

The Alleviation of Delays in Available Hearing Dates in the Family Court of Western Australia

**Interim Report
February 2014**

**Prepared by the Family Court Delay Working Group of the
Law Society of Western Australia**

**To: The Hon Justice Stephen Thackray, Chief Judge, Family
Court of Western Australia
Hon Michael Mischin MLC, Attorney General, Western
Australia
Senator the Hon George Brandis QC, Attorney General**

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INTRODUCTION

1. In late 2012, a working group of the Law Society of Western Australia convened comprising representatives from the Family Court, District Court, Family Law Practitioner's Association, AIFLAM, Legal Aid and other senior members of the profession to consider the concern arising from the significant delay in the hearing of cases in the Family Court at that time.
2. In 2012 the number of cases in the Defended List awaiting a trial in financial matters exceeded 1,000. There were also significant delays in relation to separately streamed cases that were due to go to trial involving child welfare disputes.
3. There have been numerous meetings of the working group together with approaches to the Commonwealth and State Attorneys General, Justice Thackray, Chief Judge Family Court and other stakeholders.
4. The response of government has been welcomed with the prompt replacement of Judicial Officers and the appointment of additional Acting Judicial Officers on temporary contracts.
5. In 2012 there were initiatives implemented by the Court and the profession to improve case management. There was and is a greater emphasis on alternate dispute resolution at the early stage of proceedings. The Court published a guideline to its case management process and collaborated with Legal Aid WA in preparing resources for the benefit of the public considering separation and divorce.
6. The working group acknowledged that the budget circumstances of both the State and Federal Governments was such that a solution to the problem of delay had to be found in ways that did not simply involve the employment of judicial and support personnel. The working group tried to focus its deliberations on changes to practices and procedures that exacerbated delay and propose solutions or areas for investigation that would in time suggest solutions that would work with the current and improved resources for the Court.
7. In the course of the work of the working group there were changes to the resources available to the Court and to its procedures all of which are expected to reduce delay but are not capable of removing that problem quickly or entirely. In the context of these changes within the Court and from practitioners the working group resolved

that having proposed some solutions it would be appropriate to see whether the changes in the Court and its practices starts to have a noticeable effect on delay.

8. The working group considered it desirable to briefly summarise the matters it considered and update its recommendations to assist in any future considerations that may be necessary to address delay and the basic issue that underpins the concerns that still exist, namely, the need to improve generally the resourcing for the Family Court of Western Australia.

Executive summary of all recommendations in this paper

9. The working group sent some of its recommendations in a letter dated 27 February 2013 to the Chief Judge of the Family Court of Western Australia. They are summarised as follows:
 - a. The Court consider a practice note to indicate that if the Registrar who first receives an application for interim orders affecting property determines that the hearing of the application is likely to take more than one day the Registrar will, unless there are good reasons to the contrary, order the provision of affidavits and submissions in support of the application and then require the parties to undergo a compulsory mediation in an attempt to resolve the interim property dispute orders. The mediation will be a precondition to the Family Court providing a hearing date to hear and determine the interim property dispute.
 - b. The Court consider a practice enabling a matter to be progressed directly to a listing conference and allocated a hearing date where:
 - i. The parties have already undertaken mediation either externally with third parties; and,
 - ii. The matter is certified as ready for trial.
 - c. The Court consider delegating authority to the Registrars to make orders to determine an application for failure to comply with previous orders and without the need for the matter to be referred to a Judge consistent with similar authorities provided to Registrars in the Supreme, Federal and District Courts.

- d. The Court consider a practice direction requiring a document in standard form be filed before the Court (and preferably filed on a joint basis) that identifies the assets and liabilities the subject of the dispute between the parties before the Court will issue a notice of the first readiness hearing. This will focus practitioners (and litigants) on preparation in advance of the first readiness hearing in financial matters.

10. The other recommendations of the working group are summarised as follows:

- a. The Court and the profession undertake some work to identify where mediation would or would not be suitable in order to streamline for mediations cases where they are appropriate and then consistently encourage those cases to an early mediation.
- b. The Court strengthen the conciliation process to be more of a pre-trial conference or mediation and that the same Registrar see the matter the whole way through for consistency.
- c. The Government increase the number of Registrars and strengthen the Registrars' powers and the conciliation process.
- d. All parties encourage retired judicial officers and other former Court officials and the Court allocate space to them and others to act as mediators and run mediations or mediation styled conferences.
- e. The Society ask the Attorney General to approve further funding to Legal Aid to undertake a program of standard mediations consistent with the fixed fee external mediations granted aid in other States.
- f. The profession encourage relationships to develop between the Family Court, the profession and social science professionals to encourage greater numbers of appropriately qualified professionals to act in the role of the Single Expert Witness.
- g. The Court and the profession undertake further and ongoing dialogue with the Psychologists Professional Body to discuss the shortage of experts and the means to educate that profession and the public on the protection afforded an expert assisting the Court.

