



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



ACCESS TO JUSTICE AND PRO BONO CONFERENCE

SYDNEY: 14 – 15 NOVEMBER 2008

**GRASS ROOTS FEDERAL JUSTICE
THE FEDERAL MAGISTRATES COURT AND
REFORM OF THE FAMILY LAW COURT STRUCTURE**

**By Ian Kennedy AM
Chair, Family Law Section
Law Council of Australia**



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



VISION FOR FMC

(A-Gs SECOND READING SPEECH, 24/6/99)

- **USER-FRIENDLY**
- **ACCESSIBLE**
- **AFFORDABLE**
- **QUICKER, CHEAPER OPTION**
- **NEW CULTURE**
- **STREAMLINED AND INFORMAL PROCEDURES**
- **CONCURRENT JURISDICTION WITH FAMILY AND FEDERAL COURTS**
 - **LESS COMPLEX MATTERS**
 - **EASE WORKLOAD (NOT TAKE AWAY)**



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



VISION FOR FMC (cont)

(A-Gs SECOND READING SPEECH, 24/6/99)

- **FLEXIBILITY TO TAILOR PRACTICE AND PROCEDURES TO EACH CASE**
- **OUTREACH TO REGIONAL RURAL AND REMOTE AREAS**
 - **USE OF VIDEO AND AUDIO LINKS**
 - **NO REQUIREMENT FOR FORMAL COURTROOM**
- **FOCUS OF PDR**
 - **IN COURT (VIA FCA)**
 - **COMMUNITY-BASED**



LAW COUNCIL RESPONSE TO FMC PROPOSAL

- **COMMITTED TO IMPROVED ACCESS TO JUSTICE**
- **OPPOSED TO STAND-ALONE FMC**
 - **COST**
 - **DUPLICATED BUREAUCRACY**
 - **LEACHING OF RESOURCES**
 - **CONFUSION AMONG LITIGANTS**
 - **DUPLICATION OF RULES, INFORMATION, PRACTICE, PROCEDURE**
 - **LIMITED IMPACT ON ACCESS TO JUSTICE**
 - **INCREASE IN APPLICATIONS/APPEALS**
 - **“COMPLEXITY” NOT USEFUL TEST**
- **SUPPORTIVE OF DIRECT APPOINTMENT OF CHAPTER III FMs TO FEDERAL AND FAMILY COURTS**



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



CURRENT IMPEDIMENTS TO ACCESS

FAMILY LAW ACT

- **607 SECTIONS (ALMOST 700 WITH DEFACTO LEGISLATION)**
- **COMPLEX AND CONFUSING NUMBERING AND STRUCTURE**
 - **s63AAA(1)**
 - **s65DAA((3)(a)(i)**
 - **70NCB(2)(a)(i)**
 - **94AAA(1A)(a)**
 - **123(1)(sdb)(1)**
- **ILLOGICAL SEQUENCE OF PROVISIONS**
- **INCAPABLE OF NAVIGATION**



CURRENT IMPEDIMENTS TO ACCESS (cont'd)

FAMILY COURT

- **604 RULES/SUB-RULES**
- **81 FORMS**
- **71 CASE MANAGEMENT DIRECTIONS
(IN 13 CHAPTERS)**
- **16 PAGES OF ICL GUIDELINES**



FAMILY LAW SECTION
Representing Family Lawyers Throughout Australia



CURRENT IMPEDIMENTS TO ACCESS (cont'd)

cf FEDERAL MAGISTRATES COURT

- **10 FORMS**
- **4 FAMILY LAW PRACTICE DIRECTIONS**
- **SIMPLIFIED RULES**
- **SIMPLIFIED PROCESSES**



FAMILY LAW SECTION
Representing Family Lawyers Throughout Australia



INCREASED DEMAND FOR COURT SERVICES

FAMILY LAW AMENDMENT (DE FACTO FINANCIAL MATTERS AND OTHER MEASURES) ACT 2008

EXTENSION OF FAMILY LAW ACT PROPERTY DIVISION, MAINTENANCE AND SUPERANNUATION REGIME TO:

- **DE FACTO COUPLES**
- **SAME SEX COUPLES**

EXTENSION TO SAME SEX COUPLES OF:

