



Magistrates' Court of Victoria



Submission to the Family Law Council

Families with Complex Needs and the Intersection of
the Family Law and Child Protection Systems

November 2015

Introduction

The Children's Court of Victoria (CCV) and the Magistrates' Court of Victoria (MCV) are pleased to provide our joint submission to the Family Law Council in response to References 3 and 4 of the investigation into Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems.

CCV and MCV have each made a previous submission to the Council in respect of References 1 and 2 and this submission builds on those earlier submissions. This submission also suggests some solutions to the challenges posed. While noting references 3 and 4 are focussed primarily on opportunities for collaboration and information sharing within the family law system, CCV and MCV together take this opportunity to express our support for efforts to enhance information sharing and collaboration between both state and the federal jurisdictions, to improve the safety of women and children affected by family violence, commonly present in families with complex needs in the justice system.

Executive Summary

One of the most significant challenges courts encounter with complex families involved either simultaneously or consecutively in multiple jurisdictions, is the capacity to identify and then access important information to assist the court to manage the risk's identified and in turn, appropriately case manage the court proceedings. Where family violence and other risks of harm to children are factors which bring families into contact with courts, early and effective case management by courts and legal practitioners is a prerequisite to safeguarding the wellbeing of vulnerable children and all family members. By supporting these families to engage with the court process constructively, a specialist understanding and case management approach provides the best opportunity to improve outcomes for these families.

CCV and MCV consider that care and expertise is required in determining the multi-jurisdictional needs of any family in contact with the justice system and further, in assessing the future risk of harm at each stage of the contact with the Court system. Underpinning this submission is the need for caution in determining which families may have complex needs, and whether this is able to be assessed definitively at any particular time.

Justice system responses and related support for families with complex needs must incorporate a procedural and legislative framework built around appropriate information sharing that operates alongside a positive obligation being placed on parties and their lawyers to inform the court of relevant matters. This will ensure that parties are properly supported to raise relevant matters and produce critical information to enable courts to assess risk and address the issues these families present with in the justice system.

The capacity to effectively and efficiently manage cases which involve families in multiple proceedings across both state and the federal jurisdictions is constrained by the following factors;

- Stretched judicial and support staff numbers and related resources in both state courts;

- Inadequate case and family identification and matching across state court jurisdictions in the MCV (crime and family violence) and CCV and between state courts and other agencies, including police and child protection agencies.
- Inconsistent approaches to assessing and managing risk in relation to families with complex needs by a range of participants and decision makers in the justice system and between courts and agencies including police and child protection agencies.
- Lack of systemic, reliable and legislatively enabled sharing of information including judicial decisions, and expert reports as the basis of informed, evidence based decision making, in particular where family violence and protective concerns for children are features of, or reasons for a family's involvement in the court system.
- Inadequately funded and fragmented legal advice, support and duty lawyer arrangements which impact on the efficient and effective management of matters before the courts. Family members, particularly those who have experienced family violence, are significantly disadvantaged where they are required to have different lawyers appearing in different court processes, even in the one jurisdiction (for instance, different lawyers appearing in an application for an intervention order and in any criminal proceedings). In these circumstances, the challenges for efficient information exchange between jurisdictions are particularly difficult.

Recommendations

- Establish a central database that holds all family law, family violence and child protection orders accessible by each of the relevant courts, being the CCV, MCV and the Family Law Courts and state child protection authorities. The data needs to be named or person based to ensure ready access to reliable information about all current court orders.
- Review the *Children Youth and Families Act*, *Family Law Act* and *Family Violence Protection Act 2008*, *Magistrates' Court Act 1989* to clarify the meaning of "publication" and any other legislative provisions that impede appropriate information sharing, including expert reports, between jurisdictions. Any review of legislative impediments should have regard to the need to balance the benefits of confidentiality in promoting disclosure and the importance of jurisdictions being able to share information regarding risk to families and children.
- That the process for sharing of information needs to be supported by protocols to be developed and implemented between CCV, MCV and the Family Law Courts. While information sharing protocols and MOU's are important, they cannot stand alone, and are dependent on the knowledge and involvement of experienced judicial officers and court staff. Protocols must be given a profile among court and agency officers and must form the basis of an ongoing, responsive relationship between the parties and be supported and implemented in practice. Accordingly, integrated responses include a set of common policies and objectives, and mechanism's including information sharing protocols and cross-court support liaison officers.
- Explore at a senior level the potential for co-location of state and federal family law jurisdictions, or, further development of effective multi-jurisdictional court models such as the FVCD and SFVC.