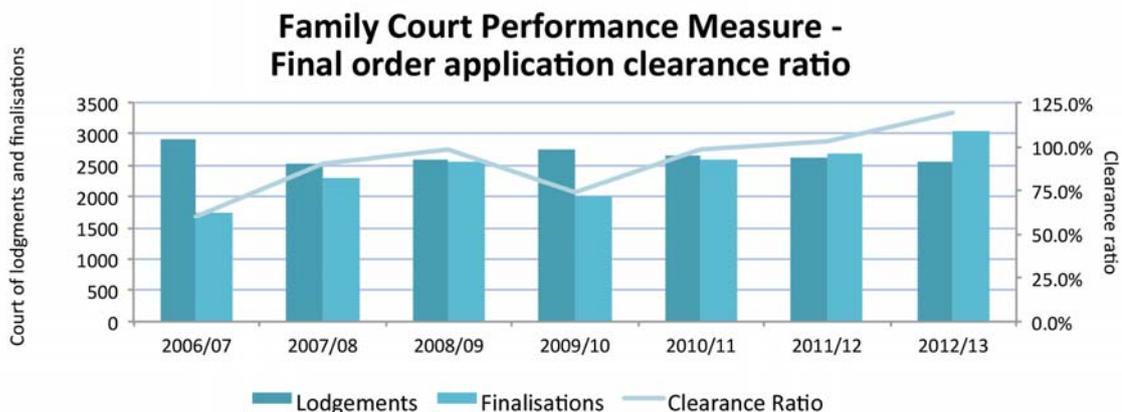
- h. The Court and the profession give careful consideration to whether the obtaining of a Single Expert Witness report is in the best interest of the child/ren taking into account the issues in dispute, the evidence available from other sources and the delay in determining the issues associated with the preparation of the report.
- i. The profession provide further training of Independent Children's Lawyers to enhance their capacity to assess the circumstances in which the report of a single expert witness is necessary.
- j. The Society approach to the Attorney General for a review of funding or for further funds to enable the preparation of family consultant reports of a higher quality and of greater use in the usual or standard Family Law matter.
- k. The Family Court consider making available more dates for a fixed start date to a trial.
- l. The Society take an ongoing interest in the delay experience of litigants in the Family Court and where delays are increasing review the deliberations of the working group in this paper to propose changes to the Court and to the State and Federal Governments.
- m. The Society publish this paper to members of the Society and others interested in the question of delay in hearing dates for trials in the Family Court of Western Australia.

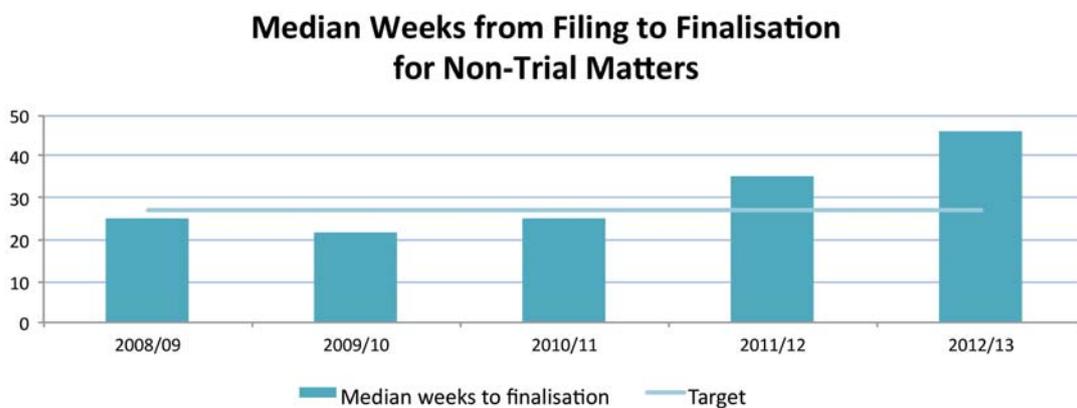
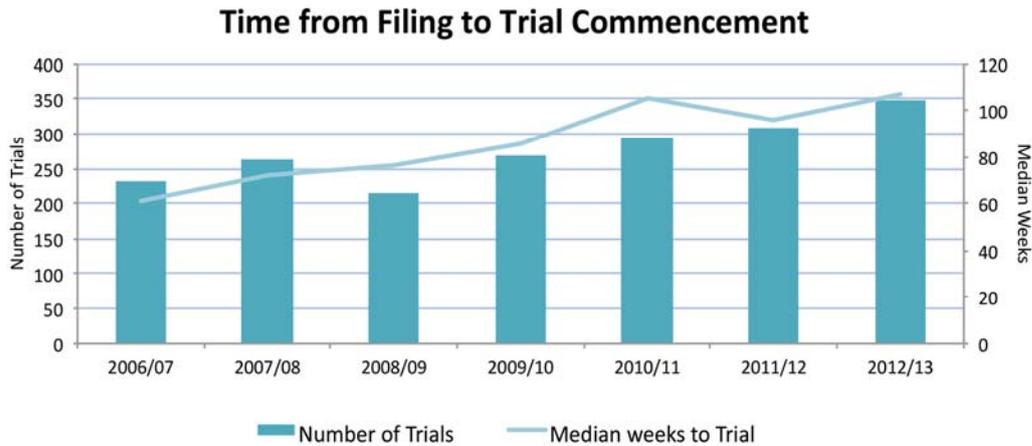
A SHORT STATEMENT OF THE DELAY PROBLEM

