

# Submission to the Family Law Council

from

Legal Aid WA

## Contents

<b>Introduction:</b> .....	2
<b>Family relationship services: confidentiality, information sharing, collaboration</b> .....	3
FDR Screening and Risk Assessment: .....	3
Section 60 I certificates: .....	4
Sections 10H and 10J Family Law Act 1975 .....	5
<b>Risk assessment in the family law system</b> .....	6
<b>Services outside the family law system: information sharing</b> .....	7
Section 69 (ZW): .....	7
Memorandums of Understanding (MOUs): .....	7
THE MOU with CPFS:.....	8
Co-located Senior Child Protection Worker:.....	8
Email Notifications:.....	8
Ex Parte Recovery Order Applications: .....	9
Section 69ZW procedures:.....	9
Subpoena:.....	9
<b>Supporting children where safety concerns are identified</b> .....	10
Independent Children’s Lawyers: .....	10
Therapeutic Services: .....	10
Parenting Order Proceedings:.....	10
Case Assessment Conferences:.....	10
Therapeutic Services in the context of Family Court Proceedings: .....	11
Child and Family Therapy: .....	12
<b>Services outside the family law system: collaboration</b> .....	13
<b>Integrated responses for families with complex needs</b> .....	13
Drugs and Alcohol:.....	14
Family Violence:.....	14
<b>Case co-ordination for families with complex needs</b> .....	15

## Introduction:

Legal Aid WA (LAWA) is the largest provider of legal services to disadvantaged people in Western Australia. Those services include the provision of legal information, advice and representation (including duty lawyer services) for financially disadvantaged people in family law, child protection, family violence, crime and some civil matters. In family law and child protection our services include the representation of children and lawyer assisted mediation processes.

Most of the families assisted by LAWA in relation to parenting disputes have complex needs of the kind described in the Family Law Council Discussion Paper *Families with Complex Needs and the Intersection of the Family Law and Child Protection System* and LAWA welcomes the opportunity to respond to the questions set out in that paper.

As described in LAWA's previous submission in respect of paragraphs 1 and 2 of the current reference to Family Law Council, since the 2006 reforms the core child related business of family courts has become families who present with multiple issues including family violence, child abuse, mental health issues and drug and alcohol abuse. This situation was further accentuated by the "family violence amendments" to the *Family Law Act 1975* in 2012<sup>1</sup> which broadened the definition of family violence and child abuse, and prioritised the safety of children over the importance of maintaining a meaningful relationship with both parents<sup>2</sup>.

These legislative changes represent a welcome paradigm shift where the safety of children and their parents in circumstances where they have been victims of family violence, has been prioritised over the protection of individual rights. This "protection paradigm" does not mean that fairness and the protection of individual rights are not important considerations. The challenge for those making and interpreting law and policy is to determine the appropriate balance between these considerations.

To ensure that decision making in relation to parenting disputes is timely and informed and that the resulting care arrangements for children are in their best interests, it is important that relevant information be identified and shared appropriately at the earliest possible stage. It is LAWA's view that, with some limitations in respect of Family Dispute Resolution, this requirement should be prioritised over the individual rights of the parties.

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<sup>1</sup> Sections 4AB and 4(1) *Family Law Act 1975* (commenced June 2012) sections 9A and 5(1) *Family Court Act (1997)* (WA) commenced October 2013.

<sup>2</sup> Jackson J *Wisdom from the West?* Paper (National Family Law Conference Sydney October 2014)

## **Family relationship services: confidentiality, information sharing, collaboration**

1. How can the exchange of information between the family courts and family relationship services (such as family dispute resolution services, counselling services and parenting order programs) be improved and facilitated in a way that maintains the integrity of therapeutic service provision?

The current confidentiality provisions in relation to FDR and family counselling in the *Family Law Act 1975*<sup>3</sup> reflect the traditional perspective that if confidentiality is not preserved in mediation and counselling this would impact on the preparedness of parties to reveal and discuss relevant information, leading to inappropriate, and potentially unsafe outcomes for children and for parties who may have been victims of family violence.

