

# **‘FAMILY REPORTS’ - WHAT ARE THEY**

**This paper presents the scope, limits, and significance of the family report process, its primary focus - the children’s welfare and best interests - and other relevant contextual issues.**

## **The family report process**

Parents going through the process of separation may be able to reach agreement about the arrangements that they consider best for the care of their child/ren. They then have the option of formalizing their parenting arrangements by seeking Consent Orders through the Family Law Courts. However, where there is considerable conflict between the parents and where they feel unable resolving the issues between them either party may file an application with the Court.

The Court identifies the parent filing the application as the ‘applicant’, and the other, as the ‘respondent’.

It is to be noted that the large majority (in the order of 90-95%) of Court applications, does not proceed through to the ultimate stage of a contested Hearing, as matters in dispute may settle earlier along the pathway between initial application and final determination of the application.

A parent wishing to make an application to the Court may do this directly and be what is called self-represented or through a legal representative. The other party, the respondent, is served with a copy of the application and is requested to file a response by a certain date. The parties are subsequently provided with a court date (some two to three months hence) when their matter will be considered. If, in the intervening time, the parties managed to settle the issues in dispute between them, with or without the assistance of dispute resolution services, solicitors or others they will be issued with Consent Orders on that first Court date.

However, where the dispute has deepened and/or where there are issues such as, family violence, allegations of child abuse, alcohol, illegal substance abuse, re-location matters, the Judge or Federal Magistrate is likely to appoint a court expert and requests that a Family Report be prepared with a view to achieve a more comprehensive basis for assessing possible parenting options and outcomes.

Family reports are assigned to family consultants who are qualified and experienced social workers and psychologists with vested responsibility as ‘court experts’, who may be requested to appear at the final Hearing to further

elaborate, through cross-examination on the views and the recommendations they have expressed in their written report. We are all registered under Regulation 7 of the Family Law Regulations as Family Consultants.

The report writer's experience, skills and qualifications in their particular discipline include up to date knowledge of the relevant body of law, related policies, rules and regulations.

The Court may also appoint an 'Independent Children's Lawyer' (ICL) to represent the child/ren. The purpose of such representation is to further assist the Court to reach a decision which is in the child/ren's best interest.

The ICL ensures that proper arrangements are made to protect the children's interests; they form an independent view about the child/ren's welfare and best interests based on all relevant information and they make a submission to the Court based on these views. The view of the ICL may not necessarily reflect the wishes of the child/ren but they will ensure that the Court is aware of the children's views. In complex cases the ICL seeks a family report to be prepared. The ICL may also be involved in follow-up arrangements in relation to a Court Order.

Following the request for a family report by either a Federal Magistrate, Family Court Judge or the Independent Children's Lawyer, and, sometimes, the parties themselves, the report is set in train. Its main aim is to achieve an objective analysis and related evaluation of the given situation arising from a relationship/marital separation, and involving a dispute or strong disagreement about post separation parenting arrangements for the children. The report aims to provide child focused recommendations to assist the Court in determining Parenting Orders in relation to the child/ren. The Court must regard the best interests of the children as the paramount consideration.

The Act requires the Court to take into account 2 tiers of considerations: Primary considerations and additional considerations. The Primary considerations cover the benefit to children of a meaningful relationship with both parents and the need to protect children from harm (from being subjected or exposed to abuse, neglect or family violence). There are numerous additional considerations; they include the child's relationship with each parent and other people including grandparents, the practical difficulties and expense of a child spending time with each parent and so on.

The family consultant who will prepare the Report receives a copy of the Court Order and a referral sheet with the parties (and their solicitors) details. The next step is to contact the parties and to arrange and conduct a series of interviews with the parents and their child/ren, and with other relevant parties as required. A handout explaining the proceedings is provided to all parties

before the interviews take place. Copies of other relevant documents may be forwarded by the parties or their solicitors. This information is not relied upon to form an assessment but is seen as an secondary source of information. There are instances where one receives large bundles of documents while in other matters one receives no information at all.

The most important information is that elicited at interview in addition to the observations made. They constitute the major part of the report process which, together with other relevant sources of information (eg from other professionals, teachers, etc) will form the basis upon which to construct the report.

From that basis, the written report will present a comprehensive analysis of all relevant parameters, their evaluation in context of the dispute, and the formulation of appropriate recommendations focusing on the best interests of the child/ren under consideration and under the given circumstances at the particular time. Thus, each given situation is appraised on its own merit with regard to the particular 'family system' and to the particular history of the parties' separate and shared relationship, attitudes, behaviors and emotions.