- Provide funding for CCV and MCV to develop and deliver a shared, integrated and modern case and document management system which will support improved information sharing outcomes for state and federal courts and justice system agencies and enable integration with a central database. This would enable a name based, not incident or application-based, identifier.
- That consideration be given to the VLA panel arrangements that provide a service to families, including those in child protection and family law, to ensure they provide an optimal and comprehensive service to complex families.

Background

What are complex needs for a family?

CCV and MCV acknowledge that a family may develop ‘complex needs’ at any stage. We accept complex needs may relate to the dynamics of any family members with treated or untreated mental health, or personality issues, drug or alcohol addictions, homelessness, as well as entrenched family violence or family sexual abuse.

Our indigenous communities or those with a disability or those that are cultural and linguistically diverse may experience even more challenges in accessing the justice system.

These issues may mean the family has contact with the justice system on multiple occasions; for instance, for an intervention order hearing, for criminal charges against one or more family members or family law applications to resolve child contact arrangements. Child protection may also become involved with a family and formerly intervene through the Children’s Court, or by supporting a family member to ‘act protectively’ by applying for an intervention order in either the CCV or MCV. One or more of these events may direct where first contact is made with the justice system for a family – which can dictate the outcome.

Accordingly, it will not be possible to have one process or system for complex families and another system for not so complex families. The entire system needs cohesive specialisation to enable any court to respond effectively to a family’s contact with the justice system or to efficiently transfer the matter to another court.

Specialised practice

The principles underpinning the SFVS Courts are of specialist practice, specialist understanding of the dynamics of family violence and importantly information gathering and exchange or use in multi-jurisdictional hearings about the same family. The SFVC’s respond to the needs of the family appearing before the court, rather than considering and determining the type of application listed in a ‘silo’ approach. MCV and CCV submit this philosophy and approach is the best solution for families presenting with complex needs¹.

The MCV’s earlier submission included a discussion about the model of the FVCD which formally operates at two sites. The FVCD has legislative underpinning. Other specialist FV court programs are available at seven other court locations: Heidelberg, Ballarat, Frankston and Moorabbin. Each of

¹ This philosophy is also present in legislation where for example in a FVPA, the court must consider if there is a FLA or a Child protection order that is in place and relevant to the parties. The FVPA requires a judicial officer in certain circumstances to exercise their jurisdiction under s 68R ‘ to the fullest extent possible

these courts have mandated Men's Behaviour Change Programs able to be ordered by a magistrate when determining a Family Violence Protection Order (FVPO). Since 2006, the Melbourne, Sunshine/ Werribee and Frankston courts operated as Specialist FV Services sites with extra family violence registrars, and Applicant Support Workers to assist victims of family violence.

Information sharing between courts

An accessible and supportive court process, one that minimises the risk to children and families through the expeditious management of cases, must be underpinned by the availability of all relevant information to a decision maker, aligned with provision of appropriate legal and social support services. The capacity to share appropriate information quickly and securely across courts is a critical prerequisite to any systemic reform aimed at improving justice system responses for families with complex needs.

A thorough examination of the existing Commonwealth and State legislative frameworks was undertaken by the Australian Law Reform Commissions (and NSW LRC's) '*Family Violence – A National Legal Response*' Report 2010. MCV and CCV commend the recommendations generally and support cross jurisdictional cooperation to achieve the ALRC's recommendations, in particular with respect to information sharing, exchange of relevant evidence and reports. Many of the ALRC and NSW Law Reform Commission recommendations are directed towards improving the flow of information, including improving initiating applications; amending legislation that regulates the disclosure of information in relation to parenting orders, family violence orders and child protection orders; providing state and territory courts with access to the Commonwealth Courts Portal and establishing information sharing protocols and MOU's where appropriate. The recommendation of the ALRC and NSW LRC are endorsed by this submission.

