

All enquiries

Telephone: (08) 6213 2219
Email: tanyana.jackiewicz@ccyp.wa.gov.au
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Family Law Council Secretariat
C/- Attorney General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Professor Rhoades

Family Law Council reference on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems (Submission 2)*

I am writing to you regarding a submission to the above reference. Consistent with my previous submission, I make my comments in the context of my role as Commissioner for Children and Young People in WA and my primary function to advocate for the best interests of the child. Under the *Commissioner and Children Act 2006 (WA)* I must give priority to vulnerable children. I encourage the work of the Family Law Council to improve the interaction between the child protection systems and the family law system. I am highly supportive of finding more effective ways of responding to the needs of children in separated families, particularly in instances of family violence, abuse, or neglect.

General comments

In my role at the Commissioner for Children and Young People I need to keep the best interests of the child at the centre of my work. In doing so I need to recognise that protecting the best interests of the child particularly in relation to children at risk means a focus not only on the legal issues but on complex psycho-social and ecological issues that arise from these circumstances. As such, protecting children is a collective responsibility of a number of jurisdictions and agencies all with differing ideologies, organizational cultures and processes.

Resource constraints are fundamental issues across all these agencies. In light of this, collaborative working relationships are essential to ensuring available resources are used efficiently and effectively.

To be effective these relationships need to be embedded within a comprehensive, inclusive and across jurisdictional approach to ensuring the best interests of children in the family law and child protection systems.

This approach is complex and multifaceted and will need to take a long term view in order to achieve change. Moreover, in order for the system to better meet the needs of children in complex families, systemic cultural change is required across all relevant jurisdictions. This

change is needed to break down the cultural and ideological differences that prevent these agencies, government and non-government from working effectively together to meet the needs of children at risk and their families. This challenge requires a different approach to working together to achieve a truly child focused system.

As a starting point I urge all relevant organizations to come to a common understanding of what constitutes “best interests” of the child in common language that can be used across all jurisdictions. This common understanding could provide the basis in which these areas work together. Keeping the best interests of the child at the centre of all decision-making is consistent with the UN Convention on the Rights of the Child.

In regard to possible approaches to facilitate working collaboratively, the Family Law Council could consider investigating *collective impact* as a means of advocating for jurisdictions to work together on complex social problems such as those that present to the family law system and child protection systems¹.

I understand that collective impact is currently being used to address issues associated with early childhood disadvantage². In 2011, John Kania and Mark Kramer³ identified five key elements for collective impact pictorially represented below.



You may find the experience of the Tow Foundation in the area of juvenile justice in the US States of Connecticut and New York⁴ to be useful to this reference. The Tow Foundation facilitated a Collective Impact process with the aim of creating effective connections in a ‘system’ of courts, law enforcement, probation, rehabilitation, education, mental health, and welfare services. These agencies were known to exist in silos, working non-communicatively and often at cross purposes. Using the Collective Impact framework, the project brought to the same table senior judges, government, business, young offenders, families, advocates and victims. It achieved a 45% decrease in the numbers of young people entering New York

¹ Please refer to <http://www.collaborationforimpact.com/collective-impact/>

² Please refer to ‘Opportunity Child’ supported by Australia Research Alliance for Children and Young People, ten20 Foundation and Woodside Development Fund. <http://www.aracy.org.au/news/cradle-to-career-opportunity-child-to-target-childhood-vulnerability>

³ Above at n1

⁴ Refer to this link for an overview of the work of the Tow Foundation in juvenile justice <http://www.collaborationforimpact.com/wp-content/uploads/2014/03/Juvenile-Justice-Case-Study-Presentation-Plain-FINAL.pdf>

state detention facilities, as a result of newly co-ordinated provision of services from the collective.

The Family Law Council could advocate for an area-specific pilot of a collective impact approach that brings together key players in the family law system as well as those in the child protection systems and other community organisations. The purpose of bringing these groups together could be to establish a common vision, a common language and a set of guiding principles on how these agencies will work together in the best interests of the child to support complex families.

Central to these conversations is the acknowledgement of Article 12 of the UN Convention for the Rights of the Child that supports listening to the voices of the child. Young people (as well as young adults) need to be provided with a place at this collaborative table to share their experiences of the child protection and family law system that will guide collective decision making.

The collective impact elements as they relate to this issue could include:

1. All representatives from relevant jurisdictions and agencies have a common agenda including a shared understanding of the problem and a joint approach to solving it through agreed upon actions.
2. Collecting data and measuring results consistently across all the agencies to support shared measurement for alignment and accountability.
3. A plan of action that outlines and coordinates mutually reinforcing activities for each agency.
4. Open and continuous communication mechanisms across the many players to build trust, assure mutual objectives, and create common motivation.

