

Committee on  
Children and Young People



PARLIAMENT OF  
NEW SOUTH WALES

# Child protection and social services system



Report 6/57 – December 2022

New South Wales Parliamentary Library cataloguing-in-publication data:



A catalogue record for this  
book is available from the  
National Library of Australia

ISBN: 978-1-925214-31-4

The motto of the coat of arms for the state of New South Wales is "Orta recens quam pura nites". It is written in Latin and means "newly risen, how brightly you shine".

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# Membership

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## Chair's foreword

In September 2020 the Committee on Children and Young People self-referred an inquiry into the child protection and the social services system.

We received 65 submissions from government agencies, non-government organisations, academics and members of the public.

Due to constraints on the inquiry timeline during the 57th Parliament, the Committee decided to narrow the focus of the inquiry to examine cross-jurisdictional issues between the state child protection system and Federal Circuit and Family Court of Australia (FCFCOA). This was the focus of our public hearing on 12 August 2022.

Notwithstanding the revised scope of the Committee's inquiry, this report dedicates a chapter to discussing recent reviews, inquiries and commissions that have been undertaken in relation to the NSW child protection system. We heard from stakeholders that many recommendations originating from these investigations remain outstanding, or have failed to effect meaningful and enduring change. The need for greater investment in early intervention services (particularly following the ending of the Their Futures Matter initiative) and the over-representation of Aboriginal and Torres Strait Islander children in child protection and care services were also prominent themes that emerged in evidence to the inquiry.

We recommend that the NSW Government identify and respond to any outstanding recommendations from recent reviews. Moreover, the Committee recommends that the NSW Government publish updates on its responses to recommendations of both the Auditor-General in the audit of the Their Futures Matter program, and the Independent Review of Aboriginal Children in Out-of-home Care (the *Family is Culture* report). While the Committee acknowledges that progress has been made toward achieving the objectives of these recommendations, periodic and transparent updates will help to build community confidence in the NSW Government's response to these significant reports.

Chapters two and three of this report consider points of intersection between the state child protection system and the FCFCOA in family law matters where child abuse or family violence is alleged to have occurred. The Committee wanted to understand how and why misalignment between the NSW Department of Communities and Justice (DCJ) and the FCFCOA occurs, the impacts of that misalignment on protective parents and at-risk children, and opportunities to address deficiencies and ensure good child protection outcomes.

We heard about instances where one parent has been alleged to have perpetrated child abuse or family violence, by a child or the other parent (a 'protective parent'). These allegations may be substantiated and recorded by NSW-based agencies charged with protecting children, but not communicated, or given adequate consideration during court proceedings in the federal family law system. Stakeholders told us that this has led to children being placed in unsafe environments, including with alleged abusers. Some stakeholders suggested that these are not isolated instances, and that cross-jurisdictional issues are impacting more children than we may realise.

Family law proceedings can exacerbate fear, distress and trauma for children and young people. For some protective parents, they can also prove financially crippling. The need for greater mental health, legal, financial and other supports for children and protective parents who have experienced abuse and are engaged with the family law system is considered in chapter two. We also note the importance of affording children and young people the opportunity to have their voices heard in legal proceedings that affect them and possible ways to achieve this. Children will not have faith in a system that fails to listen to their wishes and concerns.

It is common for applications under the *Family Law Act 1975* (Cth) to raise issues of child protection and/or family violence. However, the FCFCOA has limited investigative powers and is reliant on information from state and territory courts and agencies about risks to a child's safety. Chapter three examines mechanisms that mediate information exchange between DCJ and the FCFCOA, the limitations that stakeholders observed in how children's best interests are represented in family law matters where there are risks to their safety, and recent reforms that are being implemented at a national level.

We have made a range of recommendations that are focused on improving outcomes for children involved in the family law system. Mechanisms designed to facilitate information exchange between jurisdictions must be fit for purpose. To this end, the Committee recommends that both the Memorandum of Understanding between DCJ and the FCFCOA and the Magellan case management program be reviewed. We also recommend that police officers and legal professionals have the right guidance, training and resources to provide trauma-informed support to families that are subject to proceedings in the family law system.

The Committee is grateful for the submissions we received from stakeholders. We hope this report and its recommendations contribute to improved practices that will protect children from harm. I would like to acknowledge the witnesses who appeared at our public hearing, and thank them for their courage and candour. I would also like to thank the FCFCOA and the Attorney-General's Department for their input into this inquiry.

Finally, I would like to thank my Committee colleagues for their dedication and valuable contributions throughout the inquiry process, and the Committee secretariat for their professionalism and ongoing support.

**Peter Sidgreaves MP**  
**Chair**

## Findings and recommendations

Recommendation 1	1
That the NSW Government identify and respond to any outstanding recommendations from recent reviews and inquiries of the child protection and social services system.	
Recommendation 2	3
That the NSW Government publish an update on its response to recommendations made by the Auditor-General in the audit of the Their Futures Matter program.	
Recommendation 3	6
That the NSW Government publish an annual, comprehensive update on its response to the <i>Family is Culture</i> recommendations.	
Finding 1	10
The family law system and NSW child protection system are often misaligned in family law matters where child abuse or domestic and family violence has occurred.	
Recommendation 4	14
That the NSW Department of Communities and Justice develop mental health and other support services (including social workers as support persons) for children and protective parents who have experienced abuse by a parent and have matters in the family law system.	
Recommendation 5	15
That the NSW Government provide specific financial support for protective parents engaged with the family law system, and/or increase funding for legal services that support these parents.	
Recommendation 6	20
That the NSW Attorney General conducts a review of the Memorandum of Understanding between the NSW Department of Communities and Justice and the Federal Circuit and Family Court of Australia, with the aim of better realising its purpose of aligning the jurisdictions in order to meet the care and protection needs of children.	
Recommendation 7	20
That the NSW Government commission an independent evaluation of the Magellan Program.	
Recommendation 8	21
That the NSW Department of Communities and Justice conduct a thorough review of its protocols for supporting children who have experienced or are experiencing abuse and are the subject of proceedings in the family court, including the mechanisms by which it engages with the Federal Circuit and Family Court of Australia.	
Recommendation 9	21

That the NSW Department of Communities and Justice (DCJ) initiate a review of the information sharing agreement between DCJ and Legal Aid NSW, with the aim of ensuring that it remains fit for purpose.

Recommendation 10 \_\_\_\_\_ 25

That the NSW Department of Communities and Justice work with the NSW Police Force to develop training and guidance for officers working with families with child protection and family violence issues that are subject to proceedings in the family law system.

Recommendation 11 \_\_\_\_\_ 30

That Legal Aid NSW review the training provided to independent children's lawyers working in NSW, with the aim of improving outcomes for children who are involved in the family law system and who have experienced child abuse or family violence.

Recommendation 12 \_\_\_\_\_ 30

That the NSW Government consult with the Commonwealth Attorney-General's Department and advocate for improvements to the mandated training for legal professionals working with children in the Federal Circuit and Family Court of Australia, including mandatory and comprehensive training in child abuse and family violence and managing family law matters that involve child abuse and family violence.

Finding 2 \_\_\_\_\_ 33

Children and young people are not necessarily being provided the opportunity to be heard, in their own words, in court proceedings where significant decisions are often made for them.

Recommendation 13 \_\_\_\_\_ 33

That the NSW Department of Communities and Justice introduce new tools for children to record their own experiences in a form that can be presented in both state children's and federal family law courts, or that it update ChildStory so it can be used for this purpose.

Recommendation 14 \_\_\_\_\_ 35

That the NSW Government closely monitor reforms that are underway at a federal level, in particular the implementation of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems, with the aim of promptly utilising any new mechanisms, programs and resources that could facilitate better interactions between the state child protection system and the Federal Circuit and Family Court of Australia.

Recommendation 15 \_\_\_\_\_ 37

That the NSW Government provide the Department of Communities and Justice with additional funding for recruiting more staff to work as co-located child protection and police officers based in NSW-based registries of the Federal Circuit and Family Court of Australia, where funding is not available through the Commonwealth and where positive results from the Commonwealth-funded pilot have been reported.



# Chapter One – The NSW child protection and social services system

- 1.1 In 2020 the Committee invited submissions from government, non-government and academic stakeholders engaged with the child protection and social services system.
- 1.2 This chapter outlines three persistent themes that stakeholders raised in their submissions to the inquiry:
- The NSW child protection system has already been the subject of numerous recent reviews and inquiries, with many recommendations still outstanding
  - Greater investment in early intervention services is required, particularly following the ending of the Their Futures Matter initiative
  - Aboriginal and Torres Strait Islander children are disproportionately impacted by the child protection system, with the need to fully implement the findings of the Independent Review of Aboriginal Children in Out-of-home Care being identified as a priority by stakeholders.
- 1.3 Due to external factors constraining the inquiry timeline during the 57<sup>th</sup> Parliament, the Committee resolved to narrow the focus of the inquiry to examine cross-jurisdictional issues between the state child protection system and Federal Circuit and Family Court of Australia. These issues are examined in chapters two and three.

## **Recommendation 1**

**That the NSW Government identify and respond to any outstanding recommendations from recent reviews and inquiries of the child protection and social services system.**

- 1.4 In their submissions to the inquiry, many stakeholders highlighted that the NSW child protection system has already been the subject of several reviews, inquiries and commissions that have been conducted in the past 15 years.<sup>1</sup>
- 1.5 In particular, stakeholders focused on the following reviews of the child protection system:
- The 2008 Special Commission of Inquiry into Child Protection Services (the 'Wood inquiry')<sup>2</sup>

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<sup>1</sup> For example: [Submission 2](#), The Smith Family, p 4; [Submission 10](#), NSW Office of the Children's Guardian, pp 11-13; [Submission 21](#), Office of the Advocate for Children and Young People, p 4; [Submission 13](#), NSW Council of Social Services, p 1; [Submission 24](#), Domestic Violence NSW, p 11.

<sup>2</sup> The Hon. J Wood, [Report of the special commission of inquiry into child protection services](#), Special commission of inquiry into child protection services, November 2008, p ii.

- The 2015-16 Independent Review of Out of Home Care in New South Wales (the 'Tune review')<sup>3</sup>
- The 2017 inquiry into child protection by the NSW General Purpose Standing Committee No. 2 (the 'SC2 inquiry')<sup>4</sup>
- The 2019 Independent Review of Aboriginal Children in Out-of-home Care prepared by Professor Megan Davis (*Family is Culture* report)<sup>5</sup>
- The NSW Auditor-General's audit of the Their Futures Matter program.<sup>6</sup>

1.6 Children and families peak body, Fams, told the Committee that 'successive NSW governments have been handed consistent findings on what needs to change to keep children safe and well'. The Fams submission noted that, between the Wood inquiry, Tune review, SC2 inquiry and *Family is Culture* reports, 286 recommendations have been made to 'strengthen child protection outcomes for children and families in NSW'.<sup>7</sup>

1.7 Stakeholders emphasised that these inquiries have made many recommendations that were either not implemented or did not achieve meaningful change in the child protection and social services system.<sup>8</sup> Mission Australia submitted that, from the reviews conducted between 2008 and 2019, fewer than two-thirds of recommendations have been fully or mostly implemented.<sup>9</sup> The limited implementation of recommendations was frequently identified in relation to the *Family is Culture* report (discussed further below).

1.8 Ms Renata Field, Manager, Policy, Advocacy and Research, Domestic Violence NSW, told the Committee that these previous inquiries have 'well-evidenced recommendations', but resourcing is required for them to be implemented.<sup>10</sup> Fams also submitted that:

Recommendations that have been implemented tend to be more tactical and specific such as legislative amendments and those focused on procedures and processes. Those that have not been implemented tend to be those that involve large and immediate budget implications and involve substantial systemic change.<sup>11</sup>

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<sup>3</sup> NSW Government, [Their Futures Matter: a new approach – reform directions from the Independent Review of Out of Home Care in New South Wales](#), pp 2-5.

<sup>4</sup> General Purpose Standing Committee No. 2, [Child protection](#), report 46, Parliament of New South Wales, March 2017.

<sup>5</sup> M Davis, [Family is culture: independent review into Aboriginal out-of-home care in NSW](#), October 2019.

<sup>6</sup> NSW Auditor-General, [Performance Audit – Their Futures Matter](#), Audit Office of NSW, Sydney, 24 July 2020.

<sup>7</sup> [Submission 19](#), Fams, pp 3-4.

<sup>8</sup> For example: [Submission 4](#), Central Coast Community Legal Centre, p 1; [Submission 8](#), Mrs Karen Cragie, p 1; [Submission 13](#), NSW Council of Social Services, p 1; [Submission 19](#), pp 3-4; [Submission 23](#), Public Interest Advocacy Centre, p 3; [Submission 24](#), Domestic Violence NSW, p 11; [Submission 42](#), Jumbunna Institute for Indigenous Education and Research (UTS), p 5.

<sup>9</sup> [Submission 36](#), Mission Australia, p 3.

<sup>10</sup> Ms Renata Field, Manager, Policy, Advocacy and Research, Domestic Violence NSW, [Transcript of evidence](#), 12 August 2022, p 2.

<sup>11</sup> [Submission 19](#), Fams, p 4

- 1.9 For example, the 2008 Wood inquiry found that child protection services were hampered by a 'duplicative, unduly complex and administratively burdensome funding system'.<sup>12</sup> The 2015 Tune review identified that attempts to co-ordinate services across government agencies have failed, because 'Vulnerable families have needs that cross government silos'.<sup>13</sup>
- 1.10 Submissions made to the present inquiry identified that the NSW child protection and social services system still needs to provide greater co-ordination and integration of supports to vulnerable children and families, rather than leaving them to contend with a 'siloed system' in which government and non-government agencies 'often work in isolation from each other'.<sup>14</sup>
- 1.11 The Committee acknowledges that there has been work done by the NSW Government and Department of Communities and Justice (DCJ), both proactively and in response to the recommendations of these reviews and inquiries. The Committee notes that the number of children in OOHC has slowly declined year-on-year since 2016-17: from 17 800 children in 2015-16, down to 15 515 on 31 December 2021.<sup>15</sup>
- 1.12 In 2020-2021, there were an estimated 126 000 children reported at risk of significant harm in NSW.<sup>16</sup> The Committee notes that there were a reported 112 517 in 2019-2020 and 105 772 in 2018-2019.<sup>17</sup>
- 1.13 In light of the recurring issues identified in the NSW child protection and social services system, the Committee recommends that the NSW Government conduct a systematic review of the findings and recommendations that have been made in recent inquiries, reviews and commissions. This review should identify outstanding recommendations, with a view to considering and responding to them as a matter of priority.

## Providing early intervention services should remain a priority

### Recommendation 2

**That the NSW Government publish an update on its response to recommendations made by the Auditor-General in the audit of the Their Futures Matter program.**

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<sup>12</sup> [Report of the special commission of inquiry into child protection services](#), p iv

<sup>13</sup> NSW Government, [Their Futures Matter: a new approach – reform directions from the Independent Review of Out of Home Care in New South Wales](#), p 4.

<sup>14</sup> [Submission 2](#), p 5; [Submission 13](#), NSW Council of Social Services, p 13; [Submission 14](#), Australian Association of Social Workers, p 11; [Submission 28](#), Public Service Association of NSW, p 13.

<sup>15</sup> [Performance Audit – Their Futures Matter](#), p 25; Ms Simone Czech, Deputy Secretary, Permanency, District and Youth Justice Services, Department of Communities and Justice, [Transcript of evidence](#), 2 March 2022, p 37 (Portfolio Committee No. 5, Regional NSW and Stronger Communities).

<sup>16</sup> Ms Czech, [Transcript of evidence](#), 2 March 2022, p 2 (Portfolio Committee No. 5, Regional NSW and Stronger Communities).

<sup>17</sup> DCJ Caseworker Dashboard, [September 2019](#), NSW Department of Communities and Justice, May 2020; DCJ Caseworker Dashboard, [September 2020](#), NSW Department of Communities and Justice, April 2021.

- 1.14 The inquiry's terms of reference highlighted the availability, effectiveness and adequacy of funding for early intervention services for families and children in NSW as an area of interest for the Committee.
- 1.15 Stakeholders told us that investment in early intervention services is essential for preserving families and preventing children from entering the OOHC system in the first place.<sup>18</sup> This is particularly important for Aboriginal children, where a system that is 'deeply lacking in early intervention support' has resulted in 'the traumatic overrepresentation Aboriginal children in the out-of-home-care system.'<sup>19</sup>
- 1.16 The Office of the Children's Guardian highlighted that 'Shifting the system towards early intervention allows families to stay safely together and address challenges before they escalate.'<sup>20</sup> The Monash University Department of Social Work highlighted the significance of preventing children from entering the child protection system:
- ...we believe it is important to take a step back and realise that child protection is a service that is deeply problematic in virtually every jurisdiction in Australia and internationally...The outcomes of child protection involvement are not overwhelmingly positive. Anywhere.<sup>21</sup>
- 1.17 Early intervention services have typically been funded by government, but delivered by non-government agencies. Early intervention supports can include:
- Supports for parents that focus on preserving families, such as home-based programs that aim to treat trauma, mental health, and drug and alcohol issues<sup>22</sup>
  - Care hubs or 'drop in' services that provide assessment and referral to other services<sup>23</sup>
  - Health services that target the early years of a child's life, particularly for children with atypical development and/or challenging behaviours.<sup>24</sup>
- 1.18 The Tune review identified that investment in child protection services was weighted towards families that are already in crisis, such as through OOHC service delivery. The Tune review concluded that preventing entries to the OOHC system and targeting the drivers of demand for child protection intervention,

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<sup>18</sup> For example: [Submission 7](#), Southern Youth and Family Services, p 6; [Submission 10](#), p 3; [Submission 28](#), p 34; [Submission 36](#), pp 4-5, [Submission 37](#), Social Futures, p 4.

<sup>19</sup> [Submission 53](#), Aboriginal Legal Service NSW/ACT Ltd, p 13.

<sup>20</sup> [Submission 10](#), p 3.

