

# The Children's Court Clinic

## Children's Participation In Parenting Capacity Assessments

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### Outline

- Overview of the Children's Court Clinic
- Parenting Capacity Assessments
- Principles of Children's Participation
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### Overview of the Children's Court Clinic

- Established in July 2001 as part of the introduction of the Children and Young Persons (Care and Protection) Act 1998.
- The Children's Court Clinic is part of the Attorney General's Department, and
- Consists of a small unit of administrative and clinical staff who are responsible for overseeing the state-wide service.

### Objectives

Clinical assessment of children, young people and their families and provide reports to Children's Court in care and protection matters.

### Issues

- *Expert assessment of issues to be addressed that are listed in the Assessment Order.*
- *Assessments are independent of all parties to the proceedings.*
- *When submitted the report becomes the property of the Children's Court.*

## **Assessment Order**

- Only be made by a party to the care proceedings in accordance with Section 53 or 54 of the Children and Young Persons (Care and Protection) Act 1998.
- Application for Assessment Order is made to the Children's Court.
  - Clearly states the issues to be addressed.
  - Gives reasons for requesting the Assessment Order.

### **Issues**

*All parties to the proceedings agree on which issues are to be addressed in the assessment and which documents are sent to the Children's Court Clinic.*

## **Considerations**

Before an Assessment Order is made, whether:

- The information required can be obtained elsewhere.
- The proposed assessment is necessary.
- It may cause unnecessary distress to the child/children.

### **Issues**

- *Many have already experienced significant levels of intervention, assessment and intrusion into their lives.*

## **Sections of the Act**

The Children's Court orders an assessment under certain sections of the Act:

**Section 53** – relating to the physical, psychological, psychiatric or other medical examination of the child/young person, and/or

**Section 53** – relating to the assessment of the child/young person, and/or

**Section 54** – relating to the assessment of a person with parental responsibility or who is seeking parental responsibility for a child/young person to carry out that parental responsibility.

**Majority of reports are for parenting capacity assessment.**

## **The Need for Parenting Capacity Assessment**

Arises in care and protection cases when there is doubt surrounding parental care giving ability.

It involves assessing the capacity of parents to provide the child with a safe, stable, predictable environment, that is supportive in terms of both physical and psychological development. (Steinhauer, 1991).

The American Psychological Association Committee on Professional Practice & Studies (1998): Children's Courts are increasing demand for expert parenting capacity assessment as community concern for child protection intensifies.

## **Parenting Capacity Assessment**

Parenting capacity assessment addresses child and parent interaction systems, making them more than, for instance, psychological assessment. Fazzari (2002).

The crux of the issue is to balance the needs, safety, welfare and wellbeing of the child, against the circumstances of the family and their community context, with the recognition that the least intrusive option should be considered.

**The complexities involved become apparent when one considers the principles of the Act.**

## **Effective Parenting Assessments**

There is little research worldwide into what constitutes an effective parenting capacity assessment, and no uniform theoretical model.

*"Although clinical evaluations are common in a child protection context, little empirical information exists about the characteristics of these evaluations in current practice"* Karen Budd (2001, p2).

*"We found no studies directly examining the characteristics or usefulness of mental health evaluations of parents in child abuse or neglect cases."* Budd, Poindexter, Feliz, Naik-Polan (2001, p96).

## **Inclusion of Children**

However, the literature on parenting capacity assessment does indicate that children should be included.

The American Psychological Association Committee on Professional Practice Standards (1998) recommends that a diversity of assessment methods be used to enhance the thoroughness and objectivity of assessments. Including:

- Interviewing the child.
- Observing parent and child interaction

This requires knowledge of child development and family dynamics, as well as an understanding of individual functioning.

## **Individual Needs of Child**

An additional reason for including the child is to gain knowledge about the individual characteristics of the child. That is:

When the Court makes an order for a parenting capacity assessment, it is not assuming that the clinician undertake an **abstract** assessment of how this person may parent.... but rather a **specific** assessment of the **parents ability to parent this particular child, given this particular parent's and this particular child's circumstances.**

The Children's Court Clinic always includes children.

### **Issues**

*It must be remembered that the child is the subject of the order.*

## **Principles of the Act**

- The safety, welfare and well-being of the child or young person must be the paramount consideration.
- As far as possible children and young people must be given an opportunity to express their own views, and those views are to be given due weight.
- Account must be taken of the culture, disability, language, religion and sexuality of the child or young person.
- In deciding what action is taken to protect a child or young person from harm, the least intrusive intervention in the life of the child should be used.
- If a child or young person is removed from their family environment, their name, identity, cultural and religious ties should be maintained.
- If a child or young person is placed in out-of-home care they are to be entitled to keep close relationships with those that are important to them.
- Aboriginal and Torres Strait Islander families and communities are to participate and become involved in decision making about the care and protection of their children and young people.

