

LAWASIA CONFERENCE

CHILDREN AND THE LAW: ISSUES IN THE

A D D R E S S

give evidence without the leave of the Court, and such leave is rarely granted⁵.

from one or both parents, where none of the parties is legally represented and where it is proposed to separate siblings.

The main bulk of funding for child representatives comes from legal aid funds, on rare occasions defrayed by costs orders obtained against parents. Although the State and Territory Commissions now usually appear to have adequate resources to provide

especially in cases involving older children, although I cannot see it becoming a mandatory requirement as it is in some overseas jurisdictions such as Quebec. There are usually good reasons for caution.¹⁴

In a recent case¹⁵ I invited the children through their legal representative, to meet with me should any of them want to speak to me directly. They accepted the invitation and I met with each of the three individually in the presence of the child representative. I made it clear to the children that I would not necessarily act on the views they expressed to me, but that I would take them into account. The reasons in that case included the age of the older

(h) the attitude of the child, and to the responsibilities of parenthood, demonstrated by each of the child's parents (

Unfortunately, the disputes the Court is called upon to adjudicate
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A presumption of joint parenting would have ramifications far beyond the population of parents who come before the Court. Many of those we do not see negotiate in the shadow of the law, whilst others are completely unaffected by its provisions but are able to make workable and sensible arrangements concerning their children. For those somewhere in the middle I would be concerned that one or other parent – and it can, of course, be either thither

Research carried out during the first 3 years of the operation of the 1996 amendments showed that there was confusion about the meaning of shared parental responsibility in the then new section 60B. Interviews with counsellors showed that, although they generally supported the 'shared parenting' ideal, most viewed 'equal time' arrangements as disruptive and destabilising for children, and said they would not recommend them unless there was an existing high level of co-operation between the parents. The vast majority of those who

on parent's rights rather than the child. Its meaning and application is

delays, ensured that relevant information was provided within short time frames and allowed a complete picture of the child's circumstances to be produced. Many matters settled on the basis of the information provided, and in a manner which satisfied the judge that the child's future welfare would be protected. Magellan is about to be implemented na

The Child's Representative is to ensure that the views and attitudes brought to bear on the issues before the Court are drawn from and supported by the admissible evidence and not from a personal view or opinion of the case.

The Child's Representative is expected and encouraged to seek peer and professional support and

- Ø the willingness of the child to express wishes; and
- Ø any relevant factors associated with the child's capacity to communicate.

Ø the extent of any child protection involvement with the child or family, in particular, any abuse or neglect notifications and

6.4 Case Planning

The Child's Representative is to seek to develop a case plan in consultation with any Child and Family Counsellor involved in the case at the earliest opportunity.

Ø the Child's Representative's relationship with the child has broken down irretrievably to the

7. Family Violence and abuse

promote self-reliance and facilitate the child's active participation in the community.

Honest Broker

A person who has accepted the role of negotiator in the dispute because their impartiality is unquestioned by either side.

Mediation Service

Services are offered by the Court to help settle disputes by agreement rather than a hearing. Sessions deal with child-related issues or combined child-related and financial issues. The way a session is structured will depend on the individual needs and circumstances of the family. Sessions can be conducted by mediators trained in law, social work or psychology who are expert in child-related and/or financial issues as relevant. In some instances a person may be ordered to attend a mediation session by the Court. Mediation sessions are privileged

