

Statement from The Honourable Diana Bryant AO, Chief Justice of the Family Court of Australia

26 June 2012

From my experience, there continue to be differences of opinion in overseas jurisdictions to the extent to which judges should interview children. Some judges are very supportive, others have significant concerns.

It is very important to identify the purpose for which a judicial interview takes place. For example there needs to be very clear appreciation as to whether the interview is for forensic purposes, designed to elicit information relevant to the facts in the case, which is considered inappropriate in most jurisdictions, or whether it is to allow the broader views of the children to be placed before the court.

In overseas jurisdictions where the judge interviewing children is common, differences between civil law and common law jurisdictions can be significant. In common law jurisdictions for example, the need to afford procedural fairness to the parents by enabling them to know (and test) what the children have said to professionals becomes much more problematic when the interview is with a judge. That issue does not provide as much concern in a jurisdiction where the inquiry is largely an inquisitorial one.

In Australia we are fortunate to have independent children's lawyers (ICLs) who are required to indicate the children's views to the court and family reports that are prepared by expert psychologists and social workers who have many years clinical training in interviewing children. Many other jurisdictions which rely on interviews with a judge do not generally have the benefit of a representative for the child or a Family Report.

Thus I think great care has to be taken in considering whether value can be added to these interviews by involving judges. Certainly there would need to be a good case in my view before it could be said that interviews by judges should occur as a matter of course in every case. There may be cases where it is appropriate, and it does occur from time to time.

However, I am exploring ways in which children may be able to be more included in the proceedings outside the issue of judicial interviews. To this end, I have established a Children's Committee chaired by the Director of Child Dispute Services and the committee is currently examining the published research on children's involvement in proceedings including practises around ICLs interviewing children to ascertain their views. The Committee will report its findings to me so that the Court can consider whether or not it is appropriate to change our present practices in some way.