

Parenting Coordination: a new service option for separating families?

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What is Parenting Coordination?

Parenting Coordination is an emerging service option for high conflict families. Developed and practised in several international jurisdictions, including the United States, Canada and South Africa, it is relatively new to Australia. Parenting Coordination has been shown in many instances to reduce demand on court services and to benefit families by resolving issues more promptly with reduced litigations.¹ Some evaluations of Parenting Coordination have shown a reduction in acrimony, development of parenting and communication skills and improved conflict resolution skills². In light of the current review of the family law system by the Australian Law Reform Commission, perhaps consideration should be given to this service option being made broadly accessible to separating families in Australia.

“Parenting coordination is a quasi-legal, quasi-mental health, dispute resolution process which combines assessment, conflict management, education, facilitation, case management, mediation and limited decision-making functions.”³

Where there is a parenting agreement or interim or final orders regarding children but there is ongoing conflict, a Parenting Coordinator (PC) may be engaged by the parties or, in some jurisdictions, appointed by the court to facilitate cooperation and fulfilment of orders. The PC focuses on the implementation of the orders and provides education, conflict management and mediation to help the parties communicate and manage disagreements.

Parents may have regular sessions with the PC but are also able to call upon the PC at short notice when conflicts arise so that issues may be promptly addressed as they occur. PCs can meet with both parents in person, facilitating a mediation-style process or act as a go-between in negotiations over the telephone. A PC does not make decisions that would change living arrangements or existing parenting orders. However, a PC might help resolve disputes around handover times and locations, travel, health issues, schooling arrangements, daily and weekly routines and communication between the parents. When successful, this service can provide an alternative to returning to court whenever a dispute between parents arises.

The objective of Parenting Coordination is protecting and sustaining safe, healthy relationships between parents and their children by educating parents about their children’s needs, encouraging cooperation and agreement on decisions and resolving conflicts. Compared to other service models, there is a more intense intervention and the relationship is long-term.

In many Parenting Coordination models, there appears to be broad scope for a PC to provide reports to the court and to monitor compliance with court orders.

When to engage a PC?

Parents whose disputes involve high levels of anger, protracted or repetitive litigation or who struggle to comply with court orders may benefit from the appointment of a PC.

Further, a PC might assist where parents have shown a continued inability or unwillingness to make cooperative parenting decisions, to comply with parenting arrangements or orders and to reduce child-related conflicts.

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While high conflict matters could benefit from improved outcomes with a PC, a more cautious approach is required where there is domestic and family violence. Where there is a power differential or a concern about the safety of a parent and/or child, the appropriateness of appointing a PC would be “predicated upon ensuring that the primary focus is the safety of abused parents and their children”⁴.

Who can be a PC?

The US Association of Family and Conciliation Courts Task Force on Parenting Coordination has proposed guidelines for the qualifications, education, training, experience and ethics of PCs⁵ which include:

- being a qualified mediator, legal professional or mental health professional in an area relating to families;
- knowledge, awareness and experience in relation to domestic and family violence issues;
- training and experience in family mediation;
- practical experience dealing with high conflict or litigating parents;
- specific training in parenting coordination; and
- relevant ongoing professional training and development.

In a recent judgement of the High Court in Cape Town⁶, it was noted that “an unskilled or temperamentally unsuitable PC could inflame a volatile conflict situation and do more harm than good.”

Appointment and Powers of a PC

A controversial aspect of this service model is the power the PC may have to make decisions and whether their decisions are binding or enforceable.

In some jurisdictions within the United States of America, PCs are given a quasi-judicial role allowing them to make binding, legally enforceable decisions in relation to parenting matters. In these jurisdictions the legislation enables the PC to make certain decisions, such as those limited to the carrying into effect of the court order. However, in Canada and certain other jurisdictions within the United States, PCs can only be appointed by consent and their power to make binding directions is limited by a legal framework which prevents judges from delegating judicial or quasi-judicial functions.

In Canada, parties may enter

into a Parenting Coordinator Agreement, granting the PC mediation and

decision-making powers and also limiting those powers. For example, a PC may be given power to arbitrate and resolve minor parenting disagreements but not to fundamentally change the structure of the parenting arrangements (such as custody and contact). The Parenting Coordinator Agreement can even be incorporated into court orders to give recognition to the parties’ agreement to arbitrate and mediate. This is because Canada has developed a hybrid dispute resolution model which allows the PC to both mediate and arbitrate.

A recent South African decision⁷ explored the circumstances in which PCs should be appointed by consent and by the court and gave detailed limitations and guidelines on such appointment and the scope of the PC’s power.

In Australia, while there are limited instances where judicial power can be delegated (such as to Registrars of the courts), it is not clear whether such delegation would extend to PCs to the extent that they are in some other jurisdictions given the potential constitutional difficulties that might arise⁸. While there would seem to be capacity for the court to appoint a PC to a matter, the extent to which the PC may then make decisions that bind the parents is likely to be very limited in scope.