MCV and CCV also note the ALRC recommendations that specialised practice in courts, and in related agencies together with improved integration and critical information sharing will improve responses for families with complex needs. It is our view that an integrated justice systems response and information and evidence sharing across jurisdictions is supported by specialised practice and specialist courts.

There is a need to review existing arrangements that govern the exchange of information, including reports, orders, and case management information between the Magistrate's Court of Victoria and the Children's Court and between each of these courts and their various jurisdictions and the family law courts.

Current arrangements for Information sharing

In 1995 a Memorandum of Understanding was signed by the MCV (which at that time encompassed the CCV) the Family Court of Australia and the (then) Department of Health and Community Services Victoria. The central principles underpinning the agreement remain relevant. These are:

- Recognition of the specialised nature and separate jurisdictions of the Family Court and Children's Court
- Recognition that Human Services has statutory responsibility which may involve or result in the involvements of both the Family Court and Children's Court
- Recognition that multiple hearings in separate jurisdictions can be harmful to the child and should where possible be minimised

- Recognition that parents have the right to have their disputes resolved expeditiously efficiently and where possible within a single jurisdictions
- Recognition that the Children’s Court should not be utilised as a de facto Court of appeal from the Family Court and vice versa.

In 2008, a protocol was established between the MCV (which then included the CCV) and the Family Court (FC) to articulate an agreed process for MCV/CCV registrars to request family law orders from the Family Court where they related to a family violence intervention order. To this end, the Family Court provided a central email address and phone number for MCV/CCV registrars to direct requests for orders which in accordance with the protocol would be provided by the Family Court as soon as practicable.

Consideration should also be given to co-locating court staff to aide collaboration and information sharing; similar to the current arrangements applying to the allocation of a DHHS liaison officer within the Family Court/Federal Circuit Court. MCV and CCV would support and welcome such a development. In the event there is consideration of an increased jurisdiction, or significantly increased number of related applications, this will be a critical additional to management of best practice between jurisdictions and the productive outcomes for families with complex needs.

Information provided to the Family Court pursuant to this arrangement can include:

- Copies of a FVPA application including narrative and any interim or final FV protection orders relevant to any family member and future hearing dates
- Applicant and respondent details, including ATSI , any identified disability status and whether an interpreter is required by the applicant, or a respondent if known,
- Child details
- Existence of and the type of child protection orders and future hearing dates
- Detailed history of family violence incidents, if police applications may include the number of previous police interventions
- The existence of any past intervention orders between the parties or one of them to another person if this is relevant
- Police involvement with the parties, including past and pending criminal charges against the respondent.
- If client’s written consent is obtained, an Applicant Support Worker may provide assessment details including risk assessment, safety plan and referrals to services.
- In the same circumstances , a report from the respondent’s worker and any orders ordering , or referring a man to a men’s behaviour change program
- Any section 68R orders made in the interim or a final basis impacting on a Family Law Act order.

Notwithstanding the capacity to provide this information under the protocol that exists with the Family Court, in reality the exchange of this information is complicated by the need to properly identify parties or is reliant upon information disclosed to the Court.

Information held by CCV that should be available to MCV and to the family law courts within a framework that encompasses appropriate safeguards:

- Current protection orders under the *Children Youth and Families Act* and dates of future hearings

- Status of Intervention Order Applications and intervention orders pursuant to the *Family Violence Protection Act*
- In criminal proceedings – orders, bail orders and other case management information including pending court dates and upcoming hearings/applications for a child
- Expert reports including those prepared by the CCV Clinic
- Disposition reports prepared by DHHS child protection workers, although it conceded these are not always provided by way of affidavit
- Youth Justice reports where relevant.

The expertise underpinning Children’s Court Clinic reports make them source of considerable insight and information. Currently under section 552 CYFA these reports are confidential and can be released only where an order to do so is made under s552(2) of the *Children, Youth and Families Act* by the President or a magistrate of the Children's Court. Notwithstanding these provisions, the Children’s Court believes there are compelling reasons to permit the disclosure and transmission of these reports to Family Law courts where such disclosure is reasonably and necessarily related to a proceeding in those Courts.

