



7 September 2022

NSW Parliamentary Committee on Children and Young People Inquiry into the child protection and social services system

Questions for the Commonwealth Attorney-General's Department

- 1. Can you outline any recent legislative or policy reforms that are underway at a national level, in order to improve alignment between the family law and state child protection systems?**

The Australian Government is providing funding to co-locate state and territory child protection and policing officials in family law courts across Australia. The co-location program has established 22 (16 child protection and 6 police) co-located officials in family law court registries since June 2020. Further funding has been allocated by the Government to continue the co-location program until 30 June 2025. This additional funding was part of the 2021-22 Budget measure to support information sharing under the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* (the National Framework).

The National Framework, in conjunction with the co-location program, will support the appropriate and timely two-way exchange of information between the family law courts and relevant agencies (including State and Territory child protection agencies). The primary objective of the National Framework is to promote the safety and wellbeing of adults and children affected by family violence, child abuse and neglect, ensuring decision-makers across these systems 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. This early access to relevant and current information supports decision making that promotes the best possible outcomes for children, and a court system that is responsive to safety risks.

- 2. How often is the Magellan program evaluated?**
 - a. What issues has the Department identified that could be improved in the Magellan program?**

The Magellan Program is a case management model implemented by the Federal Circuit and Family Court of Australia (FCFCOA) for matters where one (or both) parties have raised serious allegations of physical and/or sexual child abuse. The Attorney-General's Department notes the FCFCOA is best placed to respond to matters relating to the operation of the Court.

- 3. What training is provided to the people who work in the family law system – such as lawyers, judges and magistrates – to ensure they can achieve outcomes that are in the best interests of children in matters that involve allegations of child abuse or family violence?**
 - a. What training is provided to Independent Children's Lawyers in relation to representing children?**

The Commonwealth and states and territories co-fund the Australian Institute of Judicial Administration to maintain and update the National Domestic and Family Violence Bench Book. The Attorney-General's Department administers this funding for the Commonwealth. The Bench Book is a central resource on domestic and family violence information that assists judicial officers and legal practitioners when considering legal issues relevant to domestic and family violence. It covers the dynamics of family violence, guidelines for courtroom management, information about referrals for victim-survivors and perpetrators, evidence issues, information on responses in criminal proceedings, and information about family law proceedings. The Bench Book also includes information regarding the exposure of children to family and domestic violence, whether direct or indirect, and provides resources that outline how family and domestic violence can cause significant harm to children.

Building on the Bench Book resource, the Commonwealth, states and territories co-fund the National Judicial College of Australia (NCJA) to develop and run the Family Violence in the Court Training Program. The training program is designed to improve competency of judicial officers dealing with family law and family violence matters which includes information on the impacts of family and domestic violence on children. Training is delivered in all Australian jurisdictions on a regular, biannual basis. The NJCA has also developed online eLearning modules for judicial officers unable to attend the face-to-face sessions.

Legal Aid NSW, on behalf of National Legal Aid, developed a national training program for Independent Children's Lawyers (ICLs) which was made available nationally to practitioners in December 2018. This training includes six online modules and workshop training to support ICLs deal with complex and difficult situations, including domestic violence, mental health and trauma; meeting with and interviewing children to obtain their views; and presenting information to the court on the best interests of the child. ICLs are expected by legal aid commissions to have completed this training before they can be appointed as an ICL. Further details regarding the ICL training program is available from <https://icl.gov.au/>, or please contact National Legal Aid or Legal Aid NSW – contact details are available from: www.nationallegalaid.org/contact/.

- 4. What steps are Independent Children's Lawyers (ICL) required to take in cases where there are allegations of child abuse or family violence?**
 - a. What processes exist for managing complaints and grievances relating to the actions of ICLs?**

The *Family Law Act 1975* (Cth) (the Family Law Act) requires that an ICL must form an independent view, based on the evidence available to them, of what is in the best interests of the child, and act in the best interests of the child. If they are satisfied that the adoption of a particular course of action is in the best interests of the child, the ICL must make a submission to the court suggesting the adoption of that course of action.

The [*Guidelines for Independent Children's Lawyers*](#) (2021) provide the obligations and expectations of the ICL role, including in circumstances where there are allegations of child abuse or family violence. Fundamentally, these guidelines note the importance of remaining independent, objective and focused upon promoting the child's best interests in all dealings throughout the proceedings. These guidelines have been endorsed by the Chief Justice (Division 1) and Chief Judge (Division 2) of the FCFCOA, and the Chief Judge of the Family Court of Western Australia (FCWA). For further details about the skills and expectations of ICLs when responding to allegations of child abuse and family violence, please contact National Legal Aid or the individual legal aid commissions.

Where there are concerns about the actions or conduct of an ICL, complaints may be directed to the relevant legal aid commission responsible for the ICL appointment. Complaints may also be directed to relevant authorities responsible for the regulation of the legal profession such as the Law Society or Legal Services Commission in the relevant state or territory.

5. What oversight or accountability mechanisms exist to review the fairness and accuracy of family consultant reports?

Where there are concerns about the fairness or accuracy of a family report, or a complaint about a family report writer, the expectation is that these concerns are to be raised within court proceedings and tested through cross-examination. Family reports and assessments are admitted into evidence and the court's role is to establish the truth of the evidence and the weight it will be given. Cross-examination is an essential feature of the adversarial trial system and this approach is consistent with the way other expert evidence is treated by the courts.