## **Principle of Participation**

The principle of the Act relating to the child's participation states:

*Whenever a child or young person is able to form his or her own views on a matter concerning his or her welfare, he or she must be given the opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances.*

### **Child's Participation Issues:**

- Ability to form a view.
- The opportunity to express that view.
- Due weight given and dependent upon
  - Developmental capacity.
  - Circumstances.

## **Including Children in Parenting Capacity Assessment**

Therefore there are three powerful reasons for including children in parenting capacity assessment:

- Principles of the Act.
- Best practice literature on parenting capacity assessment recommends that children should be both interviewed, and observed in interaction with the parent/s.
- Individual child is subject of Order.

### **Issues**

*Interviewing the child is dependent upon the child's age.*

## **Inclusion**

The Children's Court has accepted mandatory inclusion of children, but will sometimes stipulate that the child is to be observed only, because of concern that the child may have been over assessed previously.

## **Involving the Child**

- The age of the child will determine the appropriate method of gaining information.
- Most clinicians do not directly interview a child under 3-4
- Use indirect methods with younger children such as play, draw my family (with an explanation), stating three wishes etc.
- Children over 5-6 can usually be questioned about interests, needs and expectations.
- Children and young people from 11-12 onwards often have very strong views to express

## **Observation**

Direct observation of infants and children (in interaction with the parent) includes:

- *Proximity Seeking*
- *Contact Maintenance*
- *Search behaviour during separation*
- *Eye gaze*
- *Avoidance*
- *Vocalising*
- *Resistance to comforting, etc.*

## **Guidelines for Interviewing the Child**

- Children must be informed about why they are seeing the clinician.
- Issues should be explained sensitively so as not to further traumatise the child.
- Children should be engaged in such a way so as to gain their confidence.
- The clinician should take time to learn about the child.
- It is useful to allow the child themselves explain what they think the issues are.

## **Guidelines for Interviewing the Child (cont)**

- It should be explained to the child that a report will be prepared and that there are limitations to confidentiality.
- The child should be informed that the Magistrate considers all the information and makes the final decision

### **Issues**

- *The child must have a right to have input into decisions, they cannot be given the responsibility of having to decide.*
- *When the child is observed with the parent, it may be necessary to set some limits to the parents' behaviour.*
- *When there is more than one child, it is most beneficial to interview each child separately as well as, or rather than, together.*

## **Overcoming Misunderstandings**

Wilson & Powell (2001) - Guide to Interviewing Children, said that misunderstandings may exist in the child's mind prior to a forensic interview.

The interviewer should make it clear that the child's view and information is very important and explain to the child that:

- If the interviewer says something wrong the child may correct him or her.
- The more the child can tell the better.
- It is fine to say 'I don't know' or 'I don't remember.'
- If a question is asked a second time, it does not mean the child should change their answer
- The child can use any words that they want to.

## **Overcoming Misunderstandings (cont)**

- The child should say so if he or she does not understand the question.
- That the child can tell about the issues again even if they think the interviewer already knows about them.

## **Input from the Child**

Interviewing and including input from the child :

- Maintains the focus on the wellbeing of the child as the paramount consideration.
- Gives children a sense that their views are important.
- Ensures that the child's needs, wishes and relationships are taken into account as they are explicitly expressed.
- Allows children to reveal their worries and fears to a neutral person (can be relieving for them).
- Adds great power to the report due to inclusion of child's voice.

## **Children's Views**

- Decisions are being made for children by a range of adults and agencies. This will very often make children feel powerless and vulnerable.
- It is important that children be able to state where they want to live and who they wish to have contact with.
- Children's views must be balanced against what is known about the context of their situation and the reasons behind the views they express
  - **For example**, love for a parent who is not taking adequate care of them, the need to protect a parent, or active coercion by a parent for their own ends

### **Case Studies – Dr Liz Tong**

**Case Study One** - Disclosures from two Aboriginal children, who were subsequently confirmed in Kinship Care.

Peter – 12 years

Sophie – 6 years

**Case Study Two** - The restoration of five children to the primary care of their father.

Donatella – 10 years

Natalia – 8 years

Katora – 6 years

Rosita – 5 years

Bruno – 3 years

\* Note – all names have been changed.

## **Case Studies – Ms Anne Grapsas**

**Case Study One** - A child resisting pressure to return to her mother's care.

Paul – 14 years

Cate – 12 years

**Case Study Two** - Restoration of two children and a stepchild to the care of the parents.

Nick – 14 years

Ashton – 7 years

Nanette – 6 years

\* Note – all names have been changed.

## **Summation**

- Children's own needs, interests and wishes must be made known to the Court.
- It is essential to have skilled clinicians observe and involve children and young people and convey their views.
- The clinician must weigh up the importance that should be given to this view, against what is known of the whole context... and the parents current and likely future ability to parent effectively.

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