<sup>21</sup> [Submission 27](#), Monash University Department of Social Work, p 2.

<sup>22</sup> [Submission 10](#), p 3; [Submission 36](#), Mission Australia, p 5; [Submission 35](#), NSW Department of Communities and Justice, pp 25-26.

<sup>23</sup> [Submission 11](#), Tresillian, p 7.

<sup>24</sup> [Submission 51](#), SDN Children's Services, p 4.

such as domestic and family violence or mental illness, should instead be prioritised.<sup>25</sup>

- 1.19 In 2016 the NSW Government launched the Their Futures Matter (TFM) initiative as its core response to the Tune review. TFM represented a significant investment in early intervention.
- 1.20 TFM was based on an investment and data-driven approach, with the aim of identifying cohorts of vulnerable children and families, and directing early investment funding where it was needed. The Human Services Dataset (HSDS) was established to inform the evidence base and investment approach, new cross-government bodies were created to drive a more cohesive government response and new evidence-based early intervention programs were piloted.<sup>26</sup>
- 1.21 The Committee received numerous submissions that highlighted the impacts and limitations of TFM, with many stakeholders noting the findings of the Auditor-General's 2020 performance audit of TFM.<sup>27</sup>
- 1.22 The audit identified a number of limitations of the TFM initiative, including ineffective governance arrangements and an absence of enabling legislation to implement the reform.<sup>28</sup> The Auditor-General said:
- ...an evidence-based whole-of-government early intervention approach for vulnerable children and families in NSW – the key objective of the reform – was not established.<sup>29</sup>
- 1.23 However, stakeholders and the Auditor-General also suggested that TFM showed promise in several areas. This includes family programs that have successfully limited children's engagement with the child protection system, and the 'unprecedented' scale of information in the HSDS, which could assist with future investment decisions.<sup>30</sup>
- 1.24 Several early intervention programs that were piloted under TFM are still in operation. This includes the Multi-systemic Therapy for Child Abuse and Neglect and Functional Family Therapy Through Child Welfare programs. Contracted places for participation in these two programs have been provided for 3900 families since 2017.<sup>31</sup>
- 1.25 Other DCJ initiatives continue to provide early intervention and family preservation support. These include Brighter Futures parenting programs and

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<sup>25</sup> [Their Futures Matter: a new approach – reform directions from the Independent Review of Out of Home Care in New South Wales](#), pp 4-5.

<sup>26</sup> [Performance Audit – Their Futures Matter](#), pp 9-10; 33; 49.

<sup>27</sup> For example: [Submission 10](#), p 13; [Submission 11](#), p 17; [Submission 13](#), p 2; [Submission 14](#), Australian Association of Social Workers, p 23; [Submission 57](#), NSW Ombudsman, p 5.

<sup>28</sup> [Performance Audit – Their Futures Matter](#), pp 2, 4.

<sup>29</sup> [Performance Audit – Their Futures Matter](#), p 2.

<sup>30</sup> [Performance Audit – Their Futures Matter](#), p 3; [Submission 11](#), p 17; [Submission 16](#), Australian Research Alliance for Children and Youth, pp 5-6; [Submission 35](#), p 26; [Submission 38](#), MacKillop Family Services and OzChild, pp 10, 14.

<sup>31</sup> [Annual report 2020-21: Volume 1 – Performance and activities report](#), p 39.

children's services, Intensive Family Preservation, and the Targeted Earlier Intervention Program.<sup>32</sup>

- 1.26 The Committee notes that the NSW Legislative Assembly Public Accounts Committee recently reviewed the DCJ response to the recommendations made in the audit, and that it was satisfied 'that DCJ is on track to fulfill the intent of the audit recommendations.'<sup>33</sup> The DCJ response includes plans to evaluate the effectiveness of investments in early intervention programs like the Kids Early Years (KEYS) Network.<sup>34</sup> However, the Committee also notes that there have been delays in responding to some recommendations, due to delays in finalising the Investment Plan for Human Services in NSW.<sup>35</sup>
- 1.27 The Committee recommends that the NSW Government publish a further update on its response to recommendations made by the Auditor-General in the audit of the Their Futures Matter initiative. While the Committee acknowledges the progress already made to address the Auditor-General's recommendations, the Committee notes that a substantial volume of outstanding implementation work is scheduled to continue into 2022-23.

## Aboriginal and Torres Strait Islander children remain over-represented in the child protection system

### Recommendation 3

**That the NSW Government publish an annual, comprehensive update on its response to the *Family is Culture* recommendations.**

- 1.28 Stakeholders frequently highlighted the findings and recommendations of the Independent Review of Aboriginal Children in Out-of-home Care (the *Family is Culture* report) in their submissions.<sup>36</sup>
- 1.29 Prepared by Professor Megan Davis, the *Family is Culture* report was published in 2019. Following from federal inquiries like the 1997 *Bringing them home report* and NSW reviews like the Tune review, *Family is Culture* emphasised that Aboriginal children are over-represented in OOHC and the broader care and protection system.<sup>37</sup>
- 1.30 The report made 125 recommendations, including recommendations that:
- an independent Child Protection Commission be established to improve oversight of and accountability within the child protection system

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<sup>32</sup> NSW Department of Communities and Justice, [Reforms](#), viewed 4 November 2022.

<sup>33</sup> Public Accounts Committee, [Examination of selected Auditor-General's Performance Audit Reports June - December 2020](#), report 11/57, Parliament of New South Wales, October 2022, p 10.

<sup>34</sup> [Submission 3](#), Department of Communities and Justice, pp 5-7 (Public Accounts Committee, Examination of the Auditor General's performance audit reports June - December 2020).

<sup>35</sup> [Submission 3a](#), Department of Communities and Justice, p 1 (Public Accounts Committee, Examination of the Auditor General's performance audit reports June - December 2020).

<sup>36</sup> For example: [Submission 23](#), p 3; [Submission 42](#), pp 5-8; [Submission 53](#), pp 8-11; [Submission 54](#), pp 38-41; [Submission 59](#), Wirringa Baiya Aboriginal Women's Legal Centre, p 6.

<sup>37</sup> [Family is culture: independent review into Aboriginal out-of-home care in NSW](#), October 2019, p xxxi;

- an Aboriginal Quality Assurance Unit be established within DCJ to track progress made in implementing the recommendations made in the report
- the NSW Government should, in consultation with Aboriginal stakeholders and communities, 'review the Aboriginal and Torres Strait Islander Principles of the *Children and Young Person (Care and Protection) Act 1998*...with the view to strengthening the provisions consistent with the right to self-determination.'<sup>38</sup>

- 1.31 In November 2020 the NSW Government reported on its progress in responding to the *Family Is Culture* recommendations, which aimed to address the high removal rates of Aboriginal children.<sup>39</sup> Some stakeholders told the Committee that the government response to the *Family is Culture* recommendations was 'inadequate'.<sup>40</sup>
- 1.32 The Committee notes that efforts have been made to address the findings of the *Family is Culture* report through recent legislation.
- 1.33 A private members bill, the *Children and Young Persons (Care and Protection) Amendment (Family Is Culture Review) Bill 2021*, was introduced in the Legislative Council. The Bill lapsed, in accordance with Standing Orders, on 25 August 2022.<sup>41</sup>
- 1.34 A government bill, the *Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022* was introduced in the Legislative Council on 12 October 2022.<sup>42</sup> The bill responds to the 25 legislative reforms outlined in the *Family is Culture* report. During her second reading speech in the Legislative Council, The Hon Natasha MacLaren-Jones MLC, Minister for Families and Communities and Minister for Disability Services, said that:

This bill represents the first legislative changes to give effect to the Family is Culture report. This is only the beginning of the reform process. The department will continue to engage with the Aboriginal community and other stakeholders to progress the remaining recommendations that are more complex and require more detailed consideration. These consultations will have a focus on Aboriginal peoples' right to self-determination and the exercise of authority within the child protection system.<sup>43</sup>

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<sup>38</sup> [Family is culture: independent review into Aboriginal out-of-home care in NSW](#), October 2019, p xxxix-xi

<sup>39</sup> DCJ, [Family is culture: progress report](#), 25 November 2020

<sup>40</sup> [Submission 13](#), p 2; [Submission 53](#), Aboriginal Legal Services NSW/ACT Ltd, p 10; [Submission 54](#), AbSec – NSW Child, Family and Community Peak Aboriginal Corporation, p 38; [Submission 59](#), pp 9-10; [Submission 42](#), p 8.

<sup>41</sup> NSW Parliament, [Children and Young Persons \(Care and Protection\) Amendment \(Family Is Culture Review\) Bill 2021](#), viewed 10 November 2022.

<sup>42</sup> NSW Parliament, [Children and Young Persons \(Care and Protection\) Amendment \(Family is Culture\) Bill 2022](#), viewed 10 November 2022

<sup>43</sup> New South Wales, Legislative Council, [Parliamentary Debates](#), 13 October 2022 (Natasha MacLaren-Jones, Minister for Families and Communities, and Minister for Disability Services).

- 1.35 The Committee notes that Aboriginal children continue to be over-represented in the OOHC system. As of 31 December 2021 there were 6783 Aboriginal children in out-of-home care, representing 44 per cent of children in OOHC.<sup>44</sup>
- 1.36 The Committee recommends that the NSW Government publish an annual, comprehensive update on its response to the *Family is Culture* recommendations. Such an update should: indicate the progress made on any consultations undertaken with Aboriginal communities and stakeholders, including Aboriginal children and young people involved in the child protection system; provide specific timeframes for responding to outstanding recommendations; and address all 125 recommendations made in the *Family Is Culture* report.

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<sup>44</sup> Ms Czech, [Transcript of evidence](#), 2 March 2022, p 37 (Portfolio Committee No. 5, Regional NSW and Stronger Communities).



## Chapter Two – The impacts of cross-jurisdictional issues between the NSW child protection system and the Federal Circuit and Family Court of Australia

### Introduction

- 2.1 As noted in Chapter One, the Committee elected to narrow the focus of this inquiry to cross-jurisdictional issues between the NSW child protection system and Federal Circuit and Family Court of Australia (FCFCOA), and other related matters.
- 2.2 In 2020 the Committee received four submissions that described the experiences of children and parents, who are victim-survivors of domestic and family violence, and have experienced significant difficulties with the family law system.<sup>45</sup>
- 2.3 The Committee was told about instances where one parent has been alleged to have perpetrated child abuse or family violence by a child or the other parent (a 'protective parent'). These allegations may be substantiated and recorded by NSW-based agencies charged with protecting children, predominantly the NSW Department of Communities and Justice (DCJ). Yet risks of significant harm to children may not be adequately communicated, or given adequate consideration, during court proceedings in the federal family law system.
- 2.4 Stakeholders told us that this has led to unsafe outcomes for children and families, where children are placed in the care of a parent, often their father, who has abused them. A submission from Ms Jane Matts, CEO, Sisters In Law Project, summarised the numerous issues she has observed during her advocacy work for mothers who have had this experience. She submitted that:

The Family Court jurisdiction has been known to provide unsupervised parental responsibility to convicted child sex offenders in opposition to what would be good practice in state child protection practice...

In Family Court/Federal Circuit cross jurisdictional issues have not adequately managed concerns raised by children in a manner that has weight. Children are not directly represented, where documented claims of child sex abuse, domestic violence and neglect are not having their disclosures of abuse and fears translated into 'child safe' outcomes.<sup>46</sup>

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<sup>45</sup> [Submission 14](#), Australian Association of Social Workers, p 24; [Submission 24](#), Domestic Violence NSW, pp 24-25, 36-37; [Submission 26](#), Women's Safety NSW, pp 43-47; [Submission 60](#), Ms Jane Matts.

<sup>46</sup> [Submission 60](#), pp 3, 4.

- 2.5 In addition to these submissions, the Committee's decision to focus the inquiry on these cross-jurisdictional issues was informed by recent inquiries that have been conducted at a federal level. These include:
- the House of Representatives Standing Committee on Social Policy and Legal Affairs' 2017 inquiry into a better family law system to support and protect those affected by family violence<sup>47</sup>
  - the Australian Law Reform Commission's 2019 *Family Law for the Future: An Inquiry into the Family Law System* report<sup>48</sup>
  - reports tabled by the Joint Select Committee on Australia's Family Law System between 2019 and 2021.<sup>49</sup>
- 2.6 The Committee held a public hearing on 12 August 2022. It heard evidence from witnesses who work with children and protective parents who have been affected by cross-jurisdictional issues between the NSW child protection system and the family law system, as well as academic, legal services and government stakeholders.
- 2.7 This chapter explores the misalignment of the family law and child protection jurisdictions, and how children and protective parents are impacted by conflicts between the two jurisdictions.
- 2.8 Chapter three then examines mechanisms that mediate information exchange between DCJ and the FCFCOA, the limitations that stakeholders observed in how children's best interests are represented in family law matters where there are risks to their safety, and recent reforms that are being implemented at a national level.

## The misalignment of the family law and child protection jurisdictions

### Finding 1

**The family law system and NSW child protection system are often misaligned in family law matters where child abuse or domestic and family violence has occurred.**

- 2.9 The role of the Federal Circuit and Family Court of Australia (FCFCOA) is to make determinations in family law matters such as guardianship of children and division of property. The *Family Law Act 1975* (Cth) is a federal law that is typically invoked when there is a dispute between parents.<sup>50</sup>
- 2.10 State and territory regimes are responsible for child protection and family violence laws. Proceedings to determine whether a child is in need of care or

<sup>47</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, [A better family law system to support and protect those affected by family violence](#), Parliament of Australia, Canberra, December 2017.

<sup>48</sup> Australian Law Reform Commission, [Family law for the future: an inquiry into the family law system](#), report 135, ALRC, Brisbane, March 2019.

<sup>49</sup> Parliament of Australia, [Joint Select Committee on Australia's Family Law System](#), viewed 10 November 2022.

<sup>50</sup> Australian Law Reform Commission & NSW Law Reform Commission, [Family violence: a national legal response](#), ALRC report 114, NSWLRC report 128, November 2010, p 903.

protection are usually brought under state and territory laws and are almost always initiated by a child welfare agency. Care and protection matters are heard in the Children's Court (NSW). When responding to risk of significant harm reports, the child protection services provided by the NSW Department of Communities and Justice are governed by statutory responsibilities under the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*.<sup>51</sup>

- 2.11 It is common for applications under the *Family Law Act* to raise issues of child protection and family violence. The Committee heard evidence that, in a sample of families involved in applications for enforcement in the FCFCOA, around one quarter had had previous engagement with the state child protection system.<sup>52</sup>
- 2.12 This trend is also evident in data collected from the FCFCOA's Notice of Child Abuse, Family Violence and Risk form. From 1 November 2020 to 30 June 2021, 12 420 notices were filed in the Federal Circuit Court. Of those:
- 55 per cent of parties alleged a child had been abused or was at risk of abuse
  - 64 per cent of parties alleged that they had experienced family violence
  - 57 per cent of parties alleged a child had experienced family violence.<sup>53</sup>
- 2.13 In its 2019 inquiry into the family law system, the Australian Law Reform Commission (ALRC) identified 'structural and systemic difficulties' in the system, including an inadequate structure for 'collaboration, coordination, and integration between the family law system and other Commonwealth, state, and territory systems, including...child protection systems'.<sup>54</sup> It argued the Australian family law system, in its current form, is not consistently protecting children from harm. This view was broadly supported by inquiry participants.<sup>55</sup>
- 2.14 Section 60CC (2) of the *Family Law Act* sets out the primary considerations for determining a child's best interests. Women's Safety NSW argued that while the Act stipulates that greater weight is to be given to the child's protection needs than to the benefits of having a relationship with both parents, 'this does not always occur'.<sup>56</sup>
- 2.15 Domestic Violence NSW (DVNSW) submitted that the FCFCOA appears to prioritise a co-parenting agenda over children's safety.<sup>57</sup> The Committee heard several examples of where the Court has allowed a parent, often a child's father,

<sup>51</sup> [Tabled document](#), NSW Department of Communities and Justice, Statement of Rachael Ward, 12 August 2022, p 3.

<sup>52</sup> Dr Rae Kaspiew, Research Director, Systems and Services, Australian Institute of Family Studies, [Transcript of evidence](#), 12 August 2022, p 23.

<sup>53</sup> Federal Circuit Court of Australia, [Annual Report 2020-2021](#), Federal Court of Australia, Canberra, p 38.

<sup>54</sup> Australian Law Reform Commission, [Family Law for the Future – An inquiry into the Family Law \(Summary Report\)](#), March 2019, pp 23, 28.

<sup>55</sup> [Submission 24](#), pp 36-37; [Submission 26](#), pp 45-46; [Submission 60](#), p 3; Ms Nicolette Norris, Founder, National Child Protection Alliance of Australia, [Transcript of evidence](#), 12 August 2022 pp 28-29; Mr Adam Washbourne, CEO, Fighters Against Child Abuse Australia, [Transcript of evidence](#), 12 August 2022, p 30.

<sup>56</sup> [Submission 26](#), p 46.