The other mechanisms available to review the fairness and accuracy of a family report depend upon who has appointed the family report writer. For example, a report writer may be appointed as an employee of the FCFCOA, appointed under regulation 7 of the Family Law Regulations 1984, or appointed by the parties as a single expert witness. Family reports produced by FCFCOA employees or regulation 7 appointments may have their reports reviewed through FCFCOA internal quality assurance and supervisory mechanisms. The FCFCOA can provide further information about these review and quality assurance processes.

The complaints mechanisms available depend upon on the profession of the family report writer (usually a psychologist, psychiatrist or social worker). Subject to the nature of the complaint, it can be investigated by their employer (such as the FCFCOA) or the relevant health regulatory authority if the report writer is a psychologist or psychiatrist, or a professional association of which they may be a member for code of conduct considerations.

The Australian Government is exploring options to improve the competency, quality and accountability of professionals involved in writing family reports, as was recommended by the Australian Law Reform Commission's (ALRC) 2019 report into the family law system, *Family Law for the Future: An Inquiry into the Family Law System* (recommendation 53) and the 2021 second interim report of the Joint Select Committee on Australia's Family Law System, *Improvements in family law proceedings* (recommendation 9). A consultation paper – [Improving the competency and accountability for family report writers](#) – was published in late 2021. The Attorney-General's Department is considering the 96 submissions made in response to the consultation, and will advise the Australian Government in due course.

6. How can information sharing between the NSW child protection system and the family law system be improved?

a. What current mechanisms exist for data sharing across jurisdictions?

b. Is this an area that requires reform?

As noted in the response to Question 1, the co-location program has facilitated more collaborative inter-agency and inter-jurisdictional information sharing arrangements between the family law, family violence and child protection systems across Australia. In NSW specifically, four child protection officials have been co-located in the Sydney, Parramatta, Wollongong and Newcastle registries of the FCFCOA since 1 June 2020.

Co-located police and child protection officials play a key role in sharing information to and from the family law courts, increasing the quality and timeliness of family safety information sharing by improving existing information sharing processes, developing new cross-jurisdictional information sharing pathways, and facilitating deeper relationships between co-located officials, state agencies and courts.

In addition, the Australian Government is currently working with the family law courts and states and territories to implement the National Framework. The National Framework, which was endorsed by the then Meeting of Attorneys-General in November 2021 after extended negotiations with participating state and territory agencies, will support the appropriate and timely two-way exchange of information between the FCFCOA and the FCWA (family law courts) on the one hand, and state and territory courts, child protection, firearms and policing agencies on the other. The National Framework responds to a number of recent inquiries that have noted major concerns with inconsistent or incomplete information sharing between the family law courts, and state and territory family violence and child protection systems, which may result in an increased risk to adults and children.

The National Framework will establish a nationally consistent and streamlined approach to meeting the needs of children and families engaged in family law proceedings where there is, or may be, a risk of family violence or child abuse. The Australian Government is in the process of considering legislative amendments to the Family Law Act to operationalise the National Framework. While the National Framework is not intended to impact state-state information sharing, the Attorney-General's Department

acknowledges there has been significant and ongoing work to implement, encourage and improve information sharing across state and territory lines.

- 7. Is it practical and appropriate for family law and child protection matters to be held in the same jurisdiction?**
 - a. Would there be benefits to having child protection experts or authorities embedded within the Family Court?**
 - b. Would there be benefits to having state and territory children's courts exercising family law jurisdiction?**

The Family Law Act confers family law parenting jurisdiction upon state and territory courts of summary jurisdiction. The *Family Law Amendment (Family Violence and Other Measures) Act 2018* provided for the expansion of state and territory courts' family law jurisdiction by allowing relevant state and territory courts, such as children's courts, to be prescribed in regulations to have the same family law parenting jurisdiction as state and territory courts of summary jurisdiction. This is intended to remove any doubt that prescribed children's courts, no matter how constituted, are able to make family law orders relating to children if appropriate, rather than requiring families to initiate separate proceedings for family law orders in a family law court.

There are also current mechanisms available which provide the family law courts with direct access to child protection officials. Under the co-location program, child protection officials are currently co-locating within court registries across Australia. Co-locating an official at the court has assisted with the development of trust, mutual respect, and a shared understanding of practice between the family law courts, the co-located officials and, by extension, their agencies.

In addition, under section 91B of the Family Law Act, the family law courts may request the intervention of child protection officials in any proceedings which affect, or may affect, the welfare of a child. Child protection co-located officials in some states have been requested to attend matters as a 'friend of the court' under this provision. By attending matters as a 'friend of the court', child protection officials have been able to ensure that the most contemporaneous information is provided, and any questions that may arise regarding this information can be answered immediately. This facilitates prompt decision-making that promotes the best possible outcomes for children, and a court system that is responsive to safety risks.

- 8. Are you aware of the proportion of cases in the Family Court, annually, in which a child has named a parent or carer as an abuser, and that parent or carer is then allowed to have custody or unsupervised contact with the child?**
 - a. If so, is there a threshold at which you would be concerned? E.g. 5% of cases annually**
 - b. If so, are there any circumstances in which you would not be concerned about reaching such a threshold? E.g. if there were cases in which a parent had coached a child to provide misleading evidence**
 - c. If not, what processes would the Court or the Attorney-General's Department need to introduce in order to capture such data?**

The Australian Government is committed to protecting Australia's children and ensuring their safety and wellbeing in all settings.

The Attorney-General's Department notes the FCFCOA is responsible for the operation of the court, which includes data collection, and would be best placed to respond to this question.