11. Following numerous reports published by the Honourable Justice Thackray, Chief Judge Family Court of Western Australia over many years dealing with the issue of resourcing of the Family Court the following was evident:

- a. The Family Court was not adequately funded by either the State or Federal Government.
- b. The problems were compounded by the introduction of a jurisdiction over de facto property matters in 2002.
- c. The difficulties were further compounded by the unfortunate health issues of the Honourable Justices Martin and Crooks.

12. By late 2011, the delays in trials in financial matters were in excess of 2 years and by December 2011, there were approximately 1,000 cases in the Defended List awaiting a trial date.
13. The approach, in the short term was both temporary appointments of additional judicial resources and the facilitation of mediations and mediation style conferences (with AIFLAM).
14. As at 25 March 2013 the defended list of matters for judges was 731 and the median number of weeks to trial was 101 weeks.
15. As at 30 September 2013 the defended list of matters for judges was 679 and the median number of weeks to trial was 108 weeks for financial or property matters and 110 weeks for child related matters. It was also clear that the time to trial statistics could be significantly affected by the presence in a list of complex matters some taking in excess of 25 hearing days.
16. For the year to June 2013 there was a reduction in lodgements of 2.4%. While parenting matters were up there were less financial or property matters which were down by 8.4%.
17. Although finalisations and clearance ratios have dramatically improved since 2008/2009: there is still a lengthy time to trial; and, non trial matters are not resolved within the target period. The statistical position of the Family Court is illustrated in the following charts reproduced from the Family Court of Western Australia - Annual Review 2012/2013.





BACKGROUND TO ESTABLISHING THE WORKING GROUP

18. In 2011, Rod Hooper, then President of the Family Law Practitioners' Association (FLPA), attended a meeting of the Council of the Law Society to address the excessive delays being experienced in the Family Court of Western Australia (FCWA) due to lack of resources.

19. Following this address, the Society wrote to the Federal Attorney General and the Law Council of Australia expressing concern at the lack of funding and resources for the Family Court of Western Australia. On 14 November 2011 the Society wrote to the then Attorney General for Western Australia Hon Christian Porter (attaching a letter of support from the Law Council of Australia) expressing the same concern.

20. On 16 January 2012, Rick Cullen (Convenor of the Access to Justice Committee and member of the Courts Committee) wrote to the President proposing that the Society establish a working group comprising representatives of the Society, FLPA, AIFLAM and Legal Aid WA to try to work out a solution to the Family Court's problems.

21. By letter dated 2 February 2012 the WA Attorney General advised that he had written to the Federal Attorney General, Hon Nicola Roxon MP "requesting additional funding for two acting Judges to be appointed to the FCWA for a period of six to twelve months."
22. It is understood that the Federal Attorney General appointed an Acting Judge for six months and the State Attorney General, appointed an Acting Magistrate along with some extra staff for two years. However it was been noted that the extra resources were still insufficient and only temporary. In the meantime, Mr Cullen's letter of 16 January 2012 was included in the agenda for the Courts Committee meeting of 8 February 2012. The Courts Committee agreed that a working group should be formed.
23. Since then, the issue has been considered a number of times by the Society's Executive and Council. The Council resolved on 28 August 2012 that, subject to the views of the Executive following a proposed meeting with representatives of FLPA and Judges of the FCWA:
 - a. A working group be formed to consider a course of action in an attempt to resolve the delay and resourcing problems of the Family Court of Western Australia; and
 - b. The Society send a letter calling for nominations for the working group from the FLPA, AIFLAM, Legal Aid and the Family Court.
24. Subsequently, on 11 September 2012, the Executive endorsed the above Council resolution. The letter was sent on 28 September 2012 and the group set out in the attachment met on the dates set out in the attachment. The working group called for submissions from members of the Society with concerns and suggestions and considered a number of academic and other papers. The submissions set out in the attachment were gratefully received and considered.