LAWA experience of the removal of the confidentiality provisions relating to court ordered meetings between family consultants and the parties to Family Court proceedings (eg section 11F Conferences, Case Assessment Conferences and Child Dispute Conferences) suggest that this concern has not been warranted in the context of Family Court proceedings. This view is supported by the research of Donna Cooper<sup>4</sup>. She also suggests that the admissibility provisions in the *Family Law Act 1975* are far more narrowly defined than the confidentiality requirements and have been interpreted strictly by the courts. Consideration of the ramifications of the current definitions may be of assistance in determining whether any legislative reform is required.

### **FDR Screening and Risk Assessment:**

LAWA does have reservations about removing the confidentiality of the FDR screening and risk assessment process. Parties coming to FDR are trying to resolve their parenting disputes without going to court and generally are concerned to ensure that the other party will not be given the information provided by them during the screening process. In particular, where there has been family violence, many parties would be reluctant to engage in FDR if they could not be confident of confidentiality. In LAWA's experience, FDR, particularly when it is lawyer assisted, often provides the best opportunity for victims of family violence to achieve parenting arrangements in the best interests of their children.

In relation to the "protection paradigm" referred to earlier LAWA suggests there is a distinction to be drawn in relation to how confidentiality should be managed in court proceedings as compared

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<sup>3</sup> Sections 10D and 10H and sections Sections 49 and 53 *Family Court Act 1997 (WA)*

<sup>4</sup> *Inconsistencies in and the Inadequacies of the Family Counselling and FDR confidentiality and admissibility provisions: the need for Reform* Family Law Review Volume 4 Part 4 (2014)

to FDR. It is understood that the desire to provide information obtained from FDR screening and risk assessment to the court arises from the concern of some FDRP's about the safety of children in circumstances where notifications to child protection authorities do not meet their thresholds for investigation.

In WA when court proceedings are commenced in parties are required to file a Case Information Affidavit<sup>5</sup> and the federal family courts require the parties to file a Notice of Risk. LAWA would anticipate that these documents and other affidavit material filed by the parties would include information provided during the screening process. In these circumstances it is unclear what additional benefit there would be in access to the FDR screening and risk assessment, particularly given the potential for the Court to access relevant information using Memorandums of Understanding and the section 69ZW procedures (see responses to Questions 2 and 3 below). The FDR screening and risk assessment provides a "snapshot in time" and may be more or less relevant depending on the period of time that has elapsed between the screening and the commencement of family court proceedings. In this context it is also important to understand that risk assessment cannot be a "one-of" event and that there would still be a need for the Court to build on this earlier assessment, as appropriate.

Research is necessary to determine whether there is, in fact, an evidence base for the concern that the confidentiality of the FDR screening and risk assessment process is adversely impacting on the Court's ability to assess risk, before major reform of this kind is implemented.

### **Section 60 I certificates:**

In WA in the 2014/2015 financial year 57% of parenting order proceedings were commenced on the basis that they met the requirements for exemption from FDR. Of the balance, most certificates were filed on the basis that the other party had refused or failed to attend FDR. It is understood that this is analogous to the experience of the federal family courts. LAWA is also confident that FCWA (and the federal family courts) interpret the "not appropriate" certificate as an alert to the need for risk assessment.

The potential benefits of expansion of the information provided on the section 60I certificate needs to be considered in this context. Certificates providing expanded information would be provided in a very limited number of matters and any benefit needs to be balanced against the risk to victims of family violence and abuse of that information being made available to both

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<sup>5</sup> [http://www.familycourt.wa.gov.au/files/June2012/CasInfoAffidavit\\_Web\\_June2012.pdf](http://www.familycourt.wa.gov.au/files/June2012/CasInfoAffidavit_Web_June2012.pdf)

parties prior to the commencement of parenting order proceedings<sup>6</sup>. Other options, for obtaining relevant information might be preferable.

