continues. If any of the information in it needs to be expanded upon, this may be done by oral evidence.

Depending on the circumstances of your case, the Judge may order a report from a Court appointed expert. This will be dealt with in the same way as a Family Report.

You and the other parties to your case will be sworn in as witnesses once you have entered this new program. Everything said in Court to the Judge will then become part of the evidence.

Unless the Judge otherwise orders, he or she may take into account everything that is said or occurs before the Judge, a mediator or a Court appointed expert during the progress of your case after it enters the new program.

More detail about how cases in this new program will be run is set out in a Practice Direction issued by the Chief Justice. A copy of the Practice Direction can be obtained from the Sydney and Parramatta Registries of the Court and is available on the Court's web site at:

- www.familycourt.gov.au

How will evidence be handled

There are some important differences in how evidence is handled between this new program and normal adversarial proceedings. The main differences are:

- Once the issues have been defined, the Judge will decide, in discussion with you and the other parties (and your lawyers, if any) what witnesses are to be called. [In adversarial proceedings the parties normally decide these things.] The Judge may reject proposed witnesses if the evidence they can give is not, in his or her view, relevant or of significant importance. Also, the Judge will approve all witness subpoenas and may direct the issue of a particular subpoena to ensure that proper evidence is before the Court about an important matter. This will be explained to you as the case proceeds.

Can I appeal if I am not happy with the result?

Yes. Your ordinary rights of appeal are not affected except that you will not be allowed to complain about matters to which you have agreed and, in particular, your consent to participating in this program.

in this new program?

- Only you and the other parties will give written evidence by way of affidavit, and then only about the issues your Judge has identified as relevant. If witnesses are required they will provide a written statement/outline of the evidence they can give about any of the identified issues. This statement will be made available to each party. The witnesses will give their evidence orally or, if there is no dispute about its contents, a party may tender a witness statement.
- If expert witnesses are necessary they will provide a short written report, and if they are required to provide more details, they will be able to give evidence by telephone or videolink to save expense and time.
- The Judge can take "hearsay" evidence into account in coming to a decision. [Hearsay evidence is where a witness repeats something that someone else said]. In adversarial proceedings, this is usually restricted to a witness repeating what a child has said. However, if the hearsay relates to an important matter, the Judge will usually require direct evidence.
- All evidence (whether written or provided orally) will be provisionally admitted. Objections to its inclusion will only be made on grounds of illegality and other serious grounds. The Judge will then decide what material will be treated as evidence and what weight will be given to it.

Contact Details

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☎ (02) 9217 7111

Privacy

The Family Court of Australia treats seriously your right to privacy and information security. The *Privacy Act 1988* applies when the Court deals with administrative matters. When the Court collects information for purposes that are not administrative, such as to exercise its jurisdiction, other laws protect it. These include the *Family Law Rules* which limits access to Court files, and the *Family Law Act 1975* which restricts reporting of proceedings.

Consent for Children's Cases Program

1

FORM X

Please type or print clearly and mark [X] all boxes that apply.

Filed in Family Court of Australia

This consent is given by:

- Applicant
 Respondent

This form is used, in a case involving an application for orders in relation to children, to consent to the case becoming part of the Children's Cases Program.

- **Before signing and filing this form** you are advised to take independent legal advice. You can obtain this from a private solicitor or from a solicitor from the Legal Aid Commission of New South Wales who will be present at Court.

Client ID _____

File number/appeal number

Filed at _____

Filed on _____

Court location _____

Court date _____

Time _____

Part A About the parties

APPLICANT

Family name as used now

Given names

RESPONDENT

Family name as used now

Given names

Part B About the child representative (if appointed)

Child representative's family name

Given names

<input type="text"/>	<input type="text"/>
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Part C Consents and acknowledgments

I consent to the Court including my case in the Children's Cases Program ["the Program"]. In giving my consent:

- 1) I acknowledge and understand that:
 - a) I have been provided with and have read the "The Children's Cases Program" Brochure.
 - b) I have been advised to seek independent legal advice about the Program and have had sufficient opportunity to obtain such advice.
 - c) Each party has an obligation to make full and frank disclosure of all issues relevant to the child and his/her best interests.
 - d) I do not lose my rights to appeal just because my case is in the Program however I will not be allowed to complain about matters to which I have agreed and in particular, my consent to participating in this program.
 - e) The Court will evaluate the Program and may pass my name and contact details to those appointed to do the evaluation. They may then contact me about it. However, whether or not I take part in the evaluation is a choice for me to make at the time.