THE FAMILY COURT OF WESTERN AUSTRALIA STATISTICAL SNAPSHOT

FCWA a brief historical overview

25. In 1976 the Family Court of Western Australia was established with the appointment of 5 Judges and 2 Magistrates.

26. In 1983, the Family Court had 5 Judges and 4 Magistrates. The population of Western Australia was about 1.3 million.
27. In 2013 the Family Court still has 5 Judges and 7.6 Magistrates. The population of Western Australia is close to 2.3 million.
28. In comparison, in 1983 the Supreme Court of Western Australia had 9 Judges and now has 21 judges, while the District Court of Western Australia in 1983 had 9 Judges and now has 27 judges.

FCWA overview of processes

29. The Family Court conducts its processes differently for child welfare matters as opposed to financial relief. A very brief summary of each process is now set out below:

Child related proceedings

30. Parties are required to attend family dispute resolution (FDR-mediation) with an accredited family dispute resolution practitioner to attempt to resolve disputes about parenting issues prior to commencing Family Court proceedings unless their circumstances meet certain limited exemption criteria (including urgency, family violence, child abuse, impracticability).
31. Proceedings in Perth are generally commenced by filing an Application, Client Information Affidavit, Certificate of attendance at FDR/ Exemption Certificate (in the case of the latter there may also be a Form 4 Notification of Child Abuse and/or Family Violence and supporting affidavit). The precise process may differ in regional registries.
32. The child related proceedings are listed in the Child Related Proceedings list before a Magistrate sitting with a Family Consultant. The Court can make orders by consent and programming orders in respect of the further conduct of the proceedings (including whether affidavit evidence is filed, whether orders will be made for the Police and the Department for Child Protection and Family Support to provide information, whether there will be an interim hearing). In circumstances where there is concern about risks to the children and or the parties, the proceedings are adjourned to a Case Assessment Conference (CAC) and given a mention date following that CAC.

33. The CAC is not confidential and is conducted by a Family Consultant who meets with the parties and their lawyers and produces a written report for the Court. The report contains a risk assessment and recommendations for the further conduct of the proceedings (including, for example, whether an Independent Children's Lawyer should be appointed). The proceedings are placed in the Magistrates track or the Judges Track depending on whether the matter involves relocation or complexity. Complexity is determined by whether the trial is likely to last more than 2 days.
34. There can be a number of court hearings including: for the return of subpoenas; the appointment of a Single Expert Witness (SEW); and, hearings on interim finance or access issues.
35. The proceedings are adjourned to a Readiness Hearing and referred from there to a call over of the rolling list for Defended matters.

Financial matters

36. Matters involving a dispute as to property or finance usually undergo some pre-action procedures involving the exchange of relevant documents, offers and the possibility of a joint approach to valuations.
37. Parties are free to arrange a pre-action mediation or a mediation style conference where practicable prior to filing an application to commence any proceedings in the Court.
38. The filed Application and any Response are addressed in a case management hearing at which there may be interim directions.
39. The parties cannot usually progress to a trial or a court based Conciliation Conference unless and until:
 - a. They have attended a Mediation Style Conference or a Mediation.
 - b. They identify the issues that are agreed and the issues in dispute.
40. When re-convening in Court at a further directions hearing, the Court will require parties to identify points agreed and points in dispute so as to narrow the scope of the affidavit material to be filed (there are no pleadings) and the length of any hearing. In some cases the Court will also dispense with the requirement for parties to attend a Conciliation Conference.

41. The matter is then allocated to a trial call over to await a hearing date or a not before date.
42. The issue as to whether or not there should be an earlier identification of matters agreed and matters in issue and what form that process should take continues to be the subject of discussions between the FLPA and the Court.

CONSIDERATION OF ISSUES RELATING TO DELAY

43. Some recommendations the subject of this section were raised by the Society's letter dated 27 February 2013 to the Chief Judge of the Family Court of Western Australia.