<sup>57</sup> [Submission 24](#), p 37.

to have contact with the child in spite of child protection risks that have been identified involving that parent.<sup>58</sup>

- 2.16 For example, Ms Kerrie Thompson, Member, Sisters in Law Project and CEO VOCAL, told the Committee:
- In every case that I've seen, over the 10 years that I've worked at VOCAL, when a mother has raised allegations of child sexual abuse, the father has been awarded full custody with the mother having limited contact. In every decision the mother has been labelled "vindictive" and psychologically harming the child by raising the allegations of child sexual abuse.<sup>59</sup>
- 2.17 A submission from Lou's Place described the legal challenges faced by mothers and children who have experienced domestic and family violence. Lou's Place suggested that consideration should always be given to children's views, irrespective of their age, and that this should override parents' rights for contact. Often the system fails to hold perpetrators of family violence accountable.<sup>60</sup>
- 2.18 The Committee heard that the FCFCOA may be ill-equipped to investigate allegations of child safety risks and family violence that arise in family law proceedings, and is dependent on information from state and territory courts and agencies.<sup>61</sup>
- 2.19 The FCFCOA's limited ability to investigate such allegations is compounded by the fact that there are currently 'significant barriers to information sharing' between the two jurisdictions.<sup>62</sup> This was identified in the ALRC's inquiry into the federal family law system, and it was identified by witnesses who gave evidence to the inquiry.<sup>63</sup> These barriers are a fundamental source of misalignment between the two jurisdictions and can have serious consequences for children's safety (discussed further in chapter three).
- 2.20 In her submission, Ms Jane Matts, CEO, Sisters in Law Project, noted that children identified by a state child protection agency as being at risk of significant harm prior to FCFCOA proceedings had subsequently been ordered to live with identified abusers. Ms Matts suggested that this happens 'routinely', despite a recommendation by the Royal College of Australian and New Zealand

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<sup>58</sup> Ms Renata Field, Manager, Policy, Advocacy and Research, Domestic Violence NSW, [Transcript of evidence](#), 12 August 2022, pp 3, 5; Ms Kerrie Thompson, Member, Sisters in Law Project and CEO, VOCAL, [Transcript of evidence](#), 12 August 2022, p 10; Ms Norris, [Transcript of evidence](#), 12 August 2022, p 29; Mr Washbourne, [Transcript of evidence](#), 12 August 2022, p 30; [Submission 60](#), p 6.

<sup>59</sup> Ms Thompson, [Transcript of evidence](#), 12 August 2022, p 10.

<sup>60</sup> [Submission 6](#), Lou's Place, p 7.

<sup>61</sup> Ms Field, [Transcript of evidence](#), 12 August 2022, p 3; [Answers to supplementary questions](#), Sisters in Law Project, 23 September 2022, p 5.

<sup>62</sup> Australian Law Reform Commission, [Closing the Jurisdictional Gap: A 'Radical' Recommendation](#), p 2, accessed 13 October 2022.

<sup>63</sup> Australian Law Reform Commission, [Closing the Jurisdictional Gap: A 'Radical' Recommendation](#), p 2, accessed 13 October 2022; [Submission 60](#), p 3; Ms Field, [Transcript of evidence](#), 12 August 2022, pp 1-2; Mr Washbourne, [Transcript of evidence](#), 12 August 2022, p 30.

Psychiatrists that children are not removed from a primary attachment in family law proceedings.<sup>64</sup>

- 2.21 DVNSW also told the Committee that the 'collision' between state and federal jurisdictions... can 'see children placed in the care of those identified as a risk by child protection'. DVNSW discussed the murder of Jack and Jennifer Edwards to highlight the potentially devastating consequences of the misalignment of the two jurisdictions (outlined as a case study below).<sup>65</sup>

#### Case study: The Edwards family

Inquiry participants discussed the case of Sydney teenagers Jack and Jennifer Edwards, who were shot and killed by their estranged father, John Edwards, in 2018.<sup>66</sup> John Edwards had a long history of violence towards his domestic partners and children. Jack and Jennifer's mother, Olga Edwards, took her own life five months after the murder of her children.<sup>67</sup>

A 2020 coronial inquest found that significant failings by the independent children's lawyer (ICL) appointed to represent Jack and Jennifer led to the Court ordering weekly contact arrangements with their father. This was in clear opposition to the children's wishes and placed them at risk of harm.<sup>68</sup> DVNSW also noted that risk of significant harm (ROSH) reports from NSW child protection may not have been placed before the Court.<sup>69</sup>

The inquest also concluded that police had failed to carry out reasonable enquiries in response to an allegation of assault reported by Olga Edwards in 2016. The incident was recorded as 'Domestic Violence - No Offence Detected'. The Coroner found that the officer on duty considered the issues 'through the prism of an attempt by Olga to influence family law proceedings, rather than Jack and Jennifer being the victims of three alleged assaults'.<sup>70</sup>

Consequently, that complaint did not appear on a report supplied to the NSW Firearms Registry, which allowed John Edwards to obtain a firearms licence.<sup>71</sup>

The Coroner noted, among other things, a 'clear need for information sharing between the federal family law courts [and] the [NSW Police Force]... in relation to allegations of family violence'.<sup>72</sup>

- 2.22 Stakeholders told us that these cross-jurisdictional issues are not occurring in isolated cases. The Committee heard that they are 'producing inconsistencies in way too many cases' and resulting in poor protection outcomes for children and young people.<sup>73</sup> Ms Pip Rae, Chair, National Child Protection Alliance of Australia, told the Committee that her organisation is currently assisting 16 protective

<sup>64</sup> [Submission 60](#), p 6.

<sup>65</sup> [Submission 24](#), pp 36-37; Ms Field, [Transcript of evidence](#), 12 August 2022, pp 1-3.

<sup>66</sup> Ms Field, [Transcript of evidence](#), 12 August 2022, pp 1-3; Ms Matts, [Transcript of evidence](#), 12 August 2022, p 13.

<sup>67</sup> H Cohen and X Kleinig, [Friends reveal Olga Edwards had 'no hope' after police failure to act on domestic violence reports](#), ABC, 7 April 2021, viewed 21 November 2022.

<sup>68</sup> Coroners Court of NSW, [Inquest into the deaths of John, Jack and Jennifer Edwards](#), Lidcombe, April 2021, accessed 14 October 2022; Ms Field, [Transcript of evidence](#), 12 August 2022, pp 1-2.

<sup>69</sup> [Submission 24](#), pp 36-37.

<sup>70</sup> [Inquest into the deaths of John, Jack and Jennifer Edwards](#), p 69.

<sup>71</sup> [Inquest into the deaths of John, Jack and Jennifer Edwards](#), p 54.

<sup>72</sup> [Inquest into the deaths of John, Jack and Jennifer Edwards](#), p 119.

<sup>73</sup> Ms Field, [Transcript of evidence](#), 12 August 2022, p 2.

parents who have been affected by these issues, and estimate that it has referred 'hundreds' of cases to other organisations in a year.<sup>74</sup>

- 2.23 The statistics from the Federal Circuit Court in paragraph 2.12 indicate that family law disputes commonly involve allegations of child abuse or serious risk of abuse. The Committee also received evidence from Legal Aid stating that, in 2021-22, 51.3% of applications received for family dispute resolution, early resolution assistance and family law answered 'yes' to the question 'Are there any current investigations about child abuse?'<sup>75</sup>
- 2.24 The Committee acknowledges that programs and mechanisms exist to help address cross-jurisdictional issues, for example, the Memorandum of Understanding (MoU) between the Department of Communities and Justice (DCJ, formerly the Department of Community Services) and the FCFCOA, as well as the Family Court's Magellan case management program. The MoU and Magellan program are examined in more detail in chapter three.
- 2.25 The Committee also notes that there have been recent changes to Court processes that may assist in the identification and management of children who are at risk.<sup>76</sup> The Notice of Child Abuse, Family Violence and Risk (outlined in paragraph 2.12) was introduced in October 2020, to assist 'in ensuring the Courts are made aware of any risks alleged to be present in each case as early as possible'.<sup>77</sup>
- 2.26 The FCFCOA also introduced the Lighthouse Project, which aims to shape the Court's response to cases involving family violence and to improve safety for parents and children by, for example, screening cases to identify risks and guiding 'allocation of resources and urgency given to such cases'.<sup>78</sup>
- 2.27 However, stakeholders emphasised that there remains considerable scope for improvement in how family law matters involving allegations of child abuse or family violence are managed between the NSW child protection system and FCFCOA.

## The impacts of cross-jurisdictional issues on children and protective parents

### Recommendation 4

**That the NSW Department of Communities and Justice develop mental health and other support services (including social workers as support persons) for children and protective parents who have experienced abuse by a parent and have matters in the family law system.**

<sup>74</sup> Ms Pip Rae, Chair, National Child Protection Alliance of Australia, [Transcript of evidence](#), 12 August 2022, p 31.

<sup>75</sup> [Answers to supplementary questions](#), Legal Aid NSW, 9 September 2022, p 1.

<sup>76</sup> [Answers to written questions](#), Federal Family and Circuit Court of Australia, 2 September 2022, p 2; Ms Matts, [Transcript of evidence](#), 12 August 2022, p 13; Dr Rachel Carson, Executive Manager, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies, [Transcript of evidence](#), 12 August 2022, p 21.

<sup>77</sup> [Answers to written questions](#), Federal Family and Circuit Court of Australia, 2 September 2022, p 2.

<sup>78</sup> [Answers to written questions](#), Federal Family and Circuit Court of Australia, 2 September 2022, p 2.

## Recommendation 5

**That the NSW Government provide specific financial support for protective parents engaged with the family law system, and/or increase funding for legal services that support these parents.**

- 2.28 As discussed above, the Committee heard evidence that abusive parents may retain contact with a child through Family Court orders. Conversely, parents who try to protect their children from abuse committed by the other parent may actually be prevented from seeing their children, or restricted in how much contact they can have with their children.
- 2.29 The Committee heard that, for children, young people and protective parents, the misalignment of the child protection and family law jurisdictions can have significant impacts. This includes the risk of the family courts 'restor[ing] a relationship that has been affected by family violence, in favour of the abuser.'<sup>79</sup>
- 2.30 The Committee also heard that domestic and family violence can escalate after court proceedings have commenced.<sup>80</sup> The Sisters in Law Project observed that some children involved in family law proceedings can become victims of retribution and are less inclined to report further abuse.<sup>81</sup>
- 2.31 Other impacts include stress and trauma resulting from:
- children and young people being denied a voice in court proceedings that affect them<sup>82</sup>
  - protective parents being accused of lying or coaching children to give misleading evidence<sup>83</sup>
  - significant financial stress for parents who have prolonged engagements with the family law system.<sup>84</sup>
- 2.32 For these reasons, the Committee recommends that greater mental health, legal, financial and other supports be provided to children and protective parents who have experienced abuse and are engaged with the family law system.

### Denying children a voice in family law proceedings

- 2.33 Domestic Violence NSW (DVNSW) told the Committee about the limited research that exists on the experiences of children who are, or have been, the subject of hearings in multiple jurisdictions. There is significant evidence, however, that the family law process can exacerbate fear, distress and trauma for children who

<sup>79</sup> [Submission 24](#), p 36.

<sup>80</sup> [Answers to supplementary questions](#), Sisters in Law Project, 23 September 2022, p 1.

<sup>81</sup> [Answers to supplementary questions](#), Sisters in Law Project, 23 September 2022, p 1.

<sup>82</sup> [Answers to supplementary questions](#), Sisters in Law Project, 23 September 2022, p 1; [Answers to supplementary questions](#), Victims of Crime Assistance League (VOCAL), 12 September 2022, p 1.

<sup>83</sup> Ms Norris, [Transcript of evidence](#), 12 August 2022, p 28; Ms Thompson, [Transcript of evidence](#), 12 August 2022, p 11; Ms Matts, [Transcript of evidence](#), 12 August 2022, p 11.

<sup>84</sup> Ms Thompson, [Transcript of evidence](#), 12 August 2022, p 11; Ms Matts, [Transcript of evidence](#), 12 August 2022, p 10; Ms Norris, [Transcript of evidence](#), 12 August 2022, p 32.



have experienced abuse. DVNSW cited the example of victim-survivor, Anna, who described her childhood experiences with the family court:

...it really affected us, because everyone was always angry, and [the family court] just made everyone fight all the time. And it was scary going to my dad's house, and my brother would get really traumatised about going, and try and hide, and [it] was just—trauma.<sup>85</sup>

- 2.34 Children will not have faith in a system that fails to heed their wishes and concerns.<sup>86</sup> Stakeholders told the Committee that, if children do not have their voices heard in legal proceedings that affect them, they can experience hurt, disillusionment and trauma, because 'their disclosures of harm were not validated, acknowledged or acted upon.'<sup>87</sup> In her answers to supplementary questions, Ms Kerrie Thompson, Sisters In Law Project and VOCAL, told the Committee:

In my experience, when children are interviewed by child protection authorities they are encouraged to tell the truth about what they have experienced. When a child's experiences of violence and abuse are minimised and ignored by professional agencies, the impact on a child's psychological development, specifically self-worth, can be devastating.<sup>88</sup>

- 2.35 Ms Zoë Robinson, Advocate for Children and Young People, told the Committee that it is important for children involved in legal proceedings to feel heard and to have opportunities for participation.<sup>89</sup> This report discusses the representation of children's best interests in court proceedings further in chapter three.

### Accusations of 'coaching' against protective parents

- 2.36 Several inquiry participants told the Committee that protective parents are subject to victim blaming and accusations of 'coaching' children to lie to the court or police.<sup>90</sup> Witnesses from the Sisters in Law Project told us that legal professionals may use derogatory terms for mothers who raise allegations of child abuse during family law proceedings, such as referring to them as the 'mad mothers clubs' or suggesting that they suffer from 'factitious disorder'.<sup>91</sup>
- 2.37 The Committee heard that these are widespread perceptions in the family law system. Moreover, the belief that mothers are coaching children is equally impactful on children's ability to have their experiences of abuse acknowledged during proceedings. Ms Nicolette Norris, Founder, National Child Protection Alliance, told the Committee:

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<sup>85</sup> [Answers to supplementary questions](#), Domestic Violence NSW, 9 September 2022, p 1.

<sup>86</sup> [Answers to supplementary questions](#), Sisters in Law Project, 23 September 2022, p 1.

<sup>87</sup> [Answers to supplementary questions](#), Victims of Crime Assistance League (Hunter), 12 September 2022, p 1.

<sup>88</sup> [Answers to supplementary questions](#), Victims of Crime Assistance League (Hunter), 12 September 2022, p 1.

<sup>89</sup> Ms Zoe Robinson, Advocate for Children and Young People, Office of the Advocate for Children and Young People, [Transcript of evidence](#), 12 August 2022, p 35.

<sup>90</sup> Ms Norris, [Transcript of evidence](#), 12 August 2022, p 28; Ms Thompson, [Transcript of evidence](#), 12 August 2022, p 11.

<sup>91</sup> Ms Matts, [Transcript of evidence](#), 12 August 2022, p 11; Ms Thomson, [Transcript of evidence](#), 12 August 2022, p 11.



That mothers lie and coach the child to lie has taken over, completely. It is an unshakeable meme, and we firstly have to think about how we can destroy that meme, because so long as that happens those children are not going to be believed...<sup>92</sup>

2.38 In cases where risks of significant harm have been established by state child protection authorities, a protective parent may withhold contact from an abusive parent to protect their child and abide by NSW child protection legislative requirements. However, inquiry participants emphasised that FCFCOA orders may override state-based child protection, and that actions taken by a protective parent to keep their child safe can, in such instances, be construed by the Family Court as 'psychological abuse' or 'oppositional to a relationship' between a child and the other parent.<sup>93</sup>

2.39 If protective actions from a parent are perceived by the Court this way, orders from the Family Court may eventually prevent a protective parent from seeing their children. The National Child Protection Alliance (NCPA) is a non-profit organisation that supports children and protective parents involved in Family Court matters.<sup>94</sup> During the hearing, witnesses from the NCPA told us about a recent case involving one such parent:

...she'd had her children removed yesterday, after a 10-minute interview with an ICL who decided that after five years of sole responsibility with the parent, the child should go and live with the father, and have no contact with the mother for the next 10 weeks.<sup>95</sup>

#### **Family law disputes and financial pressure**

2.40 Stakeholders also told the Committee that protective parents can experience extreme financial pressure due to high legal costs. This can lead to situations of legal systems abuse, with abusers seeking to coerce or to assert control by exploiting their victims' financial disadvantage. The Committee heard that, in some instances, protective parents are less inclined to disclose risk to their children for fear of a lengthy and financially crippling legal process. They will instead seek out other protective measures.<sup>96</sup> In her evidence to the Committee, Ms Jane Matts, Sisters In Law Project, said:

This is a system that is geared not for women. This is a system that's geared towards people who have a lot of money.<sup>97</sup>

2.41 The Australian Association of Social Workers submitted that parents with adequate financial resources may hire lawyers that undermine the work of social workers.

...it is not uncommon for the social worker to have spent a lot of time constructing a report that represents the best interests of the child to not see that parent, to

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<sup>92</sup> Ms Norris, [Transcript of evidence](#), 12 August 2022, p 28.

<sup>93</sup> [Submission 60](#), p 3; [Submission 24](#), p 36.

<sup>94</sup> NCPA, [National Child Protection Alliance](#), accessed 14 October 2022.

<sup>95</sup> Ms Pip Rae, Chair, National Child Protection Alliance of Australia, [Transcript of evidence](#), 12 August 2022, p 31.

<sup>96</sup> Ms Thompson, [Transcript of evidence](#), 12 August 2022, p 11.

<sup>97</sup> Ms Matts, [Transcript of evidence](#), 12 August 2022, p 10.

discover that the abusive parent (i.e. father) has been able to afford a lawyer who aggressively discredits the social worker / expert witness.<sup>98</sup>

2.42 Parents should therefore have early access to legal advice and assistance in both family law and care matters. In terms of broader legal representation, the Women's Legal Service emphasised that it is also 'vital' for government to fund community legal services, Aboriginal and Torres Strait Islander community-controlled organisations and specialist women's services, in addition to funding Legal Aid. This is important given:

- the prevalence of family violence in child protection matters
- that the experience of family violence is often gendered
- there is mistrust in First Nations communities toward government and government services
- refugee and migrant communities may also be fearful or sceptical of accessing government services.<sup>99</sup>

2.43 The Aboriginal Legal Service (ALS) also underscored the issue of funding availability, noting that there is a 'shortage of culturally appropriate legal services and processes' for Aboriginal people. The ALS has insufficient funding to have family law solicitors in many regions with limited access to family law services.<sup>100</sup>

2.44 Domestic Violence NSW (DVNSW) currently work with the Women's Domestic Violence Court Advocacy Services (WDVCAS) program, which provides legal services to women and is administered by Legal Aid NSW.<sup>101</sup> DVNSW told the Committee that WDVCAS experiences a very high level of demand and struggles to navigate working across two jurisdictions.

