

alert to the potential for children to be placed under pressure to take part in medical procedures.

GWW and CMW should not, therefore, generate any fresh sense of legal uncertainty among health professionals about procedures for the benefit of children which are merely invasive. It seems most appropriately read as confined to circumstances where the purpose of the medical procedure is to benefit someone other than the child.

In this case, it was clear on the evidence that there was no such pressure. B had a very definite wish to be a donor. He had reached his decision despite his parents' initial attempts to dissuade him and he appreciated that it would not be his fault if the transplant was unsuccessful.

Moreover, the psychologist warned that there were likely to be negative effects on the boy if the application were refused:

'It is his desire to help his aunt which is a decision that he has reached after deep thought about the issue. He apparently is aware that the final decision is not his but that of the court, however he would be puzzled and confused at not being permitted to proceed as it would directly contradict his personal value of "helping". [The psychologist] hypothesised that the confusion and puzzlement may manifest itself in future years in a lack of respect for authority and particularly for the court system.'

The Judge also considered it was relevant to his decision that there was a relationship between B and the recipient – not a special relationship, but an ordinarily close familial one. Indeed, he expressed the view that if the child was donating to a stranger 'the court would be reluctant, if not in total opposition, to the procedure being performed'.

With these factors in mind, the Judge concluded that the psychological benefit to the boy of permitting his participation outweighed the risks and consequences of the procedure. The application was therefore granted as being in the best interests of B.

References

- Harrison, M. and Sandor, D. (1996), 'News from the Family Court' *Family Matters*, no. 44, pp. 38–41.
- Nicholson, A., Harrison, M. and Sandor, D. (1996), 'The role of the Family Court in medical procedure cases', *Australian Journal of Human Rights*, vol. 2, no. 2, pp. 242–261.

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Research Directions of the Family Court of Australia

As well as undertaking much of its own research and evaluation, the Family Court of Australia is keen to encourage other interested individuals or organisations to conduct research which will assist in the development of an appropriate body of knowledge about its operations.

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The Family Court has become proactive in identifying areas requiring research and in undertaking the research internally, where possible. This includes developing further opportunities for cooperative research with other interested individuals or organisations. The Management Information and Research Section of the Family Court is working to develop and promote an advance research program for the next three years. This will enable the Court to be more involved in the research area, to plan research more effectively, and to engage consultants for research when there is a lack of particular expertise within the Court.

With these goals in mind, the Court will be assessing all future research proposals in relation to the research priority areas identified below. These priorities may change over time, as they can be added to by a range of people and, in a proactive sense, research requests will also be sought at regular intervals.

Three Main Areas of Research

In general, the Family Court's own internal research and assistance provided for external research activities will be guided by the research priorities of the Court at any given time. Over the next two to three years, the Court will be concentrating on promoting research effort in three main areas – theoretical and empirical studies, research and evaluation studies aimed at improving the quality of practice, and research and evaluation to generate information for



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internal decision making. Within these priority areas, the Court has identified a range of possible projects that need to be conducted over the next two to three years.

Theoretical and empirical studies

The first area of interest is for theoretical and empirical studies which are concerned largely with the process of clarifying and quantifying family law issues. These are aimed at increasing our understanding of the way family law impacts on separating families. Projects would include research in the following areas:

- post separation parenting arrangements from the perspective of the child;

- contact compliance programs;
- legal rituals and symbols, in particular those relating to family law;
- the current adversarial system of law in comparison with the inquisitorial system (civil law style which is generally used in Europe), and whether the inquisitorial system has any application for the Family Court of Australia;
- the contemporary meaning of marriage and questions of obligation and personal responsibility within marriage;
- the longer-term social, economic and psychological impact of separation and divorce;
- likely future trends within society and the potential impact these may have on the functions of the Family Court.

Research and evaluation to improve the quality of practice

The second requirement is for research and evaluation studies aimed at improving the quality of family law practice. Such studies are required to set criteria for 'best practice' and to generate feedback to professionals, including Judges, about their interventions in the lives of the Court's clients, so that the quality of practice can be improved. Projects would include research and evaluation in the following areas:

- issues relating to the separate representation of children in the Family Court;
- incidence of gender differences in family law, in particular with respect to the judiciary and the legal profession;
- ways of early identification of potentially complex contact cases;
- appropriate models for how the Court can deal with high conflict cases, with particular focus on the involvement of children, and the costs involved;
- the impact of Family Court procedures on clients, particularly children, including identification and assessment of stress levels caused;
- factors affecting mediation, conciliation conferences and counselling outcomes;
- the role that Indigenous Customary Law could have in Family Law;
- the treatment of alleged child abuse cases in the Family Court.

Research and evaluation for internal decision making

Studies which provide management focused information that will assist in internal decision making will continue to be of importance to the Court. The main aim of management research is to provide a bridge between the theoretical and practical issues through the provision of task specific information. Such studies are needed to answer questions that are important to the Court's organisational environment and resourcing, and give practical information about local needs and problems to aid in organisational planning. In this area, the following projects are identified:

- research into the characteristics of circuit cases, to determine whether they are quicker than standard hearing cases, there is less pre servicing required, the full range of services are available to clients in circuit cases, and whether clients are choosing to have their cases heard as circuit cases rather than at a registry in order to avoid delays;
- research into the optimum size of Family Court registries, including identifying the means that can be used to determine ideal registry sizes in different areas and the factors resulting in regional variations in demand on registry services;
- evaluation of the Family Law Reform legislation which came into effect on 11 June 1996;
- evaluation of the longer-term impact of the Court's simplified procedures;
- evaluation of the cost effectiveness of conciliation, counselling and mediation services;
- evaluation of the effectiveness of Family Court information and general publicity;
- research to determine client expectations and the levels of client satisfaction with Family Court services.

It should be noted that within these priority areas, the Court will need to strike a balance between research aimed at advancing knowledge and research aimed at obtaining practical and useful information that will assist policy and decision making. Now that the Court has moved to a program structure, one of the aims is to

ensure that equal emphasis is placed on research relating to all program areas. The Court's program areas have been defined as litigation (covering legal and judicial functions), primary dispute resolution (including conciliation, counselling and mediation), operations and corporate processes.

As a result of this move to a program structure, the Court is now operating on a program budgeting framework, within which funds are allocated to each program and the activities that are part of it. This means that funds have been allocated to allow the achievement of a research program within the Court.

Submission of Proposals

The Family Court of Australia encourages researchers to submit proposals for research projects that concern issues relating to marital separation and divorce, or relating to Court administration, within the program structure and the priority areas specified above.

The Court will consider supporting research projects by providing access to Family Court staff, clients, client case-notes, funds, facilities, equipment and/or other information. A Research Policy and Guidelines document has been developed which outlines the Court's policies and general procedures in relation to providing support for research projects.

Applications for support for research projects will be examined and evaluated on their scientific merits, and a decision on providing support will be based on these merits. Issues relating to confidentiality, ethics, costs, and any additional workload which may be imposed by the project on Family Court staff, will also be taken into consideration when assessing project proposals. The Court also has a policy in relation to the confidentiality of client files.

Researchers wishing to make an application to the Family Court should refer to this document, which is available from Judi Robinson, Director, Management Information and Research, Family Court of Australia, GPO Box 3087, Canberra, ACT 2601. Phone (06) 2438620: Fax (06) 247 5906.

Judi Robinson is the Director of the Management Information and Research Section in the Family Court of Australia.