If the information provided on certificates was to be expanded consideration would need to be given to whether the certificate should be provided directly to the family court rather than the party to ensure that the risk associated with the release of the certificate to the parties is minimised (in the same way that the release of some Single Expert Reports or Reports from child protection authorities in response to child protection notifications are currently managed through appropriate court orders).

### **Sections 10H and 10J Family Law Act 1975<sup>7</sup>**

From LAWA's FDR program and our participation in the WA Family Pathways Network (WAFPN) it is apparent that many FDR practitioners (FDRPs) and counsellors providing family counselling find the current confidentiality and admissibility provisions to be complex and confusing and are concerned that the provisions prevent them from sharing information which they consider to be relevant for risk assessment purposes. There is confusion as to the implications of the use of the word "may disclose" as opposed to "must disclose" and as to whom that disclosure should be made. Some clarification is also required in respect of the requirements in respect of the need for "consent" and the circumstances in which disclosures can be shared without consent. There would also be benefit in clarification being provided as to the status of communications about past conduct as compared to new disclosures. It is possible that these issues could be addressed in the training and ongoing professional development of the professionals involved.

LAWA is also aware of the recommendations in respect of confidentiality and admissibility in the Report of the ALRC and the NSWLRC *Family Violence: A National Legal Response*<sup>8</sup> and supports the recommendation that section 10D(4)(b) and 10(H)(4)(b) should be amended to permit the disclosure of communications made during family counselling or family dispute resolution, where they reasonably believe that disclosure is necessary to prevent or lessen a serious threat to a person's life, health or safety<sup>9</sup>. This amendment would remove the imminence requirement and add "threats to safety" into these provisions.

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<sup>6</sup> NLA submission to the ALRC and NSWLRC enquiry into *Family Violence and Commonwealth Laws-Improving Legal Frameworks* (2011) Report of the ALRC and the NSWLRC *Family Violence: A National Legal Response*

<sup>7</sup> Sections 49 and 53 *Family Court Act 1997*

<sup>8</sup> ALRC Report 114 Chapter 22 Confidentiality and Admissibility

<sup>9</sup> *Ibid* Recommendation 22-1

## Risk assessment in the family law system

### 2. What opportunities exist for ensuring the early assessment of risk to children in family law matters?

The development of a shared language for communication about risk between professionals and complex families in the family law system is a desirable aim and is valuable in the context of early assessment of risk to children. However, LAWA considers that the potential to implement a standardised risk assessment tool for use by all agencies working with complex families in the family law system (community sector, child protection authorities, health providers, legal aid commissions, lawyers, courts) is an attractive, but impractical proposition. Issues have also been identified in relation to the use of standardised assessment tools in the child protection context<sup>10</sup>.

Developments are occurring which have the potential to improve the ability of professionals to communicate with each other and families in respect of the assessment of risk issues. As identified in the Discussion paper, in recent years, many jurisdictions have implemented common risk assessment frameworks in respect of the identification and management of family violence. In WA it is the Common Risk Assessment and Risk Management Framework (CRARMF) which has been implemented “for use by all government agencies and community sector services to promote a consistent collaborative approach to identifying and responding to family and domestic violence”<sup>11</sup> CPFS have reported that the CRARMF “has been progressively included into the policy and practices of legal and statutory agencies/authorities and is increasingly being used by a range of mainstream service providers.”<sup>12</sup>

Child protection authorities in each State and Territory also have risk assessment frameworks for determining whether children have suffered or are at risk of abuse in their families. In WA, an important development, associated with the introduction of the *Children and Community Services Act 2004* was the implementation of *Signs of Safety* as the risk assessment framework for CPFS<sup>13</sup> and the decision of CPFS to share that framework with other stakeholders in the child protection system. This has facilitated the development of a shared language for communication in relation to child welfare issues.