The success of a collective impact approach, according to Kania and Kramer, is the identification of a backbone organization that has responsibility to serve the entire initiative and coordinate participating organisations and agencies. This requires investment, from either government or philanthropy. However, in respect to this issue, where the family law system is known for its adversarial elements and the child protection system for its reputation taking children away from families, a neutral non-sectarian organization that is known for its work to support families and children and young people may provide the much needed glue that brings all the elements together in a functioning coordinated and integrated system. The Family Law Council could advocate for such an entity.

Once a shared vision and common language has been established then this collective impact approach based on a shared vision and common language could support the following:

- Development of across the board screening protocols to accurately identify children and families at risk.
- Appropriate information sharing protocols and procedures that encourage safe and robust two way information exchange between agencies
- Appropriate referral processes including follow-up of families and

- Identification of gaps in the system

Importantly, if a collective impact approach is adopted, a robust evaluation strategy needs to be implemented to ensure that processes are put in place are making a difference to the lives of children and young people as well as documenting good practice principles in this area to be used in other areas.

A number of the points above are discussed below in the context of specific questions posed by the Family Law Council.

Exchange of relevant information (Question 1 and 3)

Sharing accurate and timely information between agencies is crucial to a well-functioning system that protects children's best interests and keeps children safe. I acknowledge the urgent need for increased collaboration between agencies particularly in regard to sharing of information on children and families that may be at risk. Federal and state privacy legislation supports the provision of information between agencies in circumstances to protect children; however, I see a real need to promote a culture of appropriate information sharing that is based on relevant information, clear guidelines and procedures consistently endorsed and applied across jurisdictions and agencies.

As part of the collective impact approach discussed above, information sharing guidelines could be developed that are consistently applied across agencies that clearly explain to agencies and organisations their obligations under various pieces of legislation. These guidelines could also set out clear information sharing protocols between relevant entities such as child protection, police, family law, FDR practitioners including how information can be requested from one agency to another and the importance and timeliness of responding to requests.

Careful consideration of relevant parties to these guidelines is required to ensure that the guidelines are applicable to all relevant agencies involved in this area. These could include non-government service providers including family violence advocacy and support services, as well as independent children's lawyers.

The importance of consistently provided training, advice and support to those who work in these agencies in relation to information sharing cannot be stressed enough. In the spirit of collective impact, this training could be held collaboratively between agencies to encourage cross cultural collaboration and foster understanding of the different areas that all work together to protect children. This will act to foster and encourage understanding of the specific complexities that dominate each of these jurisdictions.

I draw your attention to the National Framework for Protecting Australia's Children 2009–2020, in particular, the implementation of information sharing provisions between Commonwealth agencies, State and Territory agencies and non-government agencies dealing with vulnerable families.

As the Family Law Council is aware, the Chisolm Report (2013)⁵ on collaboration and information sharing between the family court and child protection in Australia provides excellent recommendations on this issue and supports policies and procedures to support collaboration that supplements existing legislation.

Finally, I recommend that the Family Law Council takes into account the experiences of the UK in implementing 'Every Child Matters' program, and the issues associated with broad scale technological solutions in an effort to share information and hence protect children, resulting in an overall failure of the system and a withdrawal of government commitment to this broad scale approach.⁶

Risk assessment in the family law system (Question 2)

I acknowledge the procedures and processes that dominate the workings of the Family Court mean that it can be difficult to identify children at risk at an appropriate time. The Court is reliant on the particularity of the applications filed by the parties (usually parents) to identify families and children who may be at risk, and that the opportunities for screening and triage are limited. However, the Family Court has an important role in ensuring those children who are at risk are identified and they and their families are appropriately referred to services to support them. I understand that the Detection of Overall Risk Screen is used in the family law system; although not adopted by other agencies. I am not aware of any evidence of robust validation of this tool, in terms of specificity and sensitivity. I support the development and adoption of common risk assessment tools across agencies and the wider community sector.

Identification of children and young people at risk and their families is the single most important aspect of being able to take appropriate action to protect these children. In an environment of resource constraints, it is important to be able to accurately identify families at risk. Purpose built screening tools to be used across jurisdictions that are sensitive enough to detect children at risk of harm; and to identify families in need of support, need to be developed. The success of these screening tools, however, is dependent on the quality and timeliness of the provision of information from many agencies.

These screening tools need to address the political and ideological issues that stem from significant differences among legal practitioners, family consultants, family dispute resolution practitioners, mental health practitioners, child protection practitioners, alcohol and drug workers, and other experts as to the causes and appropriate responses to family violence and abuse.

These screening tools must be culturally appropriate and socioeconomically sensitive and need to be simple enough so that they can be administered by a range of people within the

⁵ Professor Robert Chisolm (2013) Information-sharing in Family Law & Child Protection: Enhancing Collaboration, Commonwealth of Australia.