Compulsory mediation on complex interim property applications prior to any hearing before a judicial officer

44. One of the consumers of hearing time is the complex property dispute requiring an interim order. These disputes can take up to a day for a hearing or, over the course of several hearings, may take several days in aggregate. These matters are usually complex by reason of the amounts of money or property involved or display complexity with the way that property is owned or held. The working group considers that usually the value of the property involved is such that the parties are able, of their own resources, to engage a mediator on a joint basis.
45. The working group **recommended** that a practice note be issued to indicate that if the Registrar who first receives an application for interim orders affecting property determines that the hearing of the application is likely to take more than 2 hours the Registrar will, unless there are good reasons to the contrary, order the provision of affidavits and submissions in support of the application and then require the parties to undergo a compulsory mediation in an attempt to resolve the interim property dispute orders. The requirement for this mediation will be a precondition to the Family Court providing a hearing date to hear and determine the interim property dispute.
46. If that practice is successful it could be expanded to other interim property applications where the pool of assets would indicate that mediation would be cost effective.
47. The working group believes that such a practice would encourage mediations for interim orders and reduce the need for such hearings to be before a Judge.

Compulsory mediation for all property disputes

48. The working group understands that there are already significant opportunities for the parties to undergo mediation prior to property dispute being heard for final determination.
49. It is noted that were parties utilise external mediations in financial matters that is generally recognised by the Court and those parties can then usually avoid the need to attend another court based conciliation conference (Section 79(9)).
50. That acknowledged, the working group **recommended** that the process of mediation may well be encouraged and assisted by enabling those actions where:
- a. The parties have already undertaken mediation either externally with third parties or through the Family Court's resources; and,
 - b. The matter is certified as ready for trial,
- to be progressed directly to a listing conference to be allocated a hearing date rather than returning, after the conciliation conference, to a general readiness hearing.
51. A suitable direction could be made to implement this short cut. On publishing this change to the profession the attractiveness of early preparation and mediation will be enhanced.
52. At the first return date for a financial or property matter, it should be almost standard that matters are referred to mediation.
53. Cases involving violence or urgency are usually (but not always) appropriate for a mediation.
54. The view was expressed that it would be inefficient to refer all matters immediately to mediation in the absence of some disclosure or statement of financial circumstances. Nonetheless early mediation of disputes would be preferred to delay.
55. It can take some time for adequate disclosure to occur by the parties and subpoenas to be issued, and therefore early mediation may not be appropriate.
56. It might be a couple of months before the parties are ready to go to mediation, but at the end of that time, both parties should be or should be put into a position to have sufficient information to make informed decisions and begin to narrow the issues.

57. Mediation is a useful resource for matters that are marked as complex early. The difficulty facing most litigants is the cost – there is a very high proportion of self represented litigants in the Family Court. Usually a Magistrate or Registrar in a conciliation conference will be the one to identify whether or not the matter is complex. Complex financial matters are suitable for early mediation, but not complex child related proceedings.
58. Unfortunately, the Court doesn't have the resources to run full day (or even half day) mediations, and therefore it will require parties to make greater use of external mediation services. In complex financial matters, where the parties can afford external mediations, it would be useful to encourage mediation as a starting point.
59. The working group **recommended** the Court and the profession undertake some work to identify where mediation would or would not be suitable in order to streamline for mediations cases where they are appropriate and then consistently encourage those cases to an early mediation.
60. The working group **recommended** Government increase the number of Registrars and strengthen the Registrars' powers and the conciliation process.
61. The working group **recommended** Court strengthen the conciliation process to be more of a pre-trial conference or mediation and that the same Registrar see the matter the whole way through for consistency like the early conferences in the Supreme and District Courts, and that the same Registrar see the matter the whole way through for consistency.
62. The working group **recommended** strengthening the Registrars' powers and the conciliation process may assist with other types of cases.
63. The working group **recommended** all parties encourage retired judicial officers and other former Court officials and the Court allocate space to them and others to act as mediators and run mediations or mediation styled conferences.
64. The working group **recommended** a set of standard orders be drafted that Registrars could use to order parties to external mediations in complex financial matters that are likely to take more than two hours to hear.