WDVCASs experiences a very high number of protective mothers in this area. Unfortunately, their capacity to assist clients in these matters is incredibly limited. Their main referral point is back to the client's family lawyer or to the federally funded co-located service, the Family Advocacy and Support Service, which is currently being expanded state-wide. WDVCAS staff often report feeling very powerless when clients are involved in hearings in multiple jurisdictions, as there are incredibly limited opportunities to assist other than emotional support.<sup>102</sup>

### **More support is needed for at-risk children and protective parents**

2.45 The Committee recognises that children and protective parents who have experienced abuse are vulnerable to further stress, fear and trauma when subject to family law proceedings. As a result, the Committee recommends that DCJ

<sup>98</sup> [Submission 14](#), p 24.

<sup>99</sup> [Submission 40](#), Women's Legal Service NSW, pp 4-5.

<sup>100</sup> [Answers to supplementary questions](#), Aboriginal Legal Service (NSW/ACT) Ltd, 14 September 2022, p 5.

<sup>101</sup> Domestic Violence NSW, [Policies and Programs](#), viewed 28 October 2022; Legal Aid NSW, [Women's Domestic Violence Court Advocacy Program](#), viewed 28 October 2022; Ms Field, [Transcript of evidence](#), 12 August 2022, p 6.

<sup>102</sup> [Answers to supplementary questions](#), Domestic Violence NSW, 9 September 2022, p 2.

develop targeted and appropriate mental health and other supports for the benefit of this uniquely disadvantaged cohort.

- 2.46 As an example of potential mental health supports that could be provided, FAAAA recommended that the NSW Government support survivors of child abuse through funding for non-traditional counselling methods, art and music therapy, and movement-based healing.<sup>103</sup>
- 2.47 The Committee also recommends providing financial support for protective parents engaged with the family law system. This could include direct financial assistance or grants for mothers who are trying to protect their children from abuse during family law proceedings. Alternatively, increased funding could be provided for legal services that support these parents. This would help to mitigate power imbalances that result from one parent having more financial security than the other.

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<sup>103</sup> [Answers to supplementary questions](#), Fighters Against Child Abuse Australia, 12 September 2022, pp 2-3.

## Chapter Three – Improving outcomes for children and protective parents in the Federal Circuit and Family Court of Australia

### Introduction

- 3.1 The Committee heard of numerous ways that adverse impacts of cross-jurisdictional issues between the state child protection system and Federal Circuit and Family Court of Australia (FCFCOA) could be reduced.
- 3.2 This chapter outlines how the NSW Department of Communities and Justice (DCJ) engages and interacts with the FCFCOA. It focuses on information exchange between these two jurisdictions and two mechanisms that inform family law proceedings where a parent is alleged to have perpetrated child abuse or family violence – a Memorandum of Understanding between DCJ and the FCFCOA, and the Magellan program.
- 3.3 The chapter also examines how children's interests are represented in family law proceedings where decisions will be made about them. The Committee was particularly interested in the professional practice of independent children's lawyers and the training or guidance that is provided to them when working with family law matters involving child abuse or family violence.
- 3.4 Further, the chapter examines recent reforms from the Australian Government, including the 2023 introduction of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems, and the 2020-22 trial of child protection and policing officials that are co-located in NSW registries of the FCFCOA.
- 3.5 The report concludes with further considerations of reform pathways, in particular whether the jurisdictional gap could be minimised by hearing family law and child protection matters in the same jurisdiction.

### **The NSW Department of Communities and Justice and its engagements with the Federal Circuit and Family Court of Australia**

#### **Recommendation 6**

**That the NSW Attorney General conducts a review of the Memorandum of Understanding between the NSW Department of Communities and Justice and the Federal Circuit and Family Court of Australia, with the aim of better realising its purpose of aligning the jurisdictions in order to meet the care and protection needs of children.**

#### **Recommendation 7**

**That the NSW Government commission an independent evaluation of the Magellan Program.**

## Recommendation 8

**That the NSW Department of Communities and Justice conduct a thorough review of its protocols for supporting children who have experienced or are experiencing abuse and are the subject of proceedings in the family court, including the mechanisms by which it engages with the Federal Circuit and Family Court of Australia.**

## Recommendation 9

**That the NSW Department of Communities and Justice (DCJ) initiate a review of the information sharing agreement between DCJ and Legal Aid NSW, with the aim of ensuring that it remains fit for purpose.**

- 3.6 DCJ is party to a Memorandum of Understanding (MoU) with the FCFCOA, which was established between the former Family Court of Australia (FCoA) and former NSW Department of Community Services (DoCS). The MoU acknowledges the overlap between the two jurisdictions and the importance of two-way information exchange.
- 3.7 The MoU represents the 'present understanding between DoCS and FCoA about how each will deal with contacts from the other, in general terms, in cases where children and young people are the subject of proceedings before FCoA and issues about the safety, welfare and wellbeing of those children and young people arise in those proceedings.'<sup>104</sup>
- 3.8 The Committee received evidence that the MoU was prepared in 2005-6, and has continued to guide interactions between DCJ and the FCFCOA since that time.<sup>105</sup> Given the age of the document, and evidence from this inquiry that suggests that numerous cross-jurisdictional issues have persisted in the time since it was introduced, there is a strong case for reviewing the MoU's terms. This would help to better realise its purpose of aligning the jurisdictions in order to meet the care and protection needs of children.
- 3.9 The Committee notes that the information sharing agreement between DCJ and Legal Aid NSW would also benefit from review to see whether it remains fit for purpose. In evidence provided to the Committee, Legal Aid NSW advised that there 'are times where responses for requests for information are not responded to and times where there are limitations on the information that is provided because of the limitations imposed by the agreement'.<sup>106</sup>
- 3.10 The MoU and the Magellan case management program are designed to facilitate the flow of information between DCJ and the FCFCOA. This section discusses issues related to those instruments. It also considers the role of DCJ and the NSW Police Force in handling reports of abuse and ensuring the protection of at-risk children.

<sup>104</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, 13 September 2022, pp 4-18.

<sup>105</sup> [Answers to questions on notice](#), Domestic Violence NSW, 9 September 2022, p 2.

<sup>106</sup> [Answers to supplementary questions](#), Legal Aid NSW, 9 September 2022, p 5.

**The Memorandum of Understanding and DCJ engagements with the FCFCOA**

- 3.11 Inquiry participants submitted that several aspects of the MoU warrant evaluation.
- 3.12 Under section 69ZK(1) of the *Family Law Act*, the court cannot make an order in relation to a child or young person under the care of a person under a child welfare law.<sup>107</sup> DVNSW argued that any child found by a state child protection agency to be at risk of significant harm should not be exposed to an adversarial family law system until it is determined that it is safe for the child. Moreover, safety clearance should be provided by the state agency on the basis that the Family Court does not have investigative powers. DVNSW stated that this should be reflected in the MoU.<sup>108</sup>
- 3.13 DCJ may be invited to intervene in a matter before the FCFCOA under section 91B of the *Family Law Act* and can respond in one of the following ways:
- bringing a care application in the Children’s Court to protect the child or young person
  - intervening as a party to the proceedings in the FCFCOA
  - indicating that it does not intend to intervene but has information that may assist the FCFCOA
  - indicating that it does not intend to take further action and has no information to assist the FCFCOA.<sup>109</sup>
- 3.14 Ms Michelle Hayward, Managing Solicitor at the Aboriginal Legal Service (ALS), told the Committee that she has observed 'a very inconsistent response' from DCJ when it comes to requests for intervention under section 91B. Ms Hayward claimed that in 15 years of legal practice, she has witnessed about three cases in the family law jurisdiction that have had departmental involvement.<sup>110</sup> The ALS suggested that 'the FCFCOA's capacity to reach safe decisions in regard to child abuse risks would be assisted by greater participation [by] DCJ in family law proceedings.'<sup>111</sup>
- 3.15 DCJ advised the Committee that it briefed the Crown Solicitor to represent the Secretary in 24 intervention matters in 2020, 18 intervention matters in 2021 and ten intervention matters, to date, in 2022.<sup>112</sup>

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<sup>107</sup> [Family Law Act 1975](#) (Cth), pt 7, div 12, s 69ZK, para 1.

<sup>108</sup> Ms Field, [Transcript of evidence](#), 12 August 2022, p 3; [Answers to questions on notice](#), Domestic Violence NSW, p 3.

<sup>109</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, 13 September 2022, pp 23.

<sup>110</sup> Ms Michelle Hayward, Managing Solicitor, Family Law Practice, Aboriginal Legal Service (NSW/ACT), [Transcript of evidence](#), 12 August 2022, p 27.

<sup>111</sup> [Answers to supplementary questions](#), Aboriginal Legal Service, 14 September 2022, p 3.

<sup>112</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, 13 September 2022, p 1.

- 3.16 The Committee notes, however, that under section 248 of the *Children and Young Persons (Care and Protection) Act 1998*, DCJ may also proactively provide information to the FCFCOA, which DCJ advises it does 'often'.<sup>113</sup>

### **The Magellan program and information sharing between DCJ and the FCFCOA**

- 3.17 The Committee also heard about the *Protocol between the Family Court of Australia and NSW Department of Community Services* ('the Protocol'), which, in addition to the MoU, was established to facilitate co-ordination and information sharing between the two jurisdictions.<sup>114</sup>
- 3.18 A key element of the *Protocol* is the Magellan Program.<sup>115</sup> 'Magellan cases' involve serious allegations of abuse of a child and are subject to a special case management pathway. The FCFCOA told the Committee that 'a crucial aspect [of Magellan case management] is strong interagency coordination' and sharing of 'high-quality information'.<sup>116</sup>
- 3.19 Where a case is identified for the Magellan pathway, the Court will make an order for DCJ to prepare a Magellan Report. That report includes the following information:
- a summary of child protection history and details of all reports and assessments
  - conclusions reached from reports and assessments that inform case planning and decision making
  - DCJ's responses to matters raised in the Magellan Order
  - DCJ's assessment as to whether the child or children are at risk of significant harm.<sup>117</sup>
- 3.20 DCJ advised the Committee that it received and acted on 19 Magellan orders in 2020 and 27 Magellan orders in 2021, and had received 12 Magellan orders by August 2022.<sup>118</sup>
- 3.21 The Committee received evidence to suggest that information sharing and interagency coordination between the jurisdictions continues to be problematic. DVNSW submitted that the FCFCOA is failing to incorporate risk notices and Risk of Significant Harm reports in Magellan cases and called on the Attorney General to advocate for a public review of the Magellan program.<sup>119</sup> Ms Jane Matts, CEO,

<sup>113</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, 13 September 2022, p 2.

<sup>114</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, 13 September 2022, pp 19-30.

<sup>115</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, 13 September 2022, pp 29-30.

<sup>116</sup> [Answers to written questions](#), Federal Circuit and Family Court of Australia, 2 September 2022, p 3.

<sup>117</sup> NSW Communities & Justice, [Factsheet: Magellan Program](#), p 1, viewed 18 October 2022.

<sup>118</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, 13 September 2022, p 1.

<sup>119</sup> [Submission 24](#), pp 36-37; [Answers to questions on notice](#), Domestic Violence NSW, 7 September 2022, p 4

Sisters In Law Project, submitted that the Magellan program and 'Magellan Manual' should be reviewed with 'public scrutiny... applied to the process'.<sup>120</sup>

- 3.22 The Committee heard evidence that once a case involving an allegation of child abuse enters the Family Court it 'literally leaves the state watch', as there is a perception the child's welfare is protected.<sup>121</sup> DCJ, however, indicated that it can respond to a Risk of Significant Harm report if a matter is before the FCFCOA. Whether a case remains open would depend on the outcome of an assessment and the casework response required to manage risks.<sup>122</sup>
- 3.23 The Committee also heard that DCJ documents subpoenaed by the court may be so heavily redacted they are rendered 'pointless' and do not help the court to make accurate determinations of risk.<sup>123</sup> These documents are redacted by DCJ to comply with section 29(1)(f) of the *Children and Young Persons (Care and Protection) Act 1998*, which prohibits disclosing the identity of an individual who has made a report. However, if evidence is deemed to be of critical importance to proceedings, the court may provide leave for DCJ to supply this information.<sup>124</sup>
- 3.24 The Committee acknowledges the work underway to improve the exchange of information between DCJ and the FCFCOA. Of particular note is the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* (the National Framework), which will be operational from 1 January 2023.<sup>125</sup> These recent national reforms are discussed further below (at paragraph 3.83).
- 3.25 The Committee notes that there may be instances where the operation of privacy requirements under the *Children and Young Persons (Care and Protection) Act 1998* and federal privacy legislation may hinder the sharing of child protection / family violence information between DCJ and FCFCOA.<sup>126</sup> This should be monitored as part of the reforms and implementation of the National Strategic Framework for Information Sharing.
- 3.26 The Committee understands that the last review of the Magellan case-management model took place in 2007 and was led by Dr Daryl Higgins, a General Manager at the Australian Institute of Family Studies.<sup>127</sup> While the review found that Magellan protocols were generally seen as an improvement on the Court's usual case-management procedures, it should be noted that participation in the study was limited to Court personnel and other professionals involved in Family Court cases that involve allegations of physical and sexual abuse. It did not

<sup>120</sup> Ms Matts, [Transcript of evidence](#), 12 August 2022, p 12; [Submission 60](#), p 7.

<sup>121</sup> Ms Norris, [Transcript of evidence](#), 12 August 2022, p 29, 31.

<sup>122</sup> [Answers to supplementary questions](#), Department of Communities and Justice, 9 September 2022, p 3.

<sup>123</sup> Ms Thompson, [Transcript of evidence](#), 12 August 2022, p 12.

<sup>124</sup> [Answers to supplementary questions](#), Department of Communities and Justice, 9 September 2022, p 2.

<sup>125</sup> Ms Simone Czech, Deputy Secretary, Child Protection and Permanency, District and Youth Justice Services, New South Wales Department of Communities and Justice, [Transcript of evidence](#), 12 August 2022, p 34.

<sup>126</sup> [Answers to questions on notice](#), The Hon. Natasha Maclaren-Jones, Minister for Family and Community Services, 26 September 2022, p 7 (Portfolio Committee No. 5, Regional NSW and Stronger Communities).

<sup>127</sup> Dr Daryl Higgins, [Cooperation and Coordination: An evaluation of the Family Court of Australia's Magellan case-management model](#), 2007, viewed 18 October 2022; [Submission 60](#), page 5; [Answers to written questions](#), Federal Circuit and Family Court of Australia, 2 September 2022, page 3.



consider the views of children and parents, the program's key stakeholders, nor their longer-term mental health outcomes.<sup>128</sup> This was identified as the study's 'most significant' limitation.<sup>129</sup>

- 3.27 In view of the time that has elapsed since Dr Higgins' review, and notwithstanding some of the positive initiatives underway to improve two-way information sharing, the Committee considers that a detailed, independent evaluation of the Magellan program, as it pertains to children and families in NSW, may help to address any deficiencies in the Magellan case-management model and restore confidence within the legal and community services sector.

### **Supporting the NSW Police Force in managing reports of abuse or violence that involve family law considerations**

#### **Recommendation 10**

**That the NSW Department of Communities and Justice work with the NSW Police Force to develop training and guidance for officers working with families with child protection and family violence issues that are subject to proceedings in the family law system.**

- 3.28 The adequacy of the NSW Police Force's resources and capabilities to respond to allegations of child abuse, particularly where the allegation involves a dispute before the Family Court, was called into question by some stakeholders.
- 3.29 The Committee notes that the Joint Child Protection Response Program (JCPRP) is delivered by a tripartite team comprising DCJ, the NSW Police Force (NSWPF) and NSW Health. The JCPRP has been established to provide a coordinated safety, criminal justice and health response for children and young people in NSW alleged to have experienced serious abuse.<sup>130</sup>
- 3.30 Ms Simone Czech, Deputy Secretary, Child Protection and Permanency, District and Youth Justice Services, DCJ, told the Committee the JCPRP has been 'incredibly effective' and 'successful', particularly in terms of promoting good interviewing technique, gathering evidence to support prosecution and ensuring a focus on children's well-being.<sup>131</sup>
- 3.31 Where a matter is referred to the JCPRP, police will typically conduct an interview with the child or young person jointly with a child protection caseworker.<sup>132</sup>
- 3.32 However, the Committee also heard evidence that 'police are not adequately trained in interviewing children' and that this is 'minimising child disclosures'.<sup>133</sup>

<sup>128</sup> [Answers to written questions](#), Federal Circuit and Family Court of Australia, 2 September 2022, page 3; [Cooperation and Coordination: An evaluation of the Family Court of Australia's Magellan case-management model](#), p 182.

<sup>129</sup> [Cooperation and Coordination: An evaluation of the Family Court of Australia's Magellan case-management model](#), p 182.

<sup>130</sup> Department of Communities & Justice, [The Joint Child Protection Response Program \(JCPRP\)](#), viewed 19 October 2022.

<sup>131</sup> Ms Czech, [Transcript of evidence](#), 12 August 2022, p 37.

<sup>132</sup> Ms Czech, [Transcript of evidence](#), 12 August 2022, p 37.

<sup>133</sup> Ms Thompson, [Transcript of evidence](#), 12 August 2022, pp 9, 12.

Ms Kerrie Thompson, Sisters In Law Project and VOCAL, observed a tendency by police to accept that parents involved in family law disputes fabricate allegations of abuse against their partners.<sup>134</sup> DVNSW also suggested that 'misidentification of domestic violence and perpetration' by NSW police remains a problem.<sup>135</sup>

- 3.33 Ms Nicolette Norris, Founder, National Child Protection Alliance of Australia, told the Committee that police may be unclear about how to respond in a way that protects children and protective parents when a case involves proceedings in the Family Court.<sup>136</sup>

The power of the Family Court has spilled over to make police think, "We can't touch this case. It doesn't matter." It is very, very difficult when you've got these sorts of things going on, and we're tackling police who say they can't intervene and they can't get enough evidence for a prosecution.<sup>137</sup>

- 3.34 The Committee recommends that DCJ work with the NSW Police Force to develop training and guidance for officers working with families subject to proceedings in the family law system. This would assist police to apply best practice in handling child protection matters, in particular where a matter has not already been referred to the JCPRP.