⁶ Refer to <http://www.infed.org/socialwork/contactpoint.htm> for a discussion on Contact Point, Every Child Matters Strategy that was launched by the UK Government as a result of a green paper into the death of Victoria Adjo Climbié.

family law system. These screening tools need to incorporate natural justice principles allowing families as well as children and young people themselves to challenge the outcomes of the screening process. Importantly these screening tools will need to be evaluated to ensure appropriate specificity and sensitivity.

Not one size fits all families and children, hence the screening tool could act to triage a system that provides support to those who need it, that takes action when action needs to be taken and that has access to information from a range of agencies to support decision-making. The benefits of a well-functioning screening tool extend not only to protecting children from harm but can also result in more efficient use of resources.

Services needed to support families and children who use the family law system where child safety concerns are identified (Question 4)

A considered and comprehensive approach is needed to determine the most appropriate and evidence based services that complex families need. These services need to be based on good evidence and where no good evidence exists; mechanisms need to be put in place to collect this evidence.

The collective impact approach that brings together all players in this area is a good starting point for identifying all those services currently operating in this space, identifying the gaps in these services and building regional specific and need specific range of services that support at risk families and children. A robust evaluation strategy needs to be put in place to ensure that those services that families and children are referred to are in fact improving the lives of these children and families.

Enhanced interaction between family courts and relevant services (Question 5)

As mentioned above, the facilitation of a collective impact approach will provide the foundation for enhanced interaction between the family law system and relevant services. This will provide the basis for the development of formal MOU's and agreements between agencies that relate to screening and identification of children and families at risk, sharing of information and effective communication mechanisms so that all players can work together in the best interests of the child.

I also recommend the development of resources for parents as well as children and young people (that are appropriate to a range of ages, educational levels and cultural diversity) that includes information on a range of relevant issues to these families such as where they can get support and what services they can access. These resources could be packaged and branded with a number of different agencies as a means of providing a seamless approach to dealing with complex families. Children and young people including those from Aboriginal and Torres Strait Islander backgrounds should be consulted in the development of these resources to ensure that they are acceptable and appropriate to needs of children and young people.

Further, I recommend the development of joint training opportunities between agencies on issues related to complex families (particularly family law and child protection) that builds common understandings and acts to move the cultures of the agencies closer together all

with the view of protecting children. I also recommend a constructive dialogue between the family court and other agencies that reinforces the value of each of the services provided by these agencies.

Opportunities for developing integrated responses (including case co-ordination) to families with complex needs who use the family law system (Question 6 and 7)

Much of my discussion above has centred on the integration of the family law system around the needs of the child and family. I support the provision of case co-ordination for at risk families, however, stress that without appropriate identification of these families through a robust screening tool and the establishment of a child and family friendly and culturally appropriate environment that will come with working collaboratively, engagement with these at risk families may be problematic. I recommend that the Family Law Council consults with other jurisdictions and agencies (including the Family Relationship Centres) that deal with complex children and their families to inform new integrated responses specific to the family law system. I refer you specifically to the work of child development services whose main client group are children with complex developmental issues. The Western Australian child development service takes a family centred approach to these issues and involves multi-disciplinary teams who all operate from different ideologies and purposes coming together to discuss issues specific to a particular child and their family⁷. The aim of this case conference is to assist decision making based on a holistic view from a range of medical, psychosocial and psychological perspectives to ensure that the needs of the child and family are met and the child receives the appropriate services.

I also direct you to the work of the Australian Research Alliance for Children and Young People (ARACY), in particular the Common Approach to Assessment, Referral and Support (CAARS) project. CAARS outlines a common approach for identifying and responding early to indicators of need. This project aims to prevent child abuse and neglect by advocating the use of an evidence-based toolkit to assist people who work with children to identify those children who may need help, and to provide timely, appropriate support. You can find more information on this and other important ARACY projects at <http://www.rch.org.au/uploadedFiles/Main/Content/ccch/PER%20%20CAARS%20Overview.pdf>

⁷ Refer to http://www.pmh.health.wa.gov.au/services/child_development_service/hp.htm

Final comments

My final comment relates to involving children and young people in the development of an integrated response to families with complex needs. Listening to the voices of children and young people who have been through the family court and child protection systems will ensure that the child remains at the centre of all decision making in this area. I refer you to the following link <http://www.ccyp.wa.gov.au/files/Participation%20Guidelines.pdf> for a copy of my guidelines for consulting with children and young people.

Thank you for the opportunity to provide my views in relation to this very important issue.

Yours sincerely

Jenni Perkins

A/Commissioner for Children and Young People

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