Information held by MCV that should be available to CCV and to the family law courts within a framework that encompasses appropriate safeguards:

- In criminal proceedings – orders, bail orders and conditions for adult family members
- Criminal charge and sentencing history including pending charges (particularly those concerning contravention of an intervention order and family violence related crimes such as injury , property damage, stalking or commonwealth telecommunication harassment charges)
- Status of Intervention Order Applications and intervention orders pursuant to the *Family Violence Protection Act* and future hearing dates
- Expert medico/legal and therapeutic reports prepared for Assessment Referral Court (ARC),(mental health, disability, ABI, drug and alcohol reports), Courts Integrated Services Program (CISP) and/or credit bail, and the Drug Court and monthly judicial monitoring reports
- Details of drug and alcohol screening, including results of screening
- Expert reports including those prepared by the *Forensicare* (VIFM) and other mental health service providers and private practitioners
- If client’s written consent is obtained, risk assessment details conducted by support agencies
- Any reports tendered to Koori Court, with the consent of parties
- Department of Health and Human Services reports – Justice Plans
- Status of any orders made in relation to parenting orders under Part VII of the *Family Law Act*
- Case management information including pending court dates and upcoming hearings/applications and regular judicial monitoring reports. These are available also on a sentence of a Community Corrections order
- Risk Assessments prepared by Applicant Support Workers in MCV and eligibility or other assessments by a respondent support worker

Information held by the Family Law courts that should be available to MCV and CCV within a framework that encompasses appropriate safeguards:

- Final and interim Family Law Act Family reports
- Notices of Risk and accompany documents

- Expert reports prepared in Family Law Act proceedings
- Applications and affidavits filed in support or response
- Court orders and decisions of a judicial officer

Legislative impediments to information sharing

State and federal legislation makes explicit provisions in most situations where decisions relating to children are made, specifically where family law, child protection and family violence jurisdictions overlap. Any agreement or similar made between jurisdictions and child protection agencies would need to be underpinned by a robust governance framework to provide strategic oversight and legislative review and reform to regulate information sharing. Legislative change to section 121 of the *Family Law Act 1975* (Cth) (restriction on publication of court proceedings), sections 205 and 206 of the *Children, Youth and Families Act 2005* (limitations on access to documents and penalties), Part 8 of the *Family Violence Protection Act 2008* (restriction on publication of proceedings) and section 18 of the *Magistrates' Court Act 1989* and *Personal Safety Intervention Orders Act 2010* could be considered as part of overall efforts to develop a framework and formalised process for information sharing.

Currently, even allowing that the requisite legislative framework and agreement was in place to facilitate comprehensive information sharing across jurisdictions and agencies, the case management systems of MCV and CCV do not have adequate capacity and function to support this aim. Current systems used by MCV and CCV are essentially case-based rather than person-based (with the exception of the Children's Court Family Division system which is child based) and this results in a lack of visibility and capability to match families.

While data links between the Courts' criminal case management system (*Courtlink*) and other justice agencies do exist, these links are unsophisticated and currently don't provide the full range of information that needs to be, and should be, transmitted between agencies. A prerequisite for enabling improved information sharing across jurisdictions and agencies would be investment in a new case management system for MCV and CCV to support automated, immediate and accurate exchange of information between agencies via a secure appropriately access controlled technology platform. While MCV and CCV will continue to seek funding for replacement of case management systems to address these issues, this process will take some time and in the interim the scope for automated, integrated exchange of information is necessarily constrained.

Subject to review and amendment of privacy and confidentiality legislation, including clarification of what constitutes "publication" for the purposes of s534 of CFYA which prohibits publication of reports of CCV proceedings that may lead to identification of a child, the MCV and CCV support enhanced, systematic sharing of reports, including expert reports, to assist decision making by courts in relation to children and families. Such sharing would operate alongside and to complement the positive obligation on parties to inform the court on matters relevant to their proceeding.

A central database for family law, family violence and child protection orders

Victoria Legal Aid (VLA) in their submission to the Family Law Council recommended that a secure shared database be developed to provide a single repository of family law, family violence and child protection orders accessible by state jurisdictions, the family courts and child protection authorities.

