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Meeting the needs of those passing through the family law system

The report *Out of the maze: Pathways to the future for families experiencing separation*, published in July 2001, is the work of the Family Law Pathways Advisory Group established by the Commonwealth Government in July 2000. The group's terms of reference were to advise government on how to achieve a family law system that provides effective support systems for families, coordinates client-focused information and services, and provides appropriate and effective pathways.

The group invited submissions and held consultations around the country, and ran an Indigenous Forum. It also commissioned case study research from the Australian Institute of Family Studies.

The final report is 85 pages long (excluding appendices) and makes 26 recommendations.

The focus of the report is largely on separation so far as it affects separating adults and their children. There is very little discussion specifically of property matters, although many of the general principles espoused by the report would be highly relevant to such disputes. As will become clear, many of the report's recommendations entail the commitment by government of significant resources.

Problems with, and perceptions of, the system

The report acknowledges that there are many instances in which the current system works well, in that parties experiencing separation feel well supported through clearly defined pathways. However, consultations and research suggested that there are many problems, real and perceived, with the system as it currently is.

As one might expect, there were many who have felt aggrieved by the current system, complaining of bias and unfairness, or simply of a lack of effectiveness, especially in the system's ability to protect family members from violence or abuse. The group also concluded that there are a number of systemic factors that impede the development of a coherent system or set of clear pathways. The most significant of these is that the system was not designed as such, but has grown in an unplanned and uncoordinated way, and now includes courts, lawyers, counselling and mediation services, legal aid commissions, government agencies such as Centrelink and the Child Support Agency, contact services, and health services. As the report puts it, "many do not see themselves as part of a system and therefore do not link effectively with other parts" (p. 11).

Flowing from this is the fact that it is easy for separating families to feel that no single agency is concerned with their problems and needs in the round. Furthermore, family law legislation and policy is not always internally consistent in the messages it gives out, and may not be consistent with policy implemented by all branches of government. The system can operate randomly and be affected disproportionately by points of entry into it. The group was especially concerned at the evidence that the system deals ineffectively with violence and allegations of violence.

Solving all of this is surely an enormous task. The report tackles it by: (a) proposing some key functions for an "integrated system"; (b) identifying pathways; and (c) suggesting ways in which the system might be more effectively managed.

Key functions

The report identifies five key functions of an integrated system (although “features” may be a more accurate term).

The first of these is education. In particular, the group was keen to emphasise the need for a broader and more multidisciplinary approach to the education and professional development of all professionals involved in the system. So far as family lawyers are concerned, the report suggests that a code of conduct directed at family lawyers be developed, possibly with the assistance or sponsorship of the Family Law Section of the Law Council, and that professional development in support of the code be developed and perhaps be made mandatory for those wishing to hold themselves out as subscribing to the code.

The second function is the provision of accurate, timely and useful information aimed at those entering the system for the first time. The report concluded that there should be a coordinated set of national system-wide information products aimed at families and service providers.

The third function is the creation of a system-wide assessment mechanism that would be used no matter how or where someone enters the system. The argument here is that a proper assessment of needs will assist with appropriate referrals. Service providers (including lawyers) would be encouraged to commit to using the assessment tools, and training would be developed to assist with the implementation of the assessment tools and in the range of referrals available.

The fourth function is to offer a range of services adequate to the range of needs of separating families. The report places particular emphasis on the need to expand the range of services available to men and to victims of violence, and the need to correct the lack of child focus of many existing services.

The fifth function is to provide ongoing support to families over time – a commitment to “after-sales service”. This includes a need for effective enforcement of court orders, as well as encouraging the development of new and innovative services designed to assist families to adjust to change (including dispute resolution services for ongoing disputes). The report specifically recommends an expansion of contact services.

Pathways

The report seeks to better identify needs and to match those needs more effectively and smoothly to an improved range of services. The central means by which it does this is the concept of the pathway, which links identified need with appropriate routes to solutions in the light of those needs.

The report identifies three such pathways:

- *The self-help pathway*, which is for those parents who are able to settle their own affairs but who need basic advice on how to do so, and assistance with formalising them.
- *The supported pathway*, which is for those (likely to be the majority) who are unable to reach agreement on their own, but who could do so with some assistance from appropriately targeted support services.
- *The litigation pathway*, for those who need urgent protection (especially victims of violence) and those who are unable to resolve their disputes by other means. The report discusses at some length the failings of the current system to protect family members in cases of real and alleged abuse. In particular, the report recommends a substantial increase in resources for courts and legal aid to ensure that matters where violence is alleged are heard and resolved quickly.

The report goes on to outline a number of particular groups with special needs for particular pathways, including members of Indigenous communities.

Managing the new system

The report concludes by making a number of recommendations for the implementation of the system proposed. Such a system will need to be better managed and monitored, and internal inconsistencies in legislation, policy and practice eliminated.

To that end the report recommends the development of a comprehensive research strategy to monitor the operation of the system; a review of all legislation creating its framework; that any new money for the system be directed towards education, assessment, referral and early intervention; and that a cross-departmental government task force be established to implement the high priority recommendations made in the report, and ensure long-term improvements in cross-agency cooperation.

Concluding thoughts

The report offers a clear vision for how the family law system might become more coordinated and coherent, and might better meet the needs of those passing through it. There is little doubt that the criticisms in the report of the current system are measured and well made. Yet implementing the recommendations in the report will take money and goodwill – money from government, and goodwill, in the shape of a commitment to playing a constructive role in the system, by all participants in it.