- 2) I acknowledge and understand that it is the Judge's (not the parties') role to control the conduct of the whole of the proceedings, to determine the issues which need to be decided, the evidence required and the manner in which it is to be provided for the purpose of making orders which are in the best interests of the child or children.
- 3) More specifically, I consent to the hearing proceeding in the following manner:
- a) The parties may not withdraw from the Program without leave of the Judge.
 - b) The parties may receive assistance from a Mediator during the hearing process. Unless the Judge decides otherwise, anything that occurs or has been said will not be privileged and will be part of the evidence in the matter.**
 - c) The Judge is not disqualified from hearing and determining the matter if he/she makes findings in relation to various facts and issues during the hearing.
 - d) The 2004 Rules of Court will apply to Program cases unless the Judge makes a different order.
 - e) The Judge will be able to use mediation techniques where he/she considers doing so will assist in determining the matter and the Judge will not be disqualified from continuing to hear and determine the matter by having used these techniques.**
 - f) The Judge may speak with and address questions to the parties, whether they are legally represented or not.
 - g) The Judge may hold private discussions with the parties providing those discussions are recorded and copies of the transcript of what has been said is available to the other parties if required.**
 - h) It is up to the Judge to determine whether or not he/she will interview the child and this decision would normally be made after hearing from a mediator or other expert. The Judge may act on the views expressed by the child in such an interview.
 - i) The Judge will determine what evidence is required in relation to the disputed facts that the Judge considers important.
 - j) The Judge may direct inquiries to be made and evidence obtained on any issue the Judge determines is relevant to his or her decision.
 - k) The Judge determines the manner in which this evidence will be given.
 - l) The Judge will determine what witnesses are to be called and the issues about which a witness will give evidence.
 - m) All relevant material put before the Judge is to be conditionally admitted as evidence. The Court will determine the weight to be given to the evidence.
 - n) The order and sequence of questioning by the parties will be determined by the Judge.
 - o) Judgment may be given in specific parts rather than one event at the conclusion of the hearing.
 - p) The Rules will be departed from to ensure that the time for lodging any appeal against any order made, otherwise than by consent, will not commence to run until the conclusion of the hearing and the making of the last orders in the hearing.
 - q) Any Rule which requires the disclosure of any communication between the Child Representative and the court appointed expert is to be dispensed with.
- 4) I consent to a waiver of the Rules of Evidence as provided for in section 190 of the Evidence Act 1995 (Cth).

In giving my consent, I understand that the Judge, in dealing with issues of evidence, will have regard to the key issues and the substantial merits of the case.

Part D Signature of party giving consent

Signed

Date

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Children's Cases Program

www.familycourt.gov.au

CLIENT QUESTIONNAIRE

Introduction

Thank you for agreeing to participate in this program with the Family Court of Australia. The accompanying brochure explains important aspects of the Program. As the brochure indicates the aim is to focus on what will be best for your children in the future.

Please complete the questionnaire and provide a copy to the other parties before your first meeting with the Judge.

The other party will also complete the same questionnaire. The answers each of you provide will become part of the evidence the Judge will need to consider.

Some tips for completing this questionnaire

- 1 DO raise any concerns you may have about your own or your children's safety with the Judge at the earliest possible moment.**
- 2 DO** think about the answers from the viewpoint of what is in the best future interest of your child or children. Try to put yourself in your children's shoes and think about the answers in a way that tells the court what you think the children want the situation to be. Your children have a right to know and be cared for by both parents and will usually want to maintain the best possible relationship with both.
- 3 DO** put aside your differences and think about the future. Approach the job of completing this questionnaire not from a position of 'winning' or 'punishing' your former partner but think about how you can help the Judge find the best solution for you and your children.