Legal Aid funding for mediations

65. As a result of the initiative of AIFLAM, in conjunction with FLPA (WA), the training of a significant number of senior family law practitioners has now been completed and it has provided a good pool of chairs for Mediation Style Conferences and mediators who are now nationally accredited. Further, AIFLAM and FLPA have commenced discussions with Legal Aid WA to enhance current options for Family Dispute Resolution in the property context. They are considering referral arrangements for low value property matters which do not meet the criteria for a legal aid grant in the Legal Aid guidelines.
66. AIFLAM has obtained the support of its members together with that of FLPA, and the support from Family Court for fixed fee mediations in small asset pool matters along the lines of similar arrangements that have been developed in other States. The arrangement is that where the asset pool (including superannuation) is less than \$750,000 then a mediation of up to 1 day (including intake session) will involve a fee at the Legal Aid trial day rate of \$1,980.
67. The paper titled "Family Law Mediation-style Conferencing: Creating an opportunity in a crisis", Andrew Davies and Jill Howieson referred on page 13 to research that was being conducted on data collected on mediations.
68. The model developed by AIFLAM was such that where the parties were not able to reach an agreement at mediation, the focus moves to what needed to be done to get the matter ready for the next stage of the proceedings. This often provided a reality check to the parties but it also focussed the parties on a trial where the issues (and the time required for a trial) would be limited.
69. Ongoing discussions are occurring with Legal Aid WA, FLPA, AIFLAM and the Courts on how best to provide support and funding for parties who are unable to meet the cost of fixed fee mediation in low value property pool and low income pool cases (and who would not qualify for Legal Aid).
70. The working group **recommended** the Society ask the Attorney General to approve further funding to Legal Aid to undertake a program of standard mediations consistent with the fixed fee external mediations granted aid in other States.

Improved delegation of authority to Registrars

71. It is apparent from some of the delay in getting matters to hearing that a cause is the time lag between the Registrar making directions and the hearing date being listed before the Judge or Magistrate. Practitioners not complying with earlier procedural orders of the Registrar exacerbate these delays.
72. The Court enforces compliance with its orders by enabling a Registrar to refer the matter of non compliance to a Judge available to hear the matter. The working group encouraged that enforcement. The apparent disregard of orders of Registrars is not assisted by the absence of any sanctions or a delegation of authority to the Registrar to dismiss an application for failure to comply with interim procedural orders or to make orders on the application determining the application.
73. An effective tool of case management to ensure that practitioners and litigants comply with orders of the Registrars would be to confer upon the Registrars the power to make orders to determine the application for failure to comply with previous orders and without the need for the matter to be referred to a Judge. The double handling and delays in circumstances where a Judge is not available should be avoided.
74. The conferral of this authority would be consistent with similar authorities provided to Registrars in the Supreme, Federal and District Courts. It may be necessary to review the role of Registrars and the relevant criteria needed to appoint a person to this role consistent to the process in the Supreme, Federal and District Courts.
75. The working group **recommended** the Court consider delegating to the Registrars the authority to make enforcement orders.
76. The working group remains interested in other proposals for improving the respect for the orders of a Registrar of the Court.

Consistent case management by Registrars

77. The working group understands that for complex property matters a single judicial officer almost always manages each case. This docket system, similar to that operating in the Supreme and Federal Courts, could be enhanced by making the criteria for management by a single Judge somewhat less rigorous than meeting the test of a complex property dispute.

78. The working group **recommended** the allocation of an extra Registrar to the Family Court to assist with the time needed to properly prepare and conduct a conciliation conference in cases that are appropriate (such as where parties have limited resources and / or are in person) in the hope of increasing the settlement rate of these matters.

Compulsory preparation for first readiness hearing

79. One apparent source of delay is the attendance of practitioners at the first readiness hearing, after a conciliation conference some time earlier, only then informing the Court that their clients are unprepared for a hearing. On some occasions it is apparent that no further work has been done on the matter since the conciliation conference.

80. The working group is of the view that it might assist parties to focus on preparation in advance of the first readiness hearing if they are required by the Court to file a document in standard form (and preferably on a joint basis) that identifies the assets and liabilities the subject of the dispute between the parties.

81. The working group **recommended** that a practice direction requiring this document to be filed before the Court will issue a notice of the first readiness hearing. Such a practice will ensure that at the very least the parties at the first readiness hearing have considered the asset pool the subject of the dispute. While further directions may be required before the trial at the first readiness directions hearing the assets and liabilities table will be available to ensure that the parties have focused on the property assets and then appropriate orders on that topic can be made immediately. That focus should ensure that the readiness hearing proceeds with directions relevant to that aspect of the matter if nothing else.

82. The working group **recommended** the implementation of a requirement that the party seeking a readiness-hearing file a joint alternatively and in the absence of agreement separately a statement of assets and liabilities before the Court will allocate a date for the first readiness hearing.

Identifying and narrowing contentious issues

83. The Family Court has published Case Management Guidelines dated 7 May 2012. These guidelines provide for the following in relation to the different case management for child related proceedings and financials.

Financials

84. Case Management Guidelines require parties to address the items that are in dispute, matters that can be agreed and advise the Court in a positive way how best to progress the financial disputes in Court. If parties are unable to advise of any matters that are agreed then generally the cases are stood down to enable this to occur. Anecdotal advice from the Court is that matters are generally now being listed for less time as a result of the efforts by practitioners and the Courts to narrow the scope of the matters in dispute, the affidavit material that is filed, and allow greater use of and support for single expert witnesses (SEWs) etc.
85. The working group **recommended** that Registrars consistently encourage parties to address these issues in greater detail at the first hearing.