The proportion of time the children ought to spend in the care of one or the other parent is, most frequently, the crux of the dispute. It must be noted that the family consultant is duty-bound to express views and opinions about each parent and other relevant adults as long as they are within the context of the welfare of the child/ren and the bounds of the dispute.

The process frequently includes other parties such as new partners with regard to one or both parents, and extended family members, most notably grandparents and a full day is set aside for the purpose of interviews and observations. It may further extend to contacting specialists such as a GP, a psychiatrist, a teacher, or a School Principal, and in some cases officers from the Department of child Safety, as to their views on particular aspects of the situation. The parents are informed and permission is sought prior to involving other relevant specialists.

As mentioned above, the report focuses on the best 'arrangement' for a given child, in a given family situation, at a given point in time. It is thus a 'snapshot' at that particular point in time and the report writer is guided by and limited to the information made available to that point; the report is not a forensic enquiry. A different perspective may be reached at a different point in time, say, in matters where the Court requests an 'updated report' where several of the main parameters have changed, or where the child/ren have developed sufficiently to express views or preferences differing from those formulated in the original report.

The report provides also a general background, placing the parental dispute in context, and outlines family relationships and interactions. The observations made and the assessments formed are summarized in the report and are expected to represent an impartial analysis of the particular family's situation. In all cases, the final decision rests with the Court and it may or may not coincide, in parts or in total, with the report writer's recommendations. In this regard, it is to be noted that the report is only part of the evidence before the Court and report writers are aware that their opinion may change where additional information comes to light.

### **Primary focus: the child/ren's welfare and best interest**

The children's best interest is the predominant consideration, principal aim and central focus of the Family Law Act 1975 and its evolving reforms in subsequent legislation. This is further pursued through encouraging families to construct improved relationships after separation with a view to re-focus attention to the children's needs and best interests.

The child/ren's psycho-developmental needs - present and projected - are of predominant importance. A child thrives in the care of adults who are 'available' and who are well grounded in who and what they are and as such are able to provide the emotional space and the mental attitude that is open to the child's needs at all times rather than only when convenient.

There are situations where separating or separated parents remain so caught up in their dispute that their own needs, hurts, wants and preferences, distract them from an effective focus on the children. Where deemed necessary, the parties may be referred to an appropriate parenting course; the Triple P Program or Parenting Orders Program run by Relationships Australia, an anger management course, counseling and related services.

Ultimately, a parent's demonstrated child focus, including the will to ensure the facilitation of an appropriate relationship between the child/ren and the other parent where this is reasonable and does not imply undue risks of harm, are factors of importance in the Court's final determination. Keeping in mind the above considerations, the family report will specifically address:

- the current child/ren's living arrangements, including a description of the parties' households, major relationships and support, and child/ren's ongoing involvement with both their parents, siblings and significant others where applicable; and whether the children are likely to be subjected or exposed to abuse, neglect, or family violence;

- the impressions made by the child/ren, including an assessment of physical and cognitive development; care arrangements, schooling and interests;
- the main relevant issues arising from the family situation;
- the child/ren's views, perceptions and concerns with regard to the parental separation, their relationship with each parent, and, where appropriate, their views on the proposals formulated by each parent, and the weight the Court should place on these.
- the child/ren's maturity and characteristics such as gender and cultural background that may need to be given special consideration with regard to their best interest;
- where relevant, a risk analysis of factors that may unduly affect the child/ren in light of the proposals made by the parents. This may include any detected risk that may subject the child/ren to physical, psychological, or sexual abuse;
- proposals towards parenting arrangements made by each parent
- an analytical evaluation of the emerging picture.

The summary and discussion conclude the report and recommendations arising from the analytical evaluation are offered, including recommendations for additional specialist advice where such advice is outside the area of expertise of the family consultant. For instance a psychiatric evaluation for either one or both parents

### **Contextual issues to the primary focus**

There are a number of contextual factors – some of which have already been captured in the previous section – that are relevant to the assessment of the child/ren's best interest. These bear mainly on the nature of interpersonal processes between family and extended family members, the degree to which and the ability of the parents to be focused on the child's best interests, and the impact that these factors may have on the well-being of the children. They also include geographical factors, household factors, and other contextual social and psychological variables.

In this context, the report will list any documentation that may have been made available by the parties and/or their solicitor and address:

- care proposals of the parties;
- current parenting orders or care arrangements and the degree to which they are actually complied with;
- sequence of interviews and relevant views and statement made by participants;
- impressions derived from relevant adults participating in the report process;
- main issues in the dispute;

- factual background to the dispute;
- parties' work environment;
- parties' views as to how their proposed arrangements would best meet the child/ren's needs and best interest;
- parties' views about the other parent's capacity to meet these;
- parties' capacity in parenting and in demonstrating appropriate child focus.

