

2 November 2015

Ms Sue Harris
Acting Assistant Secretary
Family Law Branch
Attorney-General's Department
familylawunit@ag.gov.au

Dear Ms Harris,

Draft Parenting Orders Handbook

Thank you for your email of 2 September 2015 inviting comments on the draft Parenting Orders Handbook (“the handbook”).

The following comments in relation to the handbook arise from consultation with the eight state and territory legal aid commissions (commissions) represented by National Legal Aid (NLA).

It is understood that the handbook has been developed following the recommendations of Family Law Council in their report *Improving Post-Parenting Order Processes* (October 2007), and that it is considered, in particular, that the handbook will “improve the workability of court orders, particularly those prepared without legal or judicial assistance.”¹ In addition it is intended that the handbook will “assist persons responsible for the drafting orders to have a range of model or standard wording options available which would assist in better outlining the conditions and requirements set out in contact orders.”²

As a consequence we understand that the handbook has been designed with the intention of it being a resource for both self-represented litigants and for lawyers providing family law advice and representation to parties involved in parenting order disputes.

¹ Family Law Council report *Improving Post-Parenting Order Processes*, 2007, p 12.
² ibid, p 26.

Comments

(i) Audience

It is very difficult to meet the needs of both legal practitioners and parents/parties in the one document. As a consequence the handbook refers to some concepts that may be too technical for a non-legal audience. For example readers are encouraged to consider whether they want to set out their arrangements for the children in a way that will create a “legally enforceable obligation”.³

Another example is the reference in the Handbook to section 67ZC and the fact that the court also has “jurisdiction to make orders relating to the welfare of children.” The Handbook states that “There is a particular history to this section, s 67ZC, and it is a difficult and technical matter to determine its exact scope. For the purpose of this handbook, however, it need not be explored.”⁴

(ii) Language

Generally the language used in the handbook is suggested to be too complex for many self-represented litigants, and particularly for readers who have literacy issues or for whom English is not their first language (e.g. indigenous or CALD clients).

There is also a need for the concepts and subject matter to be expressed in more concise, simple terms e.g. orders about parenting decisions (“parental responsibility”).⁵

(iii) Content

Messages

There is a need to determine the essential messages to be included in the handbook for the benefit, in particular, of self-represented litigants and to ensure that these messages are communicated in simple terms, in a way that will facilitate parental decision making in the best interests of children.

Statements such as “In these circumstances, the Family Law Act contains detailed guidelines about how the court should determine what is best for children. But these guidelines apply to courts when they are determining disputes. They do not in any way restrict what parents might work out between themselves following separation.”⁶ may give parents a mixed message as to the importance of the factors

³ Handbook Part 1, p 5.

⁴ Handbook Part 1, p 14.

⁵ Handbook Part 1, p 8.

⁶ Handbook Part 1, p 1.

set out in the Family Law Act 1975 and what is relevant in the planning of care arrangements for their children.

It is also important that concepts such as parental responsibility and the difference between equal shared parental responsibility and equal time be clearly explained and the “myths” in relation to the Family Law Act 1975 provisions in relation to these concepts be addressed.

The concepts associated with headings such as “Make clear the relationship between orders”⁷ may be difficult for self represented parties to understand.

The task of identifying these essential messages is very challenging in circumstances where it appears that the handbook is attempting to meet the needs of both self-represented litigants and legal practitioners.

Family Violence and other Risk Issues

The handbook makes very limited reference to family violence as a relevant consideration in the framing of parenting orders. There is one heading that specifically refers to family violence, “Family violence orders made under state or territory laws”⁸. This section of the handbook does not make reference to circumstances where there is or has been family violence and there is no family violence order in place.

Risk issues and information about the circumstances in which it is not appropriate for parties to negotiate and apply for consent orders, such as family violence, child abuse, mental health issues and drug and alcohol abuse, require a specific heading and specific consideration at the beginning of the handbook. Guidance can be provided to readers in relation to how these issues should be managed and the benefits of seeking legal advice before entering in to consent orders in these circumstances.

CALD families

The handbook should provide CALD readers with information about how they can get assistance from interpreters in relation to the negotiations, communications and drafting in relation to their consent orders. It should also contain information about where they can get legal and other advice in relation to their parenting issues.

⁷ Handbook Part 2, p 6.

⁸ Handbook Part 1, p 15.

Resources

The current draft of the handbook is of considerable length. As previously suggested there is a need to limit the content to the essential elements (messages). A similar approach would be beneficial in respect of the Where to get help in making arrangements that will be good for the children⁹ section of the handbook. Currently the handbook does not include reference to related resources of legal assistance service providers such as those to be found on commission websites, or to obtaining legal advice including advice from commissions, indigenous legal services and community legal centres.

Model Orders and Practical Examples

In the current draft of the handbook the model orders are set out towards the end of the document, interspersed with the text. It would be beneficial to identify the model orders that are likely to be most useful and limit those included to these orders with appropriate identifying headings. A full set of “typical parenting orders” addressing the standard orders generally made for children would also be of assistance.¹⁰

The orders could be accompanied by practical examples which should include some multi-cultural examples, for example in respect of special occasions.

It might be useful to consider whether guides such as Planning for Parenting Time Arizona’s Guide for Parents Living Apart¹¹ could be of assistance in the development of this section of the handbook. This would also be helpful in respect of the framing of appropriate orders taking into account the needs of the children and their age and stage of development.

Other Information

The inclusion of information about Children’s Contact Centres, their services (including handover and supervision) and responsibilities would also be of assistance to people making use of the handbook.

In relation to information about other services, we note the “WHERE TO GET HELP IN MAKING ARRANGEMENTS THAT WILL BE GOOD FOR THE CHILDREN” section. We understand the difficulty in listing the many services that might be able to assist, however we would like to see the inclusion of a reference to legal help and the availability of legal advice and assistance, particularly in the context of family

⁹ Handbook Part 1, p 2.

¹⁰ The Family Courts (check whether this includes FCA and FCC) have Parenting Order kits with examples of such orders

¹¹ <http://www.azcourts.gov/portals/31/parentingtime/ppwguidelines.pdf>

violence. The Relationships Australia Parenting Plan document to which the handbook links, contains a “Useful contacts” section, however none of those contacts are legal assistance services.

Conclusion

Thank you for the opportunity to provide these comments.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Canny".

Gabrielle Z Canny
Chair