Protections for the experts giving evidence

86. There are a limited number of psychologists who are prepared to work as Single Expert Witnesses (SEWs) in the family law jurisdiction. There are also very few psychiatrists.
87. A major factor that has impacted on the preparedness of psychologists to act as SEWs has been the propensity of disgruntled litigants to make complaints to the Psychologists Board during and after Family Court actions. This situation has been exacerbated by the limited understanding by the Board of the Family Court and the Court's processes. The management of these complaints create complex issues because the psychologist is appointed by the Court and is the Court's witness. There are processes under the Family Law Rules for challenging the expert's evidence however these are rarely used.
88. There is currently a three to six month delay in obtaining most SEW reports. Delays in matters getting to trial mean that review reports are often required. This can also be necessary where recommendations are made and interim arrangements are trialled. In these circumstances, if the issues are not resolved a further review report is also usually required prior to trial.
89. The working group **recommended** the profession encourage relationships to develop between the Family Court, the profession and social science professionals to encourage greater numbers of appropriately qualified professionals to act in the role of the Single Expert Witness. The WA Family Pathways Network may have a role in

the development of these working relationships. Another anticipated development which it is expected will assist is the commencement of an Australian Chapter of the Association of Family and Conciliation Courts. The AFCC is based in North America but has international membership. It brings the various legal and social scientist professionals working in the Family Court context together to discuss shared issues on a regular basis. Local initiatives could be planned under the auspices of this organisation which already has a number of Australian members from the relevant disciplines.

Single expert witness' reports confined to cases where it is really required.

90. In matters where an Independent Children's Lawyer (ICL) has been appointed it has become standard practice for a SEW to be appointed. Legal Aid WA has been encouraging ICLs to give careful consideration as to whether such an appointment is necessary in the circumstances of the matter. It is anticipated that the implementation of the recommendations from the recent review of the Legal Aid WA ICL panel and the outcome of the Australian Institute of Family Studies report on the role of ICLs that is due to be published in July 2013 will result in relevant training being provided to ICLs to further encourage this approach.
91. The working group **recommended** the Court and the profession undertake further and ongoing dialogue with the Psychologists Professional Body to discuss the shortage of experts and the means to educate that profession and the public on the protection afforded an expert assisting the Court.
92. The working group **recommended** the development of stronger protocols between the Court and the Psychologists Board for dealing with complaints against a psychologist appointed as a Single Expert.
93. The working group **recommended** a dialogue with the AFCC to hasten its delivery of initiatives designed to enhance the relationship between the legal and social science professionals involved in family law disputes in WA.
94. The working group **recommended** the Court and the profession give careful consideration to whether the obtaining of a Single Expert Witness report is in the best interest of the child/ren taking into account the issues in dispute, the evidence available from other sources and the delay in determining the issues associated with the preparation of the report.

95. The working group **recommended** the profession provide further training of Independent Children's Lawyers to enhance their capacity to assess the circumstances in which the report of a single expert witness is necessary.

Family consultant's reports to be improved

96. In other States and Territories, most expert evidence in children's matters is provided in family reports prepared by family consultants funded by the family courts (rather than SEWs). The family consultants in WA rarely prepare family reports and seldom in circumstances where there are allegations of risk or high conflict between the parties.

97. WA family consultants are employed by the Department of the Attorney General for WA. They have a major role at the Case Assessment Conference stage. They are responsible for risk assessment and provide a written report to the court with recommendations as to how the matter should proceed. Consultants also liaise with other agencies that provided support and services to families involved in Family Court proceedings such as the Department for Child Protection and Family Support Family Relationship Centres and Childrens Contact Services. Family consultants once prepared very simple reports that outlined the children's views, the parents' views and gave a snapshot of the situation.

98. Family consultants have immunity as court officers. It might be practical to expand that pool for report purposes in order to avoid the delay associated with SEWs and ICLs.

99. In the Eastern States, a lot of the family consultant work was outsourced, which led to there being a register of family consultants.

100. The working group **recommended** the Society approach to the Attorney General for a review of funding or for further funds to enable the preparation of family consultant reports of a higher quality and of greater use in the usual or standard Family Law matter.

101. The working group **recommended** a process to develop family consultant reports with the same standing or authority as the current reports but possibly prepared outside of the current administration that prepares the CAC reports in WA.