### **Representing children's best interests in family law matters that involve child protection concerns**

- 3.35 The Committee was interested in the ways that children are represented in family law matters, in cases where there have been allegations of child abuse perpetrated by a parent, or where the child has been exposed to family violence.
- 3.36 The Committee focused on the work of independent children's lawyers (ICLs), who are appointed by family courts to represent children, communicate their views to the court and promote their best interests in court proceedings that affect them. ICLs are often appointed in circumstances where there are allegations of child abuse or family violence.<sup>138</sup> An ICL is appointed in every Magellan case.<sup>139</sup>
- 3.37 Dr Rae Kaspiew, Research Director, Systems and Services, Australian Institute of Family Studies, described the three aspects to the work of an ICL:
- the 'honest broker', which involves managing the litigation
  - the 'participant support role', where the ICL explains proceedings to the child and 'gathers information about their views, if the child wishes to express a view', and then puts their view before the Court

<sup>134</sup> Ms Thompson, [Transcript of evidence](#), 12 August 2022, p 9.

<sup>135</sup> Ms Field, [Transcript of evidence](#), 12 August 2022, p 6.

<sup>136</sup> Ms Norris, [Transcript of evidence](#), 12 August 2022, p 29.

<sup>137</sup> Ms Norris, [Transcript of evidence](#), 12 August 2022, p 31.

<sup>138</sup> R Kaspiew, R Carson, S Moore, J De Maio, J Deblaquiere & B Horsfall, [Independent children's lawyers study: final report \(2<sup>nd</sup> edition\)](#), Australian Institute of Family Studies, Canberra, June 2014, p ix.

<sup>139</sup> [Answers to written questions](#), Federal Circuit and Family Court of Australia, 2 September 2022, p 3.

- the 'court's forensic assistant', in which the ICL collects relevant evidence about a child and presents it to the court.<sup>140</sup>
- 3.38 Several stakeholders told the Committee that they had observed deficiencies in how well ICLs perform these functions.<sup>141</sup>
- 3.39 This section discusses issues that stakeholders identified with the work of ICLs, and with the training and education provided to them and other legal professionals working with children. New methods of hearing children's voices more directly in court proceedings are also discussed.

### Managing legal matters with children and supporting them during proceedings

- 3.40 Section 68LA of the *Family Law Act 1975* (the Act) outlines the role and responsibilities of ICLs. Under the *Family Law Act 1975* (Cth), ICLs are required to form an independent view of what is in a child's best interest, 'based on the evidence that is available to them'.<sup>142</sup>
- 3.41 The *Guidelines for independent children's lawyers* have also been endorsed by the Chief Justice and Chief Judge of the FCFCOA, and note the importance of 'remaining independent, objective and focused on the child's best interests in all dealings throughout the proceedings'.<sup>143</sup> Section 68LA of the Act also states that an ICL must 'act impartially in dealing with the parties to proceedings'.<sup>144</sup>
- 3.42 The Committee heard that ICLs do not always fulfill these responsibilities. Fighters Against Child Abuse Australia (FACAA), argued that ICLs 'say they act for the best wishes of the children, however time and time again they are acting on behalf of whichever parent has the most expensive lawyer'.<sup>145</sup>
- 3.43 Dr Rachel Carson, Executive Manager, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies (AIFS), noted the findings of the 2018 AIFS report, *Children and young people in separated families: Family law system experiences and needs*.<sup>146</sup> Dr Carson described how, of the children and young people in the study who could recall meeting their ICL, almost half of them indicated that the ICL 'acknowledged their views and experiences'.<sup>147</sup>
- 3.44 However, the Committee heard that some ICLs will only make brief or cursory engagements with children. Ms Nicolette Norris, Founder, National Child

<sup>140</sup> Dr Rae Kaspiew, Research Director, Systems and Services, Australian Institute of Family Studies, [Transcript of evidence](#), 12 August 2022, pp 21-22.

<sup>141</sup> Ms Renata Field, Manager, Policy, Advocacy & Research, Domestic Violence NSW, [Transcript of Evidence](#), 12 August 2022, p 3; [Answers to supplementary questions](#), Fighters Against Child Abuse Australia, 12 September 2022, p 1; [Answers to supplementary questions](#), Victims of Crime Assistance League, 12 September 2022, p 2; [Submission 60](#), Ms Jane Matts, p 3.

<sup>142</sup> [Answers to written questions](#), Attorney-General's Department (Cth), 7 September 2022, p 3.

<sup>143</sup> [Answers to written questions](#), Attorney-General's Department (Cth), 7 September 2022, p 3.

<sup>144</sup> [Family Law Act 1975](#) (Cth), pt 7, s 68LA, para 5 (a).

<sup>145</sup> [Answers to supplementary questions](#), Fighters Against Child Abuse Australia, 12 September 2022, p 1.

<sup>146</sup> R Carson, E Dunstan, J Dunstan & D Roopani, [Children and young people in separated families: Family law system experiences and needs: final report](#), Australian Institute of Family Studies, 2018.

<sup>147</sup> Dr Rachel Carson, Executive Manager, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies, [Transcript of evidence](#), 12 August 2022, p 20.

Protection Alliance, told the Committee about an ICL who didn't provide a level of support or engagement that was appropriate for working with children.

We're finding the ICLs, when they meet with the children—one was in his beach shorts; he'd come up from the beach. I don't know how old they are but he handed them a business card and said, "Call me anytime."<sup>148</sup>

- 3.45 Ms Jane Matts, CEO, Sisters In Law Project, identified that ICLs may be concerned about perceptions of bias – that the Court may believe they are not acting independently if they spend time consulting with protective mothers and children.

It's my experience in recent matters, especially within New South Wales, that sometimes they don't like getting the voice of the child, because they're spending too much time with the mother and it's going to be biased, and I've heard that multiple times in the last year. If they're not getting the voice of the child, because they think that there's going to be a biased view, then I see that as a risk.<sup>149</sup>

- 3.46 FACA also argued that ICLs need to be subject to greater scrutiny and accountability. This includes 'regular reviews of their decisions' and the need for them to 'face disciplinary action' when these decisions have been found to be inadequate for representing children's interests.<sup>150</sup>

- 3.47 The Committee does note that some grievance or review processes exist in relation to the actions of ICLs. The Attorney-General's Department (Cth) explained that complaints about ICLs can be directed to the relevant legal aid commission in each state or territory, or to state-based authorities that regulate the legal profession. In NSW, this would be the Law Society of NSW or Office of the Legal Services Commissioner.<sup>151</sup>

- 3.48 The Committee is of the view that ICLs require further guidance on how to manage cases that involve children and protective parents who have raised concerns of abuse or family violence, and how to act independently and in the children's best interests. Training and education for ICLs and other legal professions in the family law system are discussed further below.

### Presenting evidence from children to the Court

- 3.49 Other ICL responsibilities under the *Family Law Act* include the need to ensure 'that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the court'.<sup>152</sup>
- 3.50 Ms Matts told the Committee about an example of young people who attempted to provide evidence to an ICL, regarding abuse they had experienced from their father. The ICL chose not to consider this evidence.

<sup>148</sup> Ms Nicolette Norris, Founder, National Child Protection Alliance of Australia, [Transcript of evidence](#), 12 August 2022, p 32.

<sup>149</sup> Ms Jane Matts, CEO, Sisters In Law Project, [Transcript of evidence](#), 12 August 2022, p 10.

<sup>150</sup> [Answers to supplementary questions](#), Fighters Against Child Abuse Australia, 12 September 2022, p 2.

<sup>151</sup> [Answers to written questions](#), Attorney-General's Department (Commonwealth), 7 September 2022, p 3.

<sup>152</sup> [Family Law Act 1975](#) (Cth), pt 7, s 68LA, para 5 (b).

...the teenagers have reached out and said, "I'm scared of Dad. Dad does this. I've got evidence on video of Dad doing XYZ", and they don't want to know. The ICLs are saying, "I'm not looking at that video. I'll just make my determination and put it to the court."<sup>153</sup>

- 3.51 The Committee also heard of an ICL who appeared to have ignored the wishes of children they were representing. Ms Renata Field, Manager, Policy, Advocacy & Research, Domestic Violence NSW, told us she had met a child who had been ordered by the court to attend contact with the father, even though the child was scared to do so. The child had told the ICL that she did not want to see her father, however 'In court, this was offered as evidence that the mother was coaching the child and that she was being told to say particular things.'

That particular case is an example of the child being told that this is a service for her, to represent her, but the lawyer never made contact again with that child. She, despite reaching out constantly, saying, "I don't feel safe. I don't want to see him", was never again contacted by the ICL. A report is given that she should see the father against her wishes, and that's what she was forced to do.<sup>154</sup>

- 3.52 The Committee also heard that ICLs may neglect to present risk of significant harm (ROSH) reports to the Court before final orders are handed down. The Committee's attention was drawn to the matter of *Syms & Syms*, in which a father was awarded sole parental responsibility of the children and the mother's subsequent appeal was unsuccessful.<sup>155</sup>

- 3.53 The Committee heard that two ROSH reports prepared by NSW child protection services stated 'that the father was a risk of sexual and emotional harm' to the children. Sisters In Law stated 'we have evidence that the ICL viewed these reports with formal Notices to Inspect', but the 'ICL failed to put the evidence before the court.'<sup>156</sup> Ultimately, 'the children [were] ordered to live with the other parent with little or no contact with the protective parent.'<sup>157</sup>

- 3.54 The Committee also notes that the outcomes of the Edwards family case were influenced by the practices of an ICL. The State Coroner identified that the ICL did not adequately represent the views of children in a family law case in which child abuse and domestic violence were evident. The Coroner's report noted that the ICL:

...failed to ensure that the Court was fully informed of Jack and Jennifer's views, or alternatively, to the extent she relied on her own discussions with them, failed to ensure that material was in an admissible form...<sup>158</sup>

- 3.55 Ms Nicolette Norris, Founder, National Child Protection Alliance, told the Committee that ICLs can also be unwilling to question the evidence provided to

<sup>153</sup> Ms Matts, [Transcript of evidence](#), 12 August 2022, p 13.

<sup>154</sup> Ms Field, [Transcript of Evidence](#), 12 August 2022, p 3.

<sup>155</sup> *Syms & Syms* [2021] FamCA 38; *Syms & Syms* [2019] FamCA 724; [Answers to supplementary questions](#), Sisters in Law Project, p 2; [Submission 24](#), Domestic Violence NSW, pp 36-37; [Submission 60](#), page 3, footnote 2.

<sup>156</sup> [Answers to supplementary questions](#), Sisters in Law Project, p 2; [Submission 60](#), page 3, footnote 2.

<sup>157</sup> [Answers to supplementary questions](#), Sisters in Law Project, p 3.

<sup>158</sup> Coroners Court of NSW, [Inquest into the death of John, Jack and Jennifer Edwards](#), , Lidcombe, 7 April 2021, pp 188-190.

the Family Court by expert witnesses. While Ms Norris acknowledged that consultations between ICLs and expert witnesses are 'sensible' and 'In some cases it works well', there is often a reluctance from ICLs to contest their evidence.

... normally the ICL is not going to stand up and say, "I argue with you and I'm going to create an argument," when the expert witness makes his or her assessment. They generally go with the flow.<sup>159</sup>

- 3.56 The Committee was concerned about these examples of ICL practices that were reported by witnesses. If ICLs are not taking time to consult with children, or ignoring their reports or evidence of abuse, then their ability to effectively represent children's best interests in family law proceedings is limited.

**Appropriate and effective training should be provided to legal professionals that work with children who have experienced parental abuse**

**Recommendation 11**

**That Legal Aid NSW review the training provided to independent children's lawyers working in NSW, with the aim of improving outcomes for children who are involved in the family law system and who have experienced child abuse or family violence.**

**Recommendation 12**

**That the NSW Government consult with the Commonwealth Attorney-General's Department and advocate for improvements to the mandated training for legal professionals working with children in the Federal Circuit and Family Court of Australia, including mandatory and comprehensive training in child abuse and family violence and managing family law matters that involve child abuse and family violence.**

- 3.57 The Committee was interested in the training and education that is provided to legal professionals in the family law system, such as ICLs, who work with children and protective parents that may have experienced child abuse or family violence.
- 3.58 The Committee heard about the training and education that is provided to legal professionals in the family law system, such as judicial officers, court staff and legal practitioners like ICLs. The Attorney-General's Department and FCFCOA referred to the National Domestic and Family Violence Bench Book, which is maintained by the Australian Institute of Judicial Administration, as an example of such a training and education resource.<sup>160</sup>
- 3.59 The Bench Book is a resource for judicial officers and legal practitioners that, among other things, provides guidance on family law proceedings and the impacts on children from exposure to family violence. Building on this resource, the National Judicial College of Australia also runs the Family Violence in the Court Training Program, which provides biannual face-to-face sessions and online

<sup>159</sup> Ms Norris, [Transcript of evidence](#), 12 August 2022, p 32.

<sup>160</sup> [Answers to written questions](#), Attorney-General's Department (Commonwealth), 7 September 2022, p 2; [Answers to written questions](#), Federal Circuit and Family Court of Australia, 2 September 2022, p 4.

eLearning modules to judicial officers to improve their competency 'in dealing with family law and family violence matters'.<sup>161</sup>

- 3.60 The FCFOCA outlined the training and professional development opportunities that are provided to judges and court staff, such as registrars and Court Child Experts. The FCFOCA is not responsible for providing training to ICLs, however, internally-developed educational resources and externally-provided training packages are provided to all staff of the Courts. Staff participate in activities such as:
- learning modules on family violence
  - training packages provided by the Safe & Together Institute on best practice in responding to domestic and family violence
  - educative forums conducted by external legal bodies, such as bar associations and law societies
  - continuing professional development programs that incorporate participation in conferences and events, such as the Family Law Conference and ICLs Conference.<sup>162</sup>
- 3.61 Legal Aid NSW has developed a national training program for ICLs to support them in dealing with complex and difficult situations, including domestic violence, 'meeting with and interviewing children to obtain their views', and 'presenting information to the court on the best interests of the child'. This training involves six online modules, and 'ICLs are expected by [state and territory] legal aid commissions to have completed this training before they can be appointed as an ICL'.<sup>163</sup>
- 3.62 While the Committee acknowledges that these opportunities are available, and often mandated, for legal practitioners to undertake, evidence from some stakeholders indicates that there are areas where more professional learning supports could be provided (outlined above). It is apparent that legal professionals that work with children and protective parents, particularly ICLs, should be given more training in recognising, managing and responding to allegations of child abuse and family violence.
- 3.63 In responses to supplementary questions FACAA identified a range of behaviours that legal professionals engaged with the family law system must be able to identify. These include: 'grooming, coercive control, domestic violence, child abuse, sexual abuse, physical abuse, verbal abuse, mental abuse, and gaslighting'. FACAA argued that ICLs do not have an adequate understanding of most of these behaviours, and that they also 'need to be trained in trauma informed dealings with children and survivors of child abuse'.<sup>164</sup>

<sup>161</sup> [Answers to written questions](#), Attorney-General's Department (Commonwealth), 7 September 2022, p 2.

<sup>162</sup> [Answers to written questions](#), Federal Circuit and Family Court of Australia, 2 September 2022, p 4.

<sup>163</sup> [Answers to written questions](#), Attorney-General's Department (Commonwealth), 7 September 2022, p 2.

<sup>164</sup> [Answers to supplementary questions](#), Fighters Against Child Abuse Australia, 12 September 2022, pp 2-3.



3.64 The Committee also heard that there may be issues with Family Consultants, Single Experts and family report writers, who often do not support the claims of protective parents. Domestic Violence NSW (DVNSW) asserted that '[it] is not a requirement for these consultants to have knowledge, training or experience in the complex area of domestic abuse.'<sup>165</sup> DVNSW told the Committee:

These witnesses frequently support the perpetrator and even place blame on the victim, playing into incidences of systemic abuse in the Family Court.<sup>166</sup>

3.65 The Committee notes that the Commonwealth Attorney-General's Department is currently consulting with stakeholders on how to improve the competency and accountability of family report writers (discussed further at paragraph 3.91).

3.66 Dr Rachel Carson, Executive Manager, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies (AIFS), described findings from the AIFS's 2014 *Independent Children's Lawyers Study* research report, which noted that more training could be provided to ICLs and other professionals working in the family law system.<sup>167</sup>

3.67 Dr Carson also outlined some findings from AIFS's more recent *Children and young people in separated families* report, which noted that training for legal professionals could be provided on 'child-inclusive practices'.<sup>168</sup> Dr Carson told us that the training could be directed to assist legal professionals to:

- 'engage in a developmentally-appropriate way' with children
- provide an 'emotionally and physically safe space' where children can communicate their views
- take a 'proactive and protective approach' to children they represent
- build trust and rapport with children they represent.<sup>169</sup>

3.68 Ms Zoë Robinson, Advocate for Children and Young People, also suggested that anyone working with children and young people should consider training in child rights advocacy and using trauma-informed approaches.<sup>170</sup>

3.69 The Committee recommends that Legal Aid NSW review the training provided to ICLs. This training should aim to improve outcomes for children who are involved in the family law system and who have experienced child abuse or family violence. Training should incorporate specific guidance on how to identify signs of

<sup>165</sup> [Answers to supplementary questions](#), Domestic Violence NSW, 9 September 2022, p 2.

<sup>166</sup> [Answers to supplementary questions](#), Domestic Violence NSW, 9 September 2022, p 2.

<sup>167</sup> Dr Carson, [Transcript of evidence](#), 12 August 2022, pp 20-21; R Kaspiew, R Carson, S Moore, J De Maio, J Deblaquiere & B Horsfall, [Independent children's lawyers study: final report](#), 2<sup>nd</sup> edn, Australian Institute of Family Studies & Attorney-General's Department, Canberra, June 2014, p 97.