In Australia the Family Law Act (1975) does not currently provide for the delegation of any decisions to a parenting coordinator. However, the legislation does provide scope for parents to be provided with assistance to resolve ongoing conflict and to implement parenting orders. Section 13C allows judges to make orders requiring parents to attend counselling, family dispute resolution or any “course, program or service”. Section 65L allows a judge to order a family consultant to supervise and/or assist parents carry out a parenting order and section 65LA allows judges to order parents to participate in post-separation parenting programs. This is defined as a program:

- (a) that is designed to help people to resolve problems that adversely affect the carrying out of their parenting responsibilities (including by providing counselling services or by teaching techniques to resolve disputes); and
- (b) that consists of lectures, discussions (including group discussions) or other activities; and

(c) that is provided by an approved organisation.

It is not unusual for judges to order parents to attend family therapy and to specify the purpose and expected outcomes of such therapy¹⁰. For example, in a recent decision of Federal Circuit Court Judge Kemp, parents were ordered to immediately attend family therapy to assist to develop better parenting skills, improve communication between the parents, develop healthier family relationships and work together in relation to the child's needs¹¹. In effect, judges are making orders to a form of "parenting coordination" without actually using the term.

Regardless of the method of appointment of the PC, there must be a clear understanding by the PC and the parties as to the scope of their role, including the extent to which they will make recommendations and decisions. Unless and until endorsed by a court, such arrangements will need to be negotiated and clearly agreed by the parties.

WA Pilot Program

Relationships Australia Western Australia (RAWA) is currently piloting a Parenting Coordination program with the cooperation and support of the Family Court of Western Australia. The unfunded program aims to:

- Facilitate negotiations with parents to quickly resolve disputes as they arise;
- Educate on children's development, effective communication, problem solving skills and co-parenting strategies;
- Link families to beneficial services; and
- Where parents are unable to do so, make minor decisions in the best interests of children¹².

The Pilot program uses qualified, experienced professionals who have been specially trained in the PC model.

GOALS OF PARENTING COORDINATION:

Reduce Child Stress

Improve Co-Parent Relationship

Increase Parenting Cooperation and Respect

Reduce Future Litigation

Monitor parental behaviour and compliance

Referrals

The Family Court of Western Australia has indicated that it will make a requirement for Parenting Coordination in Court Orders in appropriate high conflict matters¹³.

The Future of PC in Australia

Parenting Coordination in Brisbane is currently only available through private practitioners.

Submissions have been made to the ALRC proposing that Parenting Coordination be significantly expanded and funded as part of the Family Law System¹⁴. If the WA Pilot Program demonstrates positive outcomes, this may well become a more significant part of the family law dispute resolution process.

It may be timely for the ALRC to consider the options for legislative changes that would enable PC in Australia, including the best ways to enable recommendations/decision making by the Parenting Coordinator to be supported by the Courts¹⁵.

Endnotes

1. Brewster, K.O.H., Beck, C.J.A., Anderson, E.R., & Benjamin, G.A.H. (2011). Evaluating Parenting Coordination Programs: Encouraging Results From Pilot Testing a Research Methodology. *Journal of Child Custody*, 9(4), 247-267. <https://doi.org/10.1080/15379418.2011.620926> "[T]he overall conclusion reached is this PC program is promising for in easing the burden on court personnel, reducing the number of agencies involved with the family and in assisting parents in making longer-lasting parenting decisions."
2. [Relationships Australia | ALRC Review Submission Paper | 7 May 2018](#)
3. Roux, Dr L, de Jong, Prof L, Duchon, Dr R, Greyvenstein, L., Schutte, I, Segal, L, and Martalas, A. [Guidelines on the Practice of Parenting Coordination in South Africa](#). See also [Association of Family and Conciliation Courts. \(2006\) Guidelines for Parenting Coordination, Family Court Review](#), 44(1), 164-181. doi:10.1111/j.1744-1617.2006.00074.x
4. Koch, Judge Dale R. & Pincolini-Ford, Amy, [Parenting Coordination in Domestic Violence Cases, Synergy – The Newsletter for the Resource Center on Domestic Violence: Child Protection and Custody](#), 10 (2) 2006, [National Council of Juvenile and Family Court Judges](#)
5. [AFCC Guidelines for parenting coordination, © 2005 Association of Family and Conciliation Courts](#)
6. [TCV SC - Case no: 20286/2017 – Cape Town High Court Judgment delivered on 18 April 2018](#)
7. [ibid.](#)
8. Parker, A., & Wilson, M. (2013). Parenting coordination: A new option for high conflict families? *Australian Family Lawyer*, 23(3), 32-39.
9. [ibid.](#)
10. [Harlow & Hathaway \[2018\] FCCA 1083 \(4 May 2018\); Channing & Snow \[2018\] FCCA 367 \(23 February 2018\)](#)
11. [Channing & Snow \[2018\] FCCA 367 \(23 February 2018\)](#)
12. (See [RAWA Brochure on Parenting Coordination](#))
13. [Relationships Australia | ALRC Review Submission Paper | 7 May 2018](#)
14. See 12
15. See 8 above.