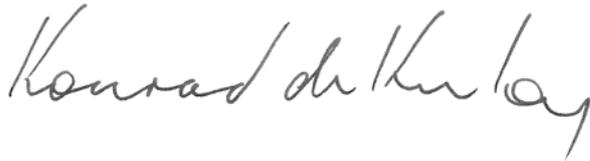
Publicising available Family Law trial counsel.

102. One aspect of delay, and not necessarily the most significant, is an apparent reluctance to brief alternate trial counsel. It is not that there is a shortage of trial counsel just that practitioners are not necessarily aware of who they might be and their availability. The Society called for counsel willing to take briefs in Family Court trials to identify themselves for publication to Family Court practitioners. The barristers that responded were published to members of the Society.
103. The working group acknowledges there is efficiency in rolling lists where a matter settles or concludes early to bring to immediately available hearings matters still waiting. There is however a disincentive for practitioners in jurisdictions other than the Family Court to work in that Court if they have to turn down fixed dates for other courts to retain a brief in a family law matter that only has a not before date in a rolling list.
104. The working group **recommended** Family Court consider making available more dates for a fixed start date to a trial in order to encourage and attract counsel who do not ordinarily practice in the Family Court.

CONCLUSIONS

105. While the working group resolved to watch the position of delay in the Family Court while the changes in personnel and procedures start to work it is clear that the question of delay is likely to arise again at some time in the future if only because the period when there is a capacity for State and Federal Governments to respond to delays by providing more judicial and support resources is likely to be limited if not over.
106. The working group acknowledges that more money would be gratefully received and highly effective it is, unfortunately, only part of the solution.
107. The working group is encouraged by the procedural and other reforms initiated by the Court and encouraged by the swift replacement of Judges in early 2013.
108. The working group **recommended** the Society take an ongoing interest in the delay experience of litigants in the Family Court and where delays are increasing review the deliberations of the working group in this paper to propose changes to the Court and to the State and Federal Governments.

109. The working group **recommended** the Society publish this paper to members of the Society and others interested in the question of delay in hearing dates for trials in the Family Court of Western Australia.
110. The working group expresses its gratitude for the support of the staff of the Law Society in facilitating its meetings particularly Ms Andrea Lace and before her Ms Priya Pillay for taking the minutes of the meetings.

A handwritten signature in cursive script that reads "Konrad de Kerloy". The signature is written in black ink and is positioned above the typed name and title.

Konrad de Kerloy
President

ADDENDUM

Members of the working group.

111. The following people contributed to the working group's discussions and this paper:

Craig Slater (Convenor)	Francis Burt Chambers
Rick Cullen	Cullen Babington Macleod
Andrew Davies	AIFLAM
Rod Hooper SC	Family Law Practitioners' Association
Julie Jackson	Legal Aid Western Australia
Registrar George Kingsley	District Court of Western Australia
Hon Justice Simon Moncrieff	Family Court of Western Australia
Andrea Lace and Priya Pillay	Law Society of Western Australia

Meetings of the working group.

112. The working group held meetings on following dates:

23 November 2012
20 December 2012
25 February 2013
25 March 2013
23 April 2013
11 June 2013
20 August 2013
4 November 2013

Terms used in this report.

113. The following terms are defined for the purposes of this report:

- a. AFCC - Association of Family and Conciliation Courts.
- b. AIFLAM – Australian Institute of Family Lawyers, Arbitrators and Mediators.
- c. FLPA – Family Law Practitioners Association.
- d. FCA – Federal Court of Australia.
- e. FCC – Federal Circuit Court (formerly the Federal Magistrates Court of Australia).

- f. FCWA – Family Court of Western Australia.
- g. MOU – Memorandum of understanding.
- h. WABA – Western Australian Bar Association.

List of Academic Papers Received

114. The working group collected a number of papers in the course of their deliberations as set out below:
- a. Dr Hands and Ms Williams report about the interface between the family law and child protection jurisdictions in WA.
 - b. Richard Chisholm paper on memorandums of understanding (and best practice guidelines for MOUs) for information passing between the child protection and family law jurisdictions across the country.
 - c. Des Semple report for the Commonwealth Government on the Federal Family Court in 2009 and separate report with respect to the Family Court of WA.
 - d. FLPA report on the VRO jurisdiction.

List of Submissions Received

115. The working group's deliberations were informed by a number of submissions and communications as set out below:
- a. Letter dated 16 January 2012 from Rick Cullen to the President; and
 - b. Letter dated 2 February 2012 from the former State Attorney General to the President.
 - c. Comments provided by: C Leach of Leach Legal; an unnamed litigant; and, M Cherubino a counselling, clinical and forensic psychologist.