<sup>168</sup> Dr Carson, [Transcript of evidence](#), 12 August 2022, p 20; R Carson, E Dunstan, J Dunstan & D Roopani, [Children and young people in separated families: Family law system experiences and needs: final report](#), Australian Institute of Family Studies, 2018, pp 95-96.

<sup>169</sup> Dr Carson, [Transcript of evidence](#), 12 August 2022, pp 20-21.

<sup>170</sup> Ms Zoë Robinson, Advocate for Children and Young People, Office of the Advocate for Children and Young People, [Transcript of evidence](#), 12 August 2022, p 42.



child abuse or family violence, collecting and presenting children's evidence in court proceedings, and how to work with children who have experienced abuse in a safe, respectful and trauma-informed way.

- 3.70 The Committee also recommends that the NSW Government consult with the Commonwealth Attorney-General's Department and advocate for improvements to the mandated training for all legal professionals working with children in the Federal Circuit and Family Court of Australia. The Committee is of the view that a comprehensive training regime in managing family law matters that involve child abuse or family violence should be a requirement for all ICLs.

## Allowing children's voices to be heard in legal matters that affect them

### Finding 2

**Children and young people are not necessarily being provided the opportunity to be heard, in their own words, in court proceedings where significant decisions are often made for them.**

### Recommendation 13

**That the NSW Department of Communities and Justice introduce new tools for children to record their own experiences in a form that can be presented in both state children's and federal family law courts, or that it update ChildStory so it can be used for this purpose.**

- 3.71 As identified above (at paragraph 2.33), there can be significant impacts on children when they are denied a voice in legal matters that affect them.
- 3.72 In addition to the deficiencies that stakeholders identified when children's interests are represented or communicated in court proceedings, the Committee heard that children and young people need to be given more opportunities to be heard directly, in their own words, in legal matters that affect them.
- 3.73 Fighters Against Child Abuse Australia (FACAA) told the Committee that, in the past, NSW has led the nation in 'legal reforms being made to better enable children to give evidence and testimony'. However, FACAA also argued that 'we need a system where children are believed and have a voice in their own futures.'<sup>171</sup>
- 3.74 The Office of the Advocate for Children and Young People (ACYP) described consultation work that it has undertaken with children and young people in the out-of-home care system. This consultation work found that children and young people in care are often 'given little or no say in decision making processes', such as those that lead to where they live. Some also reported that 'they were often left out of court proceedings and case meetings only to find out the outcome after the fact.'<sup>172</sup>

<sup>171</sup> [Answers to supplementary questions](#), Fighters Against Child Abuse Australia, 12 September 2022, p 2.

<sup>172</sup> [Answers to questions on notice](#), Office of the Advocate for Children and Young People, 5 September 2022, p 1.

- 3.75 The Committee heard that information about children and young people can be shared with the family courts through DCJ's ChildStory system.<sup>173</sup> Since 2017 ChildStory has allowed organisations to record information about individual children and young people in a centralised platform. This includes information about a child recorded by mandatory reporters, non-government agencies and government departments such as DCJ, Education, Health and Police.<sup>174</sup>
- 3.76 However, this does not necessarily give children and young people an opportunity to be heard, in their own words, in court proceedings where significant decisions are often made for them.
- 3.77 Ms Zoë Robinson, Advocate for Children and Young People, told the Committee that progress has been made in the United Kingdom in relation to providing children and young people with a means to record information about themselves, which can then be used in court proceedings.<sup>175</sup>
- 3.78 Mind Of My Own is a digital tool that was developed in consultation with children and young people with experience of the UK OOHC system. The secure tool allows children and young people to document their experiences or 'lodge a complaint or report of harm that is escalated to the relevant authorities.'<sup>176</sup>
- 3.79 In responses to supplementary questions, the ACYP described how Mind Of My Own has been used in court proceedings in the UK. A child can prepare a Mind Of My Own statement and this is included in documentation for the court. This ensures that judicial officers and other parties are able to see the child's own views, 'written in their own words, rather than the child's views being summarised and potentially misinterpreted by adults.'<sup>177</sup>
- 3.80 The ACYP also described the use of Mind Of My Own by New Zealand's Open Home Foundation (OHF). For example, a young person in OHF's custody recorded a wellbeing statement in Mind Of My Own, which was sent to their court-appointed lawyer for consideration, thereby bypassing the need for an in-person meeting.<sup>178</sup>
- 3.81 The ACYP reported that an OOHC provider was trialling Mind Of My Own in NSW and Victoria in late 2022.<sup>179</sup>
- 3.82 The Committee recommends that DCJ introduce new tools for children to record their own experiences in a form that can be presented in court proceedings. This

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<sup>173</sup> Ms Czech, [Transcript of evidence](#), 12 August 2022, p 36.

<sup>174</sup> NSW Department of Communities and Justice, [What is ChildStory?](#), 21 May 2020, viewed 9 November 2022.

<sup>175</sup> Ms Zoë Robinson, Advocate for Children and Young People, Office of the Advocate for Children and Young People, [Transcript of evidence](#), 12 August 2022, p 41.

<sup>176</sup> [Answers to supplementary questions](#), Office of the Advocate for Children and Young People, 14 September 2022, p 1.

<sup>177</sup> [Answers to supplementary questions](#), Office of the Advocate for Children and Young People, 14 September 2022, p 1.

<sup>178</sup> [Answers to supplementary questions](#), Office of the Advocate for Children and Young People, 14 September 2022, p 2.

<sup>179</sup> [Answers to supplementary questions](#), Office of the Advocate for Children and Young People, 14 September 2022, p 2.

could involve developing a tool that is similar to Mind Of My Own or updating the ChildStory system, so that it is suitable for this purpose.

## Recent national level reforms

- 3.83 The Committee heard that, following recent federal inquiries into the family law system, there are currently reforms being implemented at a national level that may reduce some of the cross-jurisdictional issues that were identified during this inquiry.
- 3.84 The Federal Circuit and Family Court of Australia (FCFCOA), Commonwealth Attorney-General's office and NSW Department of Communities and Justice (DCJ) outlined initiatives that are underway to address the findings of the recent federal inquiries.<sup>180</sup>
- 3.85 The Committee was particularly interested in the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems. The Committee also heard that, as part of the National Framework, the Commonwealth introduced a new initiative where child protection and policing officials are co-located in state and territory family law courts.
- 3.86 These reforms may help to address some of the cross-jurisdictional issues raised as part of this inquiry, particularly those regarding the limitations of information sharing processes between the NSW child protection system and federal family law system.

## The National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems

### Recommendation 14

**That the NSW Government closely monitor reforms that are underway at a federal level, in particular the implementation of the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems, with the aim of promptly utilising any new mechanisms, programs and resources that could facilitate better interactions between the state child protection system and the Federal Circuit and Family Court of Australia.**

- 3.87 The Committee heard that the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems ('the National Framework') was recently established and endorsed at the Meeting of Attorneys-General on 12 November 2021.<sup>181</sup>
- 3.88 The National Framework responds to recommendations from federal inquiries which found that 'inconsistent or incomplete' information is often shared between family law courts, and state and territory child protection and family

<sup>180</sup> [Tabled document](#), NSW Department of Communities and Justice, Statement of Rachel Ward, 12 August 2022, p 5; [Answers to written questions](#), Federal Circuit and Family Court of Australia, pp 1-3; [Answers to written questions](#), Attorney-General's Department (Cth), pp 1, 4-5.

<sup>181</sup> [Answers to written questions](#), Federal Circuit and Family Court of Australia, p 6.

violence agencies. The Attorney-General's Department noted that inadequate information exchange 'may result in an increased risk to adults and children'.<sup>182</sup>

- 3.89 The National Framework aims to achieve national consistency on how information is shared between family law courts and state and territory child protection, firearm and policing agencies.<sup>183</sup> The National Framework's primary objective is to ensure that decision-makers in family law courts and child protection agencies have 'access to the information needed to assess, manage and respond to risks of family violence or child abuse as early as possible in proceedings.' Achieving this will support 'decision making that promotes the best possible outcomes for children, and a court system that is responsive to safety risks.'<sup>184</sup>
- 3.90 Ms Simone Czech, Deputy Secretary, Child Protection and Permanency, District and Youth Justice Services, DCJ, also told the Committee that the National Framework intends 'to support informed and appropriate decision-making in circumstances where there is, or may be, a risk of family violence or child abuse.'<sup>185</sup>
- 3.91 The National Framework will be operational from 1 January 2023. The Committee heard that work is being done to operationalise it, including through collaboration between relevant NSW agencies, the Attorney-General's Department (Cth), the family law courts and other Australian jurisdictions.<sup>186</sup> In particular, the Committee notes that the Australian Government is currently 'considering amendments to the *Family Law Act* to operationalise the National Framework.'<sup>187</sup>
- 3.92 The Committee also notes that DCJ has been engaged in the national reform process, including assisting with development of the National Framework. Ms Czech told us that DCJ is 'an active member of the Commonwealth-led Family Violence Working Group', which has contributed to the introduction of the National Framework.<sup>188</sup>
- 3.93 In addition to the National Framework, the Attorney-General's Department also told the Committee that consideration is being given to improving the competency, quality and accountability of family law report writers.<sup>189</sup> This is a result of recent federal inquiries, such as the Australian Law Reform Commission's 2019 report into the family law system, which identified that family report writers may not be appropriately qualified to report on family violence or

<sup>182</sup> [Answers to written questions](#), Attorney-General's Department (Cth), p 4.

<sup>183</sup> [Answers to written questions](#), Attorney-General's Department (Cth), p 4.

<sup>184</sup> [Answers to written questions](#), Attorney-General's Department (Cth), p 1.

<sup>185</sup> Ms Simon Czech, Deputy Secretary, Child Protection and Permanency, District and Youth Justice Services, NSW Department of Communities and Justice, [Transcript of evidence](#), 12 August 2022, p 35.

<sup>186</sup> Ms Czech, [Transcript of evidence](#), 12 August 2022, p 34; [Tabled document](#), NSW Department of Communities and Justice, Statement of Rachel Ward, p 5.

<sup>187</sup> [Answers to written questions](#), Attorney-General's Department (Cth), p 1.

<sup>188</sup> Ms Czech, [Transcript of evidence](#), 12 August 2022, p 34.

<sup>189</sup> [Answers to written questions](#), Attorney-General's Department (Cth), p 4.

child abuse, that they may spend limited time with families, or that they may be prohibitively expensive for parties that privately commission reports.<sup>190</sup>

- 3.94 In 2021 the Attorney-General's Department published a consultation paper titled *Improving the competency and accountability of family report writers*.<sup>191</sup> In answers to written questions, the Attorney-General's Department told us that it had received 96 submissions to the consultation paper, which are currently being considered and will be used to advise the Australian Government 'in due course'.<sup>192</sup>
- 3.95 While the Committee has made several recommendations that could be implemented in NSW to improve outcomes for children and protective parents, it notes that these national reforms are potentially significant for improving processes outside of state jurisdiction.
- 3.96 The Committee recommends that the NSW Government closely monitor the development and implementation of these reforms (including the co-location project discussed below). This monitoring of national reforms should aim to ensure that DCJ, NSW Police and other relevant agencies are well-prepared to utilise any new mechanisms, programs and resources that could facilitate better interactions between the state child protection system and the FCFCOA.

### Court-based co-located child protection and policing officials

#### Recommendation 15

**That the NSW Government provide the Department of Communities and Justice with additional funding for recruiting more staff to work as co-located child protection and police officers based in NSW-based registries of the Federal Circuit and Family Court of Australia, where funding is not available through the Commonwealth and where positive results from the Commonwealth-funded pilot have been reported.**

- 3.97 A key initiative resulting from the National Framework was the Commonwealth trial of the Co-Location Initiative, in which state and territory child protection and police officers are co-located within registries of the FCFCOA.<sup>193</sup>
- 3.98 The Co-Location Initiative began with a Commonwealth-funded pilot from 1 June 2020 to 30 June 2022, and has established 16 child protection and six police officials in Family Court registries across Australia. This included four trial sites in NSW, in the Court registries in Newcastle, Parramatta, Sydney and Wollongong.<sup>194</sup>

<sup>190</sup> Australian Law Reform Commission, [Family law for the future: an inquiry into the family law system](#), report 135, Brisbane, ALRC, March 2019, p 411.

<sup>191</sup> Attorney-General's Department (Cth), [Improving the competency and accountability of family report writers](#), Canberra, 2021.

<sup>192</sup> [Answers to written questions](#), Attorney-General's Department (Cth), p 4.

<sup>193</sup> [Answers to written questions](#), Federal Circuit and Family Court of Australia, p 3.

<sup>194</sup> [Answers to written questions](#), Federal Circuit and Family Court of Australia, p 3; [Answers to written questions](#), Attorney-General's Department, p 1.

- 3.99 Commonwealth funding for the pilot enabled DCJ to establish the Family Court Liaison Team ('the Liaison Team'). Ms Rachel Ward, Director, Child Protection Law, DCJ Legal, told the Committee that the Liaison Team aims to improve safety and the identification of 'risks for children and families involved with the family law courts'.<sup>195</sup>
- 3.100 They do this by facilitating information exchange processes between DCJ's child protection teams and family court registries, including those outlined under the *Family Law Act 1975* (Cth). For example, the Liaison Team manages section 69ZW requests, where the Court requests documents from DCJ relating to child abuse or family violence. The Liaison Team also provides information to the Court under section 248 of the *Family Law Act*, where DCJ is required to proactively share information with the Court about claims and substantiated allegations of child abuse.<sup>196</sup>
- 3.101 Funding for the Commonwealth's Co-Location Initiative for 2022-25 has been allocated but not yet been finalised, due to the change in the Australian Government.<sup>197</sup> DCJ told the Committee that, outside of the four trial sites, 'DCJ provides support to all the remaining FCFCOA registries through existing DCJ resources'.<sup>198</sup>
- 3.102 The Committee heard that the Co-Location Initiative has been functioning well, but that there are several areas where it could be improved.
- 3.103 Ms Ward supported the expansion of the Co-Location Initiative and noted its benefits in terms of information sharing. She added that the MoU between DCJ and the FCFCOA could be updated so that this new program is reflected in the MoU's terms.
- I think in terms of where we sit now, particularly with the court liaison officers sitting in the Family Court, there would be a lot more space for that free flow of information sharing. Even though it's there and everybody knows it in principle, to really ensure that happened in practice, if we had those co-located case workers in all courts would be really helpful, and have the MOU reflect that.<sup>199</sup>
- 3.104 In responses to supplementary questions, DCJ told the Committee that further work could be undertaken by the Australian Government to improve information management. At present, DCJ manually counts the requests and responses that are exchanged between the two jurisdictions. DCJ suggested that a Commonwealth-led 'development of an electronic recording system to capture the FCFCOA data is needed'.<sup>200</sup>

<sup>195</sup> [Tabled document](#), NSW Department of Communities and Justice, Statement of Rachel Ward, p 5.

<sup>196</sup> [Tabled document](#), NSW Department of Communities and Justice, Statement of Rachel Ward, p 6.

<sup>197</sup> [Answers to written questions](#), Attorney-General's Department, p 1; [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, p 3.

<sup>198</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, p 3.

<sup>199</sup> Ms Rachel Ward, Director, Child Protection Law, DCJ Legal, NSW Department of Communities and Justice, [Transcript of evidence](#), 12 August 2022, p 41.

<sup>200</sup> [Answers to questions on notice and supplementary questions](#), NSW Department of Communities and Justice, p 3.

- 3.105 In responses to supplementary questions, Legal Aid NSW told the Committee that co-locating child protection and policing officers in the FCFCOA was 'a welcome addition'. Legal Aid outlined several ways in which further resourcing of this program, and DCJ more generally, would be beneficial:
- documents that are requested or required from DCJ could be 'efficiently produced for inspection at the earliest opportunity'
  - these documents are often 'voluminous' and 'repetitive', and further resources for DCJ staff would enable this material to be collated in a way that was easier to read
  - DCJ documentation does not always give 'the Court or Legal Aid NSW a clear picture as to DCJ's work with [the] family and future plans with the family', and additional resourcing would 'allow DCJ workers to spend more time properly redacting' documentation to ensure it was more useful.<sup>201</sup>
- 3.106 The Committee recommends that the NSW Government provide DCJ with additional funding for recruiting more staff to work as co-located child protection and police officers in NSW-based registries of the FCFCOA.
- 3.107 Additional resourcing should complement, but not replace, funding available through the Commonwealth once the 2022-2025 funding has been finalised. Additional funding from the NSW Government should aim to extend the scope of the program, so that all NSW-based registries are appropriately staffed, while also supporting the efficiency and quality of the information provided by DCJ to legal practitioners working with children and protective parents in the family law system.

#### Further considerations

- 3.108 The Co-Location Initiative could help resolve cross-jurisdictional issues by placing child protection workers in the family law system. The Committee also notes that arguments exist for hearing child protection and family law matters in the same jurisdiction.
- 3.109 In its *Family Law for the Future* report, the ALRC recommended that:
- The Australian Government should consider options to establish state and territory family courts in all states and territories, to exercise jurisdiction concurrently under the Family Law Act 1975 (Cth), as well as state and territory child protection and family violence jurisdiction, whilst also considering the most efficient manner to eventually abolish first instance federal family courts.<sup>202</sup>
- 3.110 The report highlighted that this is not a new concept. In 2001, a report by the Family Pathways Advisory Group recommended that COAG consider how family law, violence and child abuse matters can be dealt with 'in the same place at the

<sup>201</sup> [Answers to supplementary questions](#), Legal Aid NSW, p 5.