- **FAMILY LAW PARENTING REGIME**
- **FINANCIAL RESPONSIBILITY FOR CHILDREN**

NEW PROVISIONS RELATING CHILDREN FROM REPRODUCTIVE TECHNOLOGY



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



CURRENT GOVERNMENT POLICY

- **REVIEW INTERACTION BETWEEN FEDERAL COURTS**
- **MAXIMUM UNIFORMITY IN STRUCTURE AND OPERATION**
- **EFFECTIVE COURT MANAGEMENT**
- **JUDICIAL SYSTEM WHICH IS:**
 - **EFFICIENT**
 - **ACCESSIBLE**
 - **ACCOUNTABLE**



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



NEED FOR CHANGE

- **TWO SEPARATE CHAPTER III COURTS**
- **LARGELY IDENTICAL JURISDICTIONS**
- **SEPARATE ADMINISTRATIONS**
- **COMPETING FOR FUNDS AND RESOURCES**



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



KEY CRITERIA FOR CHANGE

- **NEEDS OF COMMUNITY**
- **EFFECTIVE PROVISION AND DELIVERY OF SERVICES**
- **PRESERVATION OF CULTURE OF FMC**
 - **ACCESSIBILITY**
 - **REDUCED COMPLEXITY**
 - **COST EFFECTIVENESS**
- **TEMPLATE FOR FUTURE RESTRUCTURE OF FEDERAL COURT SYSTEM**



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



COMMUNITY REQUIREMENTS

- **EFFICIENCY**
- **TIMELY RESOLUTION**
- **COST-EFFECTIVENESS**
- **PROPORTIONALITY**
- **FLEXIBILITY**
- **ACCESSIBILITY**
- **SEAMLESS INTERGRATION**
 - **COURTS**
 - **SERVICES**



FAMILY LAW SECTION
Representing Family Lawyers Throughout Australia



REQUIREMENTS OF LEGAL PRACTITIONERS

- **ONE REGISTRY/ONE POINT OF ENTRY**
- **ONE SET OF (APPROPRIATE) RULES**
- **ONE SET OF (SIMPLE) FORMS**
- **UNIFORMITY OF PROCEDURES**
- **CONSISTENCY OF PRACTICE**
- **ONE POOL OF (ADEQUATE) RESOURCES**
- **PRESERVATION (AND ENHANCEMENT) OF CURRENT SERVICES**
- **PERSERVATION OF FMC CULTURE**



FAMILY LAW SECTION

Representing Family Lawyers Throughout Australia



REQUIREMENTS FOR EFFECTIVE COURT ADMINISTRATION

- **SINGLE BUDGET**
- **SINGLE (NON-JUDICIAL) ADMINISTRATION**
- **ADEQUATE RESOURCING**
- **APPROPRIATE ACCESS TO EXTERNAL PDR**



FAMILY LAW SECTION
Representing Family Lawyers Throughout Australia



REQUIREMENTS OF JUDICIARY

- **RECOGNITION OF FMs AS CHAPTER III JUDGES**
- **PROPER REMUNERATION, TERMS AND CONDITIONS**
- **ADEQUATE RESOURCES AND SUPPORT**
- **FOCUS ON SPECIALIST APPOINTMENTS**



FAMILY LAW SECTION
Representing Family Lawyers Throughout Australia



LAW COUNCIL RECOMMENDATIONS

- **PRESERVATION OF FMC CULTURE**
- **PROPER RECOGNITION OF STATUS OF FMs**
- **RETENTION OF HIGHER JUDICIAL LEVEL FOR APPEALS, COMPLEX CASES**
- **STRUCTURE COMPATIBLE WITH FUTURE REVIEW**



SUMMARY OF LAW COUNCIL POSITION

- **INTERGRATED SYSTEM**
- **SINGLE, COHERENT STRUCTURE**
- **COMMON POOL OF RESOURCES**
- **DELIVERY OF SERVICES AT APPROPRIATE LEVEL**
- **FOCUS ON NEEDS OF USERS:**
 - **REASONABLE OUTCOMES**
 - **REASONABLE TIME FRAMES**
 - **REASONABLE COST**