Part A About your circumstances now

1 Your full name

2 Your residential address

State
Postcode

3 What is your relationship to the children?

<input type="checkbox"/> Mother/father	<input type="checkbox"/> Other relative (state relationship) _____
<input type="checkbox"/> Grandparent	<input type="checkbox"/> Other (give details) _____

4 What is your usual occupation?

5 Are you in paid employment?

No

Yes WHAT IS THE NAME OF YOUR EMPLOYER AND AT WHAT ADDRESS DO YOU WORK?

FIRM NAME

STATE
POSTCODE

6 What are your hours of work?

_____ hours per day adding up to _____ hours per week
usually between _____ am/pm and _____ am/pm.

7 How long does it take you to travel to and from where you work?

_____ minutes/hours

8 If you are not in paid employment, what is the source of your financial support?

9 Do you own your home?

Yes

No

10 Do you rent your home or are you boarding, sharing or living rent free?

Rent

Board

Share

Live rent free

11 Do you suffer from any medical condition which requires supervision by a medical practitioner or for which you take prescribed medication or which could affect your ability to supervise and care for a child?

No

Yes PLEASE PROVIDE DETAILS

12 Do you now have or have you in the past had any problems with drug or alcohol abuse?

No

Yes PLEASE PROVIDE DETAILS

13 Have you or any person with whom the child resides or has contact been convicted of a criminal offence, been involved in child welfare proceedings or been found to have breached orders or committed an offence under the Family Law Act?

No

Yes PLEASE PROVIDE DETAILS

Part B About safety issues

14 Are there any current Apprehended Domestic Violence Orders or have there been any in the past which affect you or any of the children the subject of this case?

No

Yes PLEASE PROVIDE DETAILS

15 Do you have any concerns about your safety while you are attending the Court?

- No
- Yes PLEASE PROVIDE DETAILS

Part C The current parenting arrangements

16 What are the names and ages of the children who are the subject of this Court case?

Family name	Given names	Age
Child 1: _____	_____	_____
Child 2: _____	_____	_____
Child 3: _____	_____	_____
Child 4: _____	_____	_____

ANSWER THE FOLLOWING QUESTIONS SEPARATELY FOR EACH CHILD WHERE THE ANSWERS ARE DIFFERENT

Example of answer to Item 24

SLEEPING

Child 1: own room

Child 2 & 3: shared

Child 4: own room

Please try to keep answers to your questions as short as possible as per this example

LIVING AND CONTACT ARRANGEMENTS

17 What is the address at which the children live now most of the time?

State
Postcode

18 Who else lives, or regularly stays in, the house with the children and what is their relationship to you and/or the children? **Do not include the other children listed in Item 16.**

Name _____
Relationship to you _____
Relationship to children _____

19 What is the address at which the other parent/party lives?

State	Postcode

20 Do the children spend any time with them?

- No
- Yes HOW MUCH AND HOW OFTEN?

21 How do the changeovers between you and the other parent/party take place?

22 Do the children have other contact with the other parent/party such as by phone, e-mail etc?

- No
- Yes GIVE DETAILS OF THE KIND OF CONTACT (EG. PHONE, E-MAIL ETC) AND HOW OFTEN IT OCCURS

23 Do the children have contact with other extended family members such as grandparents, aunts and uncles etc?

- No
- Yes HOW MUCH, HOW OFTEN AND WITH WHOM?

24 Describe the current accommodation and arrangements for the children when they are with you, including sleeping, meals, entertainment, homework support, if relevant, and other facilities for them.

SLEEPING (eg. own room, room shared with other children, etc)

MEALS (eg. times of meals, who cooks, types of meals, does the family eat together, etc)

ENTERTAINMENT

HOMEWORK SUPPORT (IF RELEVANT)

OTHER FACILITIES FOR THEM

CHILD CARE ARRANGEMENTS

- 25** If you work outside the home and the children live with you what are the arrangements for their care while you are at work?

- 26** Do you have a motor vehicle available for your use most of the time?

Yes

No IF NOT, HOW DO YOU TRANSPORT YOURSELF AND OR YOUR CHILDREN?