<sup>202</sup> Australian Law Reform Commission, [Family Law for the Future – An inquiry into the Family Law](#), March 2019, p 113, viewed 9 November 2022.

same time'. The ALRC also acknowledged that such a change, if implemented, would be complex and take considerable time to implement.<sup>203</sup>

- 3.111 Legal Aid indicated that it supports this recommendation, as it would remove the need for families to navigate multiple jurisdictions. Moreover, it would mean that victims would not have to tell their story in multiple courts and limit the risk of re-traumatisation. Legal Aid noted that dealing with family law and child protection matters in the same jurisdiction is currently impractical, owing to the 'different legislative schemas that exist in the state and federal jurisdictions'.<sup>204</sup>
- 3.112 Dr Rae Kaspiew, Research Director, Australian Institute of Family Studies, observed that Western Australia's model, which has a state-based family court, allows for smoother exchange of information between the family law system and the state child protection and police agencies.<sup>205</sup>

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<sup>203</sup> Australian Law Reform Commission, [Family Law for the Future – An inquiry into the Family Law](#), March 2019, pp 113-114, viewed 9 November 2022.

<sup>204</sup> [Answers to supplementary questions](#), Legal Aid NSW, pp 3-4.

<sup>205</sup> Dr Rae Kaspiew, Research Director, Systems and Services, Australian Institute of Family Studies, [Transcript of evidence](#), 12 August 2022, p 24.



## Appendix One – Terms of reference

That the Committee on Children and Young People inquire into and report on the effectiveness of the NSW child protection and social services system in responding to vulnerable children and families with particular reference to:

1. How vulnerable children and families are identified and how the current system interacts with them including any potential improvements, particularly at important transition points in their lives;
2. The respective roles, responsibilities, including points of intersection, of health, education, police, justice and social services in the current system and the optimum evidence based prevention and early intervention responses that the current system should provide to improve life outcomes;
3. The adequacy of current interventions and responses for vulnerable children and families and their effectiveness in supporting families and avoiding children entering out of home care;
4. The child protection intake, assessment, referral and case management system including any changes necessary to ensure that all children assessed as being at risk of significant harm receive a proactive and timely in-person response from child protection staff;
5. The availability of early intervention services across NSW including the effectiveness of pilot programs commissioned under Their Futures Matter program;
6. The adequacy of funding for prevention and early intervention services;
7. Any recent reviews and inquiries; and
8. Any other related matter.

## Appendix Two – Conduct of inquiry

### **Terms of reference**

On 23 September 2020 the Committee resolved to conduct an inquiry into the NSW child protection and social services system.

This inquiry has been established to examine the effectiveness of the NSW child protection and social services system in responding to vulnerable children and families. Due to impacts on the inquiry timeline, the Committee decided to focus the inquiry on cross-jurisdictional issues between the state child protection system and Federal Circuit and Family Court of Australia, and other related matters.

The full terms of reference are at Appendix One.

### **Call for submissions**

The Committee called for public submissions and wrote to key stakeholders inviting them to make a submission.

Submissions to the inquiry closed on 11 December 2020. The Committee received 65 submissions from a range of stakeholders, including government agencies, advocacy groups, academic stakeholders, service providers and members of the public.

A list of submissions is at Appendix Three and copies of submissions are available on the Committee's [webpage](#).

### **Public hearings**

The Committee held a public hearing at Parliament House on 12 August 2022.

A list of witnesses who appeared at the hearings is at Appendix Four. Transcripts of evidence taken at the hearings are available on the Committee's [webpage](#). The Committee thanks all witnesses who participated in the Committee's hearings.

## Appendix Three – Submissions

<b>No.</b>	<b>Author</b>
1	Parenting Research Centre
2	The Smith Family
3	Association of Children's Welfare Agencies (ACWA)
4	Central Coast Community Legal Centre
5	Family Planning NSW
6	Lou's Place
7	Southern Youth and Family Services
8	Mrs Karen Craigie
9	Home Stretch
10	Office of the Children's Guardian
11	Tresillian
12	Ms Cassandra Niko
13	NSW Council of Social Service (NCOSS)
14	Australian Association of Social Workers
15	Northern Rivers Community Legal Centre
16	Australian Research Alliance for Children and Youth (ARACY)
17	Centre for Community Child Health (CCCH)
18	Kamira Alcohol and Other Drug Treatment Services Inc.
19	Fams
20	Yfoundations
21	Office of the NSW Advocate for Children and Young People
22	Centre for Evidence and Implementation
23	Public Interest Advocacy Centre (PIAC)
24	Domestic Violence NSW
25	Karitane
26	Women's Safety NSW
27	Monash University Department of Social Work
28	Public Service Association of New South Wales
29	Department of Communities and Justice, Youth Consult for Change
30	Life Without Barriers
31	yourtown
32	Mid North Coast Community Legal Centre

<b>No.</b>	<b>Author</b>
33	Homelessness NSW
34	Youth Action
35	NSW Department of Communities and Justice
36	Mission Australia
37	Social Futures
38	MacKillop Family Services and OzChild
39	The Law Society of NSW
40	Women's Legal Service NSW
41	AMA NSW
42	Jumbunna Institute of Indigenous Education & Research, UTS
43	Create Foundation
44	NSW Coalition of Aboriginal Regional Alliances
45	Legal Aid NSW
46	Community Legal Centres NSW
47	Australian Services Union NSW & ACT (Services) Branch
48	Uniting NSW.ACT
49	Dr Lisa Newling (MBBS, FRANZCP, FCAP)
50	Australian Centre for Child Protection, University of South Australia
51	SDN Children's Services
52	Barnardos Australia
53	Aboriginal Legal Service (NSW/ACT) Limited
54	AbSec – NSW Child, Family and Community Peak Aboriginal Corporation
55	Confidential
56	Youth Law Australia
57	NSW Ombudsman
58	Ability Rights Centre
59	Wirringa Baiya Aboriginal Women's Legal Centre Inc.
60	Ms Jane Matts
61	Ms Nita Hidalgo
61a	Confidential
62	Australian Psychological Society
63	Triple P International
64	Western NSW Community Legal Centre
65	Name suppressed
66	Confidential

## Appendix Four – Witnesses

**12 August 2022**

**Room 814-815, Parliament House**

<b>Witness</b>	<b>Position and Organisation</b>
Ms Renata Field	Manager, Policy, Advocacy & Research, Domestic Violence NSW
Ms Jane Matts	Founder and CEO, Sisters in Law Project
Ms Kerrie Thompson	Member, Sisters in Law Project; CEO, VOCAL
Ms Katie Kelso	Deputy Director Family Law, Legal Aid NSW
Dr Rae Kaspiew	Research Director, Systems and Services, Australian Institute of Family Studies
Dr Rachel Carson	Executive Manager, Family Law, Family Violence and Elder Abuse, Australian Institute of Family Studies
Ms Michelle Hayward	Managing Solicitor Family Law Practice, Aboriginal Legal Service (NSW/ACT)
Ms Zoe De Re	Managing Solicitor Care & Protection Family Law Practice, Aboriginal Legal Service(NSW/ACT)
Ms Niki Norris AM	Founder, National Child Protection Alliance of Australia
Ms Pip Rae	Chair, National Child Protection Alliance of Australia
Mr Adam Washbourne	Founder, Fighters Against Child Abuse Australia
Ms Simone Czech	Deputy Secretary, Child Protection and Permanency, District and Youth Justice Services, NSW Department of Communities and Justice
Ms Zoe Robinson	Advocate for Children and Young People, Office of the Advocate for Children and Young People (ACYP)
Ms Janet Schorer PSM	Children's Guardian, Office of the Children's Guardian
Ms Rachael Ward	Director, Child Protection Law, DCJ Legal, Department of Communities and Justice NSW
Ms Larissa Johnson	Director, Out-of-Home Care Regulation, Office of the Children's Guardian

## Appendix Five – Extracts from minutes

### **MINUTES OF MEETING No 8**

1.33pm, Wednesday, 23 September 2020  
Macquarie Room, Parliament House

#### **Members present**

Mr Mason-Cox (Chair), Mr Donnelly, Ms Harrison, Ms Preston, Mr Saunders, Mr Shoebridge and Mr Sidgreaves.

#### **Officers in attendance**

Elaine Schofield, Leon Last, and Jennifer Gallagher.

#### **1. Committee membership**

The Chair reported a change in the membership of the Committee

Mr David Shoebridge MLC has been appointed to the Committee in place of Ms Abigail Boyd MLC.

(Legislative Council Minutes of 23 September 2020)

#### **2. Confirmation of minutes**

Resolved, on the motion of Mr Donnelly, seconded by Mr Sidgreaves:

That the draft minutes of meeting no 7, held on 6 August 2020, be confirmed.

#### **3. \*\*\***

#### **4. \*\*\***

#### **5. Inquiry into the child protection and social services system**

Resolved, on the motion of Ms Preston, seconded by Mr Sidgreaves, that:

1. the Committee conduct an inquiry into the child protection and social services system;
2. the Committee adopt the draft terms of reference for the inquiry as circulated.

Resolved, on the motion of Mr Saunders, that

- the Committee call for submissions to the inquiry and advertise the inquiry on the Committee's webpage;
- the closing date for submissions be 11 December 2020;
- the Chair issue a media release announcing the inquiry;
- the secretariat, in consultation with the Committee, develop a list of key stakeholders to be informed of the inquiry and invited to make a submission;

- the Chair write to the Minister for Families, Communities and Disability Services to request a briefing for the inquiry;
- the Committee conduct a visit of inspection to a DCJ Community Services Centre.

## **6. Next meeting**

The Committee adjourned at 1.52pm until a date and time to be determined.

## **MINUTES OF MEETING No 9**

1.32pm, Thursday, 18 February 2021

Room 1043, Parliament House

### **Members present**

Mr Mason-Cox (Chair), Ms Harrison, Ms Preston, Mr Saunders, Mr Shoebridge and Mr Sidgreaves.

### **Officers in attendance**

Elaine Schofield, Leon Last, and Mohini Mehta.

## **1. Apologies**

An apology was received from Mr Donnelly.

## **2. Confirmation of minutes**

Resolved, on the motion of Mr Shoebridge, seconded by Mr Saunders:

That the draft minutes of meeting no 8, held on 23 September 2020, be confirmed.

## **3. \*\*\***

## **4. \*\*\***

## **5. Inquiry into the child protection and social services system**

### **5.1. \*\*\***

### **5.2. Submissions**

Resolved, on the motion of Mr Shoebridge:

That the following submissions be published in full, with private contact details and signatures redacted: 1, 2, 4-18, 20-54, and 56-58.

That submissions 3 and 19 be published without the attached publicly available information.

That submission 55 be kept confidential to the Committee.

### **5.3. Inquiry plan and activities**

Discussion ensued about the inquiry.

### **6. Next meeting**

The Committee adjourned at 2.00pm until a date and time to be determined.

### **MINUTES OF MEETING No. 10**

9.02 am, 29 April 2021

Jubilee Room, Parliament House

#### **Members present**

Mr Mason-Cox (Chair), Mr Sidgreaves (Deputy Chair), Ms Harrison, Ms Preston, Mr Saunders (via Webex), Mr Shoebridge

#### **Officers in attendance**

Elaine Schofield, Leon Last, Matthew Johnson, Ilana Chaffey, Mohini Mehta

### **1. Deliberative meeting**

#### **1.1. Apologies**

An apology was received from Mr Donnelly

#### **1.2 Confirmation of minutes**

Resolved on the motion of Ms Harrison, seconded by Ms Preston:

That the minutes of deliberative meeting no. 9 held on 18 February be confirmed.

### **2. \*\*\***

### **3. \*\*\***

### **4. Deliberative meeting**

The Committee resumed the deliberative meeting at 12.21 pm.

#### **4.1. \*\*\***

#### **4.2. Inquiry into the child protection and social services system**

##### **4.2.1. \*\*\***

##### **4.2.2. Submissions**

Resolved on the motion of Mr Shoebridge:



That submissions 59, 60, 62, and 63 be published in full with private contact details redacted; and

That submission 61 be published with certain identifying information redacted and the attachments kept confidential to the Committee.

**4.3. \*\*\***

**5. \*\*\***

**6. Next meeting**

The Committee adjourned at 4.13 pm until 9.15 am on Friday, 7 May.

**MINUTES OF MEETING No. 12**

8.57 am, 14 May 2021

Macquarie Room, Parliament House

**Members present**

Mr Sidgreaves (Deputy Chair), Mr Donnelly, Ms Harrison, Mr Poulos, Ms Preston, Mr Shoebridge

**Officers in attendance**

Elaine Schofield, Leon Last, Matthew Johnson, Ilana Chaffey, Mohini Mehta

**Deputy Chair presiding**

In the absence of the Chair, the Deputy Chair opened the meeting.

**1. Deliberative meeting**

**1.1. Apologies**

An apology was received from Mr Saunders

**1.2. Confirmation of minutes**

Resolved on the motion of Ms Harrison, seconded by Mr Donnelly:

That the minutes of deliberative meeting no. 10 held on 29 April 2021 and the public hearing held on 7 May 2021 be confirmed.

**1.3 \*\*\***

**2. \*\*\***

**3. Post-hearing deliberative meeting**

The Committee commenced a deliberative meeting at 4.56 pm.

**4. \*\*\***

**5. Inquiry into the child protection and social services system**

**5.1. Submissions**

Resolved on the motion of Mr Donnelly, seconded by Ms Harrison, that submission 64 be published in full with private contact details redacted.

**6. Next meeting**

The Committee adjourned at 5.19 pm until a time and date to be confirmed.

**MINUTES OF MEETING No 17**

2.55 pm, Wednesday, 1 December 2021  
Room 1254 and via videoconference

**Members present**

Mr Poulos (Chair), Mr Donnelly, and Mr Shoebridge.

**Members attending via videoconference**

Ms Harrison, Mr Saunders, Mr Sidgreaves and Ms Preston (via teleconference).

**Officers in attendance**

Leon Last, Matt Johnson and Mohini Mehta.

**1. Confirmation of minutes**

Resolved on the motion of Mr Donnelly:  
That the draft minutes of meeting no 16, held on 21 October, be confirmed.

**2. \*\*\***

**3. \*\*\***

**4. \*\*\***

**5. Child protection and the social service system**

**5.1 \*\*\***

**5.2 Submissions**

**\*\*\***

Resolved, on the motion of Mr Shoebridge:  
That the Committee accept the late submission, and publish it with the name withheld and identifying information on pages 1 and 3 redacted.

**6. Next meeting**

The Committee agreed to meet in the week beginning 14 February, with the secretariat to canvass availability of members.

The meeting adjourned at 3.10pm.

**Meeting no. 18**

1.40 pm, Thursday, 19 May 2022

Jubilee room, Parliament House

**Members present**

Mr Peter Sidgreaves MP, Ms Melanie Gibbons MP, Ms Abigail Boyd MLC, The Hon Greg Donnelly MLC, The Hon Chris Rath MLC, Ms Jodie Harrison MP, Mr Nathaniel Smith MP

**Officers present**

Carly Maxwell, Rohan Tyler, Leon Last, Matt Johnson and Mohini Mehta

**Apologies**

None

Deputy Chair, Mr Sidgreaves opened the meeting at 1.45pm.

**1. Membership changes**

The Deputy Clerk advised the Committee of the change in membership recorded in:

- The Legislative Assembly Votes and Proceedings of 24 February 2022, No 15, Item 1(a), in which Melanie Gibbons and Leslie Williams were appointed to the Committee, in place of Robyn Preston and Dugald Saunders.
- The Legislative Council Minutes of 24 February 2022, No 4, Item 1(b), in which Catherine Cusack was appointed to the Committee in place of Peter Poulos.
- The Legislative Council Minutes of 30 March 2022, No 8, Item 1(a), in which Chris Rath and Abigail Boyd were appointed to the Committee, in place of Catherine Cusack and David Shoebridge.
- The Legislative Assembly Votes and Proceedings of 31 March 2022, No 17, Item 1(a), in which Stephen Bromhead was appointed to the Committee, in place of Leslie Williams.
- The Legislative Assembly Votes and Proceedings of 18 May 2022, No 13, Item 1(a), in which Nathaniel Smith was appointed to the Committee, in place of Stephen Bromhead.

The Committee noted the changes in membership.

**2. Election of Chair**

There being a vacancy in the office of Chair of the Committee, the Deputy Clerk called for nominations for the office of Chair.

Mr Smith nominated Mr Sidgreaves as Chair, seconded by Ms Gibbons.

No further nominations were received. There being only one nomination, the Deputy Clerk declared Mr Sidgreaves to be the Chair.

The Deputy Clerk handed the meeting over to the Chair to preside.

**3. Election of Deputy Chair**

There being a vacancy in the office of Deputy Chair of the Committee, the Chair called for nominations for the office of Deputy Chair.

Mr Smith nominated Ms Gibbons as Deputy Chair, seconded by Mr Rath.

No further nominations were received. There being only one nomination, the Chair declared Ms Gibbons to be the Deputy Chair.

**4. Confirmation of minutes**

Resolved, on the motion of Mr Donnelly, seconded by Mr Sidgreaves: That the minutes of the meeting of 1 December 2021 be confirmed.

5. \*\*\*

6. \*\*\*

7. \*\*\*

**8. Inquiry into child protection and social services system**

The Committee discussed the next steps for the inquiry into child protection and the social services system.

Resolved, on the motion of Mr Rath, seconded by Ms Boyd: That the Committee notes the discussion.

**9. Next Meeting**

The meeting adjourned at 2.02pm until date to be confirmed.

**Meeting no. 19**

1.41 pm, Wednesday, 8 June 2022

Room 1254, Parliament House

**Members present**

Ms Melanie Gibbons MP (Deputy Chair), Ms Abigail Boyd MLC, The Hon Greg Donnelly MLC, The Hon Chris Rath MLC, Ms Jodie Harrison MP, Mr Nathaniel Smith MP.

**Officers present**

Clara Hawker, Leon Last, Matt Johnson, Ilana Chaffey and Mohini Mehta.

**Apologies**

Mr Peter Sidgreaves (Chair).

In the absence of the Chair, the Deputy Chair, Ms Gibbons, opened the meeting at 1.41pm.