MCV and CCV support a single database for family violence, child protection and family law orders accessible by each of the relevant courts. Cross jurisdictional consultation would be required to identify the range of information that can, and should be made available in a central database. Arrangements for sharing of expert reports should be framed by legislation as the mechanism to reconcile the tension between adversarial and non-adversarial approaches to inquiry, evidence and information gathering and to clearly articulate roles and responsibilities in terms of what information will be shared, by whom and when and the process and mechanisms for transmission and communication of information, including timelines for response, provision of updates, requests for further time etc.

Arrangements must be supported by education and training for federal and state judicial officers, and where appropriate skills assessment for capacity in lawyers, court registrars DHHS police and support workers to ensure that only information that should be shared is, and then only with those who should have access to it.

Information sharing to improve risk assessment for children in family law matters

MCV and CCV support informed, early triage at any point a family enters or attends the justice system incorporating common understanding and identification of risk factors to ensure the immediate and ongoing safety and security of children particularly where family violence is a feature of family breakdown. MCV and CCV share the view that a best practice response to family violence and by extension children and families with complex needs, is one where legal and non-legal responses are underpinned by shared understanding and practices of the nature and dynamics of family violence, its long and short term impacts on family members, in particular children and ensuring the prioritisation of all adult and child victim safety through risk assessment and management as the basis for prevention of any future harm.

The 'best interests principles' of the *Children, Youth and Families Act 2005* is the legislative basis for the assessment of risk and provision of services in relation to children, young people at risk and their families which includes a careful assessment of the risk of family violence. The *Family Violence Protection Act 2008* is also anchored in judicial officers and courts having specialised understanding and experience in assessing and managing risks in the context of family violence and appropriate mechanisms for early identification and assessment of risk to improve the safety of children by making FVP orders, supporting perpetrators acceptance of responsibility and in sentencing offenders.

In Victoria, the Common Risk Assessment Framework (CRAF) has been in use since 2007 and was developed as part of the integrated response in Victoria 2 to underpin all different agency and organisations responses to victims of family violence. , albeit inconsistently applied, across courts and agencies. MCV and CCV share the view that the CRAF is an important tool and has been used in recent judicial education with respect to the social context of family violence. The risk assessment documents provide preliminary advice and information to police court staff and judicial officers about the type of risks relevant to an assessment of future family violence that may be present in court. The risk assessment document simply asks questions of an applicant which draws out relevant information to the application for Family violence intervention order for example. It was anticipated staff would have applicants complete the document when making an intervention order application to help staff ensure relevant and vital information was included in the application to be listed before the court. The training of judicial staff to recognize and understand the same information was to assist the careful consideration of applications to the court.

² Reforming Family Violence Systems in Victoria – Statewide Steering Committee's 2005

The MCV and CCV support the CRAF being reviewed and evaluated, and consider all agencies and MCV and CCV should use the CRAF when assessing risk to children and women in the context of family violence. This would enable risk assessment to be consistent across agencies, properly documented, updated as required, and shared with and accessible within the integrated family violence system.

Further systemic adoption of CRAF will need to be properly resourced and supported by appropriate regular training and accreditation for federal and state Judicial officers and in court support and registry staff, and should include training on identifying family violence risk factors, responding appropriately to manage the risks and training and accreditation in the nature, dynamics and impact in court proceedings of family violence behaviours.

Work is already underway to simplify the Information for Application for an Intervention Order' form and integrate a checklist based on the CRAF for Family Violence Intervention Order applicants in MCV and CCV.

Training to support improved information sharing

The need for cross functional and cross jurisdictional education and training to identify capacities and abilities in FV , support cooperation and collaboration and improve cross jurisdictional body of knowledge and understanding has been identified by the MCV and CCV and also the Judicial College of Victoria (JCV) in its submission to the Royal Commission into Family Violence.

In its submission, the JCV proposed that funding be provided to deliver an annual cross-jurisdictional education forum for judicial officers to address family violence matters of cross-jurisdictional relevance including discussion of appeals and best practice decision-making within the current overlapping and interrelated jurisdictions between the courts. MCV and CCV support and recommend this approach as an important enabler to improve alignment across courts on issues including family violence, risk assessment and the management of complex cross jurisdiction cases and support specialisation in FV and family violence sexual assault.