- 27** What are the arrangements for supervising your children during school holiday periods?

SCHOOLING

- 28** If applicable, what school/s do the children attend, in what class/year and how far from home is the school?

	Child's name	School	Class/year	Distance from home
Child 1:	_____	_____	_____	_____
Child 2:	_____	_____	_____	_____
Child 3:	_____	_____	_____	_____
Child 4:	_____	_____	_____	_____

29 How do the children travel to and from school and with whom?

30 What are the current before and after school care arrangements?

31 Do any of the children have any special education needs?

No

Yes PLEASE SPECIFY THE TYPE OF NEEDS AND HOW THESE ARE CURRENTLY MET.

32 Do the children have any regular out of school activities, including social activities, hobbies, sporting or other weekend activities?

No

Yes PLEASE SPECIFY WHAT THEY ARE AND GIVE DETAILS OF HOW THEY ARE ASSISTED BY YOU AND THE OTHER PARTY TO BE INVOLVED IN THEM?

33 Please provide brief details of any close friendships any of the children have at their school or in the neighbourhood.

HEALTH

34 Do the children have any health problems, including any special dietary needs?

No

Yes PLEASE SPECIFY WHAT THESE ARE AND HOW THEY ARE MANAGED.

35 Do any of the children require special medical or other care?

No

Yes DESCRIBE THE NEED AND HOW THIS IS CURRENTLY PROVIDED FOR.

FINANCIAL SUPPORT

36 Do you pay/receive child support to/from the other parent?

No

Yes I pay/receive (DELETE WHICH DOES NOT APPLY) \$_____ per week for:

(INSERT CHILDREN'S NAME/S)

37 Is the child support collected by the Child Support Agency or privately?

CSA

Private

38 Do you pay/receive any additional agreed payments for the child/children's financial support?
(For example, school fees, medical expenses or insurance, etc.)

No

Yes PLEASE PROVIDE DETAILS.

GENERAL

39 How long have the above living and care arrangements been in place?

_____ years/months

Part D Future parenting arrangements

In making decisions about the future care arrangements for the child, the Judge will want to consider a wide range of educational, social/relationship, environmental and economic factors that may affect the child’s daily life. The following questions begin the process of the Judge’s inquiry. (If you intend the future arrangements to be the same as the current ones, write ‘Same as current’.)

40 Where do you propose the children will live in the future:

DURING SCHOOL TERMS

DURING WEEKENDS

DURING SCHOOL HOLIDAYS

41 Describe sleeping arrangements, meal/cooking facilities, entertainment, homework support if relevant, and other relevant facilities available for them when they live with you in the future, if these will be different from the current arrangements.

SLEEPING (eg. own room, room shared with other children, etc)

MEALS

ENTERTAINMENT

HOMEWORK SUPPORT (IF RELEVANT)

OTHER FACILITIES FOR THEM

42 Who else will live in the home with the children either permanently or on a regular basis, and what is their relationship to you and the children?

Name _____
Relationship to you _____
Relationship to children _____

43 Where will the children go to school, if this is to be different from the current arrangements?

Child's name	School	Class/year	Distance from home
Child 1: _____	_____	_____	_____
Child 2: _____	_____	_____	_____
Child 3: _____	_____	_____	_____
Child 4: _____	_____	_____	_____

44 How will the children travel to and from school and with whom?

45 How will the children be supervised before and after school?

46 If the children are not of school age, what will the child care arrangements be?

47 If the children are to live with you what regular contact arrangements do you propose they will have with the other parent or party?

48 If the children are to live with the other parent most of the time, what contact arrangements with you do you propose?

49 What is the distance between your home and the home of the other parent/party?

50 How will changeovers between homes take place with the other parent/party?

51 Do you propose that the children maintain their relationships with their friends if they are going to move?

- No**
- Yes IF SO HOW?**

52 How will you help the children keep in contact with the other parent and/or other family members?

53 If any of the will children require medical treatment while they are with you what arrangements are you able to make for this treatment?

54 What out of school activities do you anticipate the children will be involved in, in the future, and how will you help them to keep up with them?

55 If any of the above arrangements are to be different during school holidays describe how they will be different?