**1. Confirmation of minutes**

Resolved, on the motion of Mr Rath, seconded by Mr Smith: That the minutes of the meeting of 19 May 2022 be confirmed.

2. \*\*\*

**3. Inquiry into child protection and social services system**

The Committee discussed the next steps in the upcoming inquiry into the child protection and social services system.

The Committee agreed that the inquiry would focus on cross-jurisdictional issues between the child protection system and family courts.

The Committee discussed witnesses and dates for a public hearing in August, and agreed that the secretariat should circulate a list of potential witnesses prior to the next meeting.

\*\*\*

4. \*\*\*

**5. Next Meeting**

The meeting adjourned at 2.01pm until 24 June.

**Meeting no. 20**

10.02 pm, Friday, 24 June 2022

Room 814-815, Parliament House and via videoconference

**Members present**

Mr Peter Sidgreaves MP (Chair), Ms Melanie Gibbons MP (Deputy Chair) (videoconference), Ms Jodie Harrison MP, the Hon Greg Donnelly MLC and the Hon Chris Rath MLC.

**Officers present**

Sam Griffith, Matt Johnson, Ilana Chaffey, Mohini Mehta.

**Apologies**

The Hon Abigail Boyd MLC, Mr Nathaniel Smith MP.

1. \*\*\*

2. \*\*\*

**3. Deliberative meeting**

The Chair opened the deliberative meeting at 1.15 pm.

**3.1 Confirmation of minutes**

Resolved, on the motion of Ms Harrison, seconded Mr Donnelly: That the minutes of the meeting of 8 June 2022 be confirmed.

**3.2 \*\*\***

**3.3 Inquiry into child protection and social services system**

**3.1.1 Inquiry planning**

The Committee discussed the list of potential witnesses for the upcoming hearing, and the inquiry's focus on cross-jurisdictional issues between the child protection system and family courts.

Members proposed alternate stakeholders to be witnesses for the hearing.

The Committee agreed that the revised focus of the inquiry will be communicated to stakeholders and updated on the inquiry's webpage.

Resolved, on the motion of Mr Donnelly, seconded Ms Harrison, that the secretariat circulate a revised list of potential witnesses, and that the focus of the inquiry is specific, as reflected in the minutes of the previous meeting.

**3.1.2 \*\*\***

**4. \*\*\***

**5. Next meeting**

The meeting adjourned at 1.35pm until a later date.

**Meeting no. 21**

9.22 am, Friday, 12 August 2022

Room 814-815, Parliament House and via videoconference

**Members present**

Mr Peter Sidgreaves MP (Chair), Ms Melanie Gibbons MP (Deputy Chair), The Hon Abigail Boyd MLC, Ms Jodie Harrison MP, the Hon Chris Rath MLC and Mr Nathaniel Smith MP (Videoconference)

**Officers present**

Clara Hawker, Matt Johnson, Patrick Glynn, Mohini Mehta

**Apologies**

The Hon Greg Donnelly MLC

**1. \*\*\***

**2. Inquiry into child protection and social services system**

**2.1 Pre-hearing resolutions**

Resolved, on the motion of Mr Rath, seconded by Mr Smith:

1. That the Committee invite the witnesses listed in the notice of hearing for Friday, 12 August 2022 to give evidence in relation to the inquiry into the child protection and social services system.
2. That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 12 August 2022, in accordance with the guidelines for the coverage of proceedings for parliamentary committees administered by the Legislative Assembly.
3. That witnesses be requested to return answers to questions taken on notice and additional questions within 14 days of the date on which the questions are forwarded to them.

**2.2 \*\*\***

**2.3 \*\*\***

The deliberative meeting was adjourned at 9:32 am.

**3. Public hearing**

The Chair opened the hearing at 9:33 am and made a short opening statement.  
Witnesses were admitted.

Renata Field, Manager, Policy, Advocacy & Research, Domestic Violence NSW, affirmed and examined.

Ms Field made an opening statement.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

Ms Jane Matts, Founder and Practice Leader, Sisters in Law, affirmed and examined. Ms Kerrie Thompson, CEO, VOCAL, affirmed and examined.

Ms Matts and Ms Thompson made opening statements.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The hearing adjourned at 10:47 am.

**4. Public hearing (continued)**

The Chair resumed the public hearing at 11:30 am.

Ms Katie Kelso Deputy Director, Family Law, Legal Aid NSW, affirmed and examined by videoconference.

The Committee questioned the witness. Evidence concluded and the witness withdrew.

The hearing adjourned at 11:48 am.

**5. Deliberative meeting**

The Chair opened the deliberative meeting at 11:49 am.

**5.1. Correspondence**

**5.1.1. \*\*\***

**5.1.2. Email received from Ms Virginia Wilson**

The Committee noted an email received from Ms Virginia Wilson, Deputy Principal Registrar, Federal Circuit and Family Court of Australia, dated 29 July 2022, in response to the invitation to appear at the 12 August 2022 public hearing on the child protection and social services system.

The Committee noted the correspondence and agreed that the secretariat will forward similar questions to both the Federal Circuit and Family Court of Australia and to the Attorney-General's Department (Commonwealth).

Resolved, on the motion of Ms Boyd, seconded by Ms Gibbons: That Committee members provide any questions to the Federal Circuit and Family Court of Australia to the secretariat by the end of next week, for forwarding to the Court, with a response requested within two weeks of receipt.

**5.1.3. Email received from Ms Deidre Cheers**

Resolved, on the motion of Ms Harrison, seconded by Ms Gibbons: That the Committee note an email received from Ms Deidre Cheers, Chief Executive Officer, Barnados Australia, dated 31 July 2022, in relation to the revised scope of the inquiry into the child protection and social services system.

The deliberative meeting was adjourned at 11:58 am.

**6. Public hearing (continued)**

The Chair resumed the public hearing at 12:00 pm.

Dr Rae Kaspiew, Research Director, Systems and Services, Australian Institute of Family Services, affirmed and examined by videoconference.

Dr Rachel Carson, Executive Manager, Australian Institute of Family Studies' Family Law, Family Violence and Elder Abuse Division, sworn and examined by videoconference.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

Ms Michelle Hayward, Managing Solicitor, Family Law Practice, Aboriginal Legal Service, affirmed and examined by videoconference.

Ms Zoe De Re, Managing Solicitor, Care & Protection, Aboriginal Legal Service, affirmed and examined by videoconference.

Ms De Re made an opening statement.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The hearing adjourned at 1:02 pm.

**7. Deliberative meeting**



The Chair opened the deliberative meeting at 2:17pm.

Resolved, on the motion of Ms Boyd, seconded by Ms Gibbons, that the Committee invite Mr Adam Washbourne, CEO, Fighters Against Child Abuse Australia, to give evidence in relation to the inquiry into the child protection and social services system.

#### **8. Public hearing (continued)**

The Chair resumed the public hearing at 2:18 pm.

Ms Niki Norris AM, Founder, National Child Protection Alliance, affirmed and examined.

Ms Pip Rae, Chair, National Child Protection Alliance, sworn and examined.

Mr Adam Washbourne, CEO, Fighters Against Child Abuse Australia, sworn and examined.

Ms Rae, Ms Norris and Mr Washbourne made opening statements.

The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The Chair left the meeting at 2.45pm. Ms Gibbons, as Deputy Chair, presided over the hearing.

Ms Simone Czech, Deputy Secretary, Child Protection and Permanency, District and Youth Justice Services, Department of Communities and Justice, affirmed and examined.

Ms Rachael Ward, Director, Child Protection Law, DCJ Legal, affirmed and examined.

Ms Zoe Robinson, Advocate for Children and Young People, affirmed and examined via videoconference.

Ms Janet Schorer, Children's Guardian, sworn and examined. Ms Larissa Johnson, Director Out-of-Home Care Regulation, Office of the Children's Guardian, affirmed and examined.

Ms Czech made an opening statement. The Committee questioned the witnesses. Evidence concluded and the witnesses withdrew.

The public hearing concluded at 3:39 pm.

#### **10. Post-hearing deliberative meeting**

The Deputy Chair opened the meeting at 3:41 pm.

- **Publication orders**

Resolved, on the motion of Ms Boyd, seconded by Ms Harrison: That the corrected transcript of public evidence given today be authorised for publication and uploaded on the Committee's website.

- **Acceptance and publication of tendered documents**

Resolved, on the motion of Ms Boyd, seconded by Mr Rath: That the Committee accepts the following document tendered by Ms Rachael Ward, Director, Child Protection Law, DCJ Legal, during the hearing: *Statement of Rachael Ward*

Resolved, on motion of Ms Boyd, seconded by Mr Rath: That the Committee publishes the following document tendered by Ms Rachael Ward, Director, Child Protection Law, DCJ Legal, during the hearing: *Statement of Rachael Ward*.

## 11. Next Meeting

The meeting adjourned at 3.42 pm until a date and time to be confirmed.

### Meeting no. 22

1.32 pm, Tuesday, 18 October 2022

Room 814-815, Parliament House and via videoconference

### Members present

Mr Peter Sidgreaves MP (Chair), Mrs Melanie Gibbons MP (Deputy Chair), the Hon Abegail Boyd MLC (videoconference), the Hon Greg Donnelly MLC, Mrs Jodie Harrison MP, the Hon Chris Rath MLC, Mr Nathaniel Smith MP (videoconference).

### Officers present

Clara Hawker, Matt Johnson, Patrick Glynn, Ilana Chaffey, Mohini Mehta

#### 1. Confirmation of minutes

Resolved, on the motion of Mr Rath, seconded by Mrs Gibbons: That the minutes of the meeting of 12 August 2022 be confirmed.

2. \*\*\*

3. \*\*\*

#### 4. Inquiry into the child protection and social services system

##### 4.1 Responses to questions sent to Commonwealth stakeholders

The Committee received the following responses to questions sent to Commonwealth stakeholders:

- The Federal Circuit and Family Court of Australia, dated 2 September
- The Commonwealth Attorney-General's Department, dated 7 September

Resolved, on the motion of Mr Rath, seconded Mr Donnelly: That the Committee publish the responses from the Commonwealth Attorney-General's Department and Federal Circuit and Family Court of Australia on its webpage with contact details redacted.

##### 4.2 Responses to questions taken on notice and supplementary questions

The Committee received the following answers to questions on notice and supplementary questions following the public hearing held on 12 August:

- Answers to questions on notice and supplementary questions from Legal Aid NSW
- Answers to questions on notice and supplementary questions from the Office of the Advocate for Children and Young People
- Answers to questions on notice and supplementary questions from Domestic Violence NSW
- Answers to questions on notice and supplementary questions from NSW Department of Communities and Justice
- Answers to supplementary questions from Ms Kerrie Thompson, Victims of Crime Assistance League and Sisters in Law Project
- Answers to supplementary questions from Fighters Against Child Abuse Australia
- Answers to supplementary questions from Aboriginal Legal Service NSW/ACT
- Answers to supplementary questions from the Sisters in Law Project

Resolved, on the motion of Ms Boyd, seconded Ms Harrison: That the Committee accept the listed answers to questions on notice and supplementary questions and publish them on its webpage with contact details redacted.

**4.3 \*\*\***

**5. \*\*\***

**6. Next meeting**

The meeting adjourned at 2.01 pm until a date and time to be confirmed.

**UNCONFIRMED MINUTES**

**Meeting no. 23**

1.33 pm, Friday 25 November 2022

Room 1254, Parliament House and via videoconference

**Members present**

Mr Peter Sidgreaves MP (Chair), Ms Abigail Boyd MLC, The Hon Greg Donnelly MLC, The Hon Chris Rath MLC, Ms Jodie Harrison MP, and Mr Nathaniel Smith MP (videoconference)

**Officers present**

Rohan Tyler, Matt Johnson, Patrick Glynn and Hayley Jarrett

**Apologies**

Ms Melanie Gibbons MP (Deputy Chair)

**1. Recording of Committee meeting**

Resolved, on the motion of Ms Boyd, seconded by Mr Donnelly: That the Committee agree to record the meeting for the purposes of the secretariat preparing the minutes and report amendments, and that the recording be deleted when the report is tabled.

**2. Confirmation of minutes**

Resolved, on the motion of Mr Rath, seconded by Ms Harrison: That the minutes of the meeting of 18 October 2022 be confirmed.

**3. Inquiry into the child protection and social services system**

**3.1 Consideration of the Chair's draft report**

Resolved on the motion of Ms Boyd, seconded by Mr Rath: That the draft report be considered *in globo*.

**3.1.1 Amendments**

By concurrence of all members, the Committee agreed that the secretariat be permitted to make stylistic amendments as proposed by Mr Donnelly.

Resolved, on the motion of Ms Boyd, seconded by Ms Harrison: That the words '(including social workers as support persons)' be inserted after 'other support services' in Recommendation 4.

Resolved, on the motion of Ms Boyd, seconded by Mr Rath: That the words ', with the aim of better realising its purpose of aligning the jurisdictions in order to meet the care and protection needs of children' be inserted at the end of Recommendation 6.

Resolved, on the motion of Ms Boyd, seconded by Ms Harrison: That the words 'or are experiencing' be inserted following the word 'experienced' in Recommendation 8.

Resolved, on the motion of Ms Boyd, seconded by Ms Harrison:

- That the following new Recommendation be inserted after Recommendation 8 on page 21: 'That the NSW Department of Communities and Justice (DCJ) initiate a review of the information sharing agreement between DCJ and Legal Aid NSW, with the aim of ensuring that it remains fit for purpose.'
- That the following text be included in paragraphs below the new Recommendation on page 21: 'The Committee notes that the information sharing agreement between the DCJ and Legal Aid NSW would also benefit from review to see whether it remains fit for purpose. In evidence provided to the Committee, Legal Aid NSW advised that there 'are times where responses for requests for information are not responded to and times where there are limitations on the information that is provided because of the limitations imposed by the agreement'.'

Resolved, on the motion of Ms Boyd, seconded by Mr Rath: That the words 'with child protection and family violence issues' be inserted after the word 'families' in Recommendation 9.

Resolved, on the motion of Ms Boyd, seconded by Ms Harrison: That the words 'child abuse and family violence and' be inserted following the word 'in' in Recommendation 11.

Resolved, on the motion of Ms Boyd, seconded by Mr Donnelly: That the words 'both state children's and federal family law' be inserted following the words 'presented in' in Recommendation 12.

Resolved, on the motion of Ms Boyd, seconded by Mr Rath: That the following new Finding be inserted after paragraph 3.68: 'Finding 2: Children and young people are not necessarily being provided the opportunity to be heard, in their own words, in court proceedings where significant decisions are often made for them.'

Resolved, on the motion of Mr Donnelly, seconded by Mr Rath: That the words 'policing officials' be omitted and replaced with 'police officers' in Recommendation 14.

Resolved, on the motion of Mr Donnelly, seconded by Mr Rath: That the words 'and where positive results from the Commonwealth-funded pilot have been reported.' be inserted following the word 'Commonwealth' in Recommendation 14.

Resolved, on the motion of Mr Donnelly, seconded by Ms Harrison: That the words 'much' and 'has been' be omitted and the words 'there has been' be inserted following the word 'that' in paragraph 1.11, so that the sentence reads, 'The Committee acknowledges that there has been work done by the NSW Government and Department of Communities and Justice (DCJ), both proactively and in response to the recommendations of these reviews and inquiries.'

Resolved, on the motion of Ms Boyd, seconded by Mr Donnelly: That the words 'an estimated' be inserted before '126 000' in paragraph 1.12.

Resolved, on the motion of Ms Boyd, seconded by Mr Donnelly: That the following be inserted as a second sentence in paragraph 1.12: 'The Committee notes that there was a reported 112 517 in 2019-2020 and 105 772 in 2018-2019.'

Resolved, on the motion of Ms Boyd, seconded by Mr Donnelly: That the words 'including Aboriginal children and young people involved in the child protection system,' be inserted following the word 'stakeholders' in paragraph 1.36.

Resolved, on the motion of Ms Boyd, seconded by Ms Harrison: That the words 'involving that parent' be inserted following the word 'identified' in paragraph 2.15.

Resolved, on the motion of Ms Boyd, seconded by Mr Rath: That the word 'wishes' be omitted and replaced with the word 'views' in paragraph 2.17.

Resolved, on the motion of Ms Boyd, seconded by Mr Donnelly: That the words 'and abide by NSW child protection legislative requirements' after the words 'protect their child' in paragraph 2.38.

Resolved, on the motion of Ms Boyd, seconded by Ms Harrison: That the following paragraph be inserted after 3.24: 'The Committee notes that there may be instances where the operation of privacy requirements under the *Children and Young Persons (Care and Protection) Act 1998* and federal privacy legislation may hinder the sharing of child protection/family violence information between DCJ and FCFCOA. This should be monitored as part of the reforms of and implementation of the National Strategic Framework for Information Sharing.'

### **3.1.2. Adoption of report**

Resolved, on the motion of Mr Rath, seconded by Ms Boyd:

1. That the draft report, as amended, be the report of the Committee, and that it be signed by the Chair and presented to the House.
2. That the Chair and committee staff be permitted to correct stylistic, typographical, and grammatical errors.
3. That, once tabled, the report be posted on the Committee's webpage.

**3.2 \*\*\***

**3.3 \*\*\***

**3.4 \*\*\***

**4. \*\*\***

**5. \*\*\***

The Chair adjourned the meeting at 2.24pm.

## Appendix Six – Glossary

AIFS	Australian Institute of Family Studies
ALS	Aboriginal Legal Service (NSW/ACT) Ltd
DCJ	NSW Department of Communities and Justice
DVNSW	Domestic Violence NSW
FACAA	Fighters Against Child Abuse Australia
FCFCOA	Federal Circuit and Family Court of Australia
ICL	Independent children's lawyer
JCPRP	Joint Child Protection Response Program
NCPA	National Child Protection Alliance
OOHC	Out of home care
ROSH	Risk of significant harm
TFM	Their Futures Matter
VOCAL	Victims of Crime Assistance League (Hunter)
WDVCAS	Women's Domestic Violence Court Advocacy Services