Updated reports are ordered where a matter has evolved over time and 'new' matters have arisen which are significantly different from the matters considered in the original report enough to warrant a further hearing and a subsequent report. Examples are: where a parent wishes to move to a distant location which might dictate consideration of new arrangements; or parties re-marry and there are additional half siblings or step siblings; or the report is simply outdated (owing to a number of possible reasons such as the death of a relevant party, the onset of mental illness or parental incarceration).

Upon completion, the written report is forwarded to the Court or to the Independent Children's Lawyer (ICL) where the ICL commissioned it.

The Court usually releases the report in due course and distributes it to the parties' or the parties' solicitors. It is to be noted that some disputes settle on the strength of the report and subsequent negotiations whereas others 'fight' on for years in the Courts.

### **Significance of the family report**

The family report and the process underpinning it are significant in a number of respects:

The report responds to a Court or solicitor's request and provides an analysis which is likely to expand the social perspective, and is designed to be of assistance to the Court. It provides the Court with objective information about the children, their views and their attachments with their parents as well as an analysis of family and conflict dynamics. The report is frequently the only document which addresses the issues independently, and frequently the only one whereby the children have been seen and heard.

In many cases of separation and dispute about parenting arrangements, communication between the parties remains ineffective or even counter productive. This frequently extends to other family members whereby two sides develop with totally different interpretations of the main elements of the dispute. This tends to be compounded over time and gives rise to anger and distorted communication whereby each side feels unjustly treated or victimized.

It is with reference to such situations that the report process may become also an enabling process with potential for contributing to what may best be described as 'therapeutic' benefits for the parties in the process.

In this regard, the process gives latitude and opportunity to all participants to ventilate their views and their emotions, to reframe certain views they entertain of the dispute which may have gone unconsidered or unchecked for some time, to refocus on the children and to correct some misunderstandings that may have arisen about the process or about the rights and duties of the parties. To this extent it may be said to have also an 'educational' role.

The significance of the family report may then be summarized as follows:

- it assists the Court make decisions about the care arrangements for the children;
- it provides the parties with a better understanding of a process which, in many cases, they had little knowledge of or over which they had formed misconstrued views.

The report may also have a positive 'therapeutic and educational impact' on parents and children in:

- assisting to ventilate views and emotions
  - assisting to reframe set views in need of reconsideration
  - providing scope for the interplay of intervention techniques for instance, the report may make recommendations for post hearing counselling, for parents to acquire further parenting skills, anger management whatever the particular situation may dictate;
  - it provides parents with an opportunity to reflect on and adopt a more child focused perspective.
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- An important aspect of family reports – though not directly related to this paper's subject matter, is their research value. Reports contain material apt to provide insight on social evolution in a longitudinal perspective about family dynamics, family interaction and family breakdown - at various points in time - reflecting an important segment of the broader social picture and its evolution. Students within relevant disciplines would find in them recurrent traits (eg. family violence, attachment issues, educational level of parents and grand-parents', alcohol and substance abuse) such as to provide the elements for ongoing policy development in attempting to construct a less litigious society.

## Conclusion

In concluding, it is important to note that The family report process; the interviews as well as the written report and the possible cross-examination in Court, is a complex one, requiring a child centered perspective, an appreciation of families as systems, an appropriate 'ethical' attitude, and a multiplicity of skills.

The final Court determination may displease either the 'applicant' or the 'respondent' or both. Not infrequently, parties blame the family consultant and therefore the report for the Court's decision, even though the final determination of all contested cases rests exclusively with the Court.

The parties' frustrations, though understandable, might be misplaced owing to the difference in focus between the report and the parties' views and perceptions. A difference which results from lengthy conflict and, possibly, insufficient child focus, whereas the family report attempts to maintain the same and unequivocal focus namely, the best interests of the children.

Social and legal 'sciences' are not exact sciences. The dispute and the emotional 'baggage' between separating or separated parents and about the arrangements for their child/ren, are not amenable to a mathematical, or chemical or physical formulation. Feelings, perceptions, behaviors, values and attitudes leading to the dispute cannot be formulated with mathematical precision.

This notwithstanding, Law and Social Sciences rest on knowledge and experience which has developed over many decades of evolving reforms towards 'getting it right' in terms of social justice. Professionals working in this field will continue to exercise their knowledge and skills with utmost integrity and the fortitude required in making evaluations and related recommendations that adopt 'the best interests of the child' as of paramount concern.

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