It may be that rather than focusing on the development standardised risk assessment tool, the most practical approach is to ensure that the risk assessment frameworks of this kind that are in

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<sup>10</sup> *Risk Assessment in Child Protection* (2011) Australian Institute of Family Studies

<sup>11</sup> *Common Risk Assessment and Risk Management Framework* Department for Child Protection and Family Support website. <https://www.dcp.wa.gov.au/CrisisAndEmergency/FDV/Pages/CRARMF2.asp> 2nd updated edition to be available from 27 November 2015.

<sup>12</sup> *Ibid.* Footnote 9

<sup>13</sup> *Signs of Safety* Turnell A and Edwards S, 1999 introduced in July 2008

existence in the States and Territories be shared with relevant stakeholders in the family law system, and supported by appropriate interdisciplinary professional development to ensure they are understood and applied in practice.

### **Services outside the family law system: information sharing**

3. How can services such as child protection departments, mental health, family violence, and drug and alcohol services make relevant information available to the courts to support decision-making in cases where families have complex needs?

#### **Section 69 (ZW):**

The provisions of section 69ZW of the *Family Law Act 1975*<sup>14</sup> have been very important in respect of early assessment of risk in the context of family court proceedings. In Western Australia, section 69ZW was the catalyst for the development and implementation of the MOU between the FCWA, CPFS and LAWA in relation to information sharing in respect of child welfare issues and the MOU between the FCWA, the Magistrates Court, Corrective Services and FCWA concerning family violence issues.<sup>15</sup> It has also assisted FCWA to implement timely cost effective information sharing arrangements with WA Police, particular the provision of Criminal Records and Incident Reports.

LAWA suggests that the amendment of section 69ZW to include other Government Departments such as the Departments of Health and the Education, and possibly the Department of Human Services, might be the catalyst to the development and implementation of similar MOUs with these agencies, with similar consequences, facilitating early risk assessment.

#### **Memorandums of Understanding (MOUs):**

The Report of Professor Richard Chisholm on *Information Sharing in Family Law and Child Protection-Enhancing Collaboration* (2013) recommended the use of MOUs for information sharing in the family law/child protection context.

As LAWA has previously described in our response for the FLC Interim report<sup>16</sup>, the development, implementation and monitoring of the operation of the MOUs between the FCWA, CPFS and LAWA in relation to information sharing in respect of child welfare issues and the MOU between the FCWA, the Magistrates Court, Corrective Services and FCWA concerning

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<sup>14</sup> Section 202K *Family Court Act 1997*

<sup>15</sup> MOU between FCWA, CPFS and LAWA (updated February 2008) and the MOU between FCWA, the Magistrates Court, Corrective Services and LAWA (2009)

<sup>16</sup> LAWA Submission pp 8 to 11

family violence issues has assisted the development of a shared language for communication in relation to child welfare and family violence issues.

In particular, the MOU with CPFS has facilitated the ability of FCWA to achieve early accurate risk assessment as a consequence of the timely, streamlined information sharing arrangements that have been developed and implemented.

The development of similar MOUs with other relevant stakeholders (eg, Health, Education, Police, and Department of Human Services) could achieve some outcomes of the kind described below.

### **THE MOU with CPFS:**

The collaboration of the working group established to monitor its operation has facilitated the streamlining and timeliness of information sharing arrangements and reduced the associated workload for CPFS, particularly in respect of section 69ZW Orders *Family Law Act 1975*,<sup>17</sup> Notifications of Family Violence and Child Abuse<sup>18</sup>. and subpoena. Information in relation to what has been achieved in relation to the streamlining and timeliness of information sharing arrangements and the associated reduction in the workload of CPFS are set out in detail in the LAWA's earlier submission in response to paragraphs 1 and 2 of Family Law Council's current terms of reference<sup>19</sup>

### **Co-located Senior Child Protection Worker:**

The co-location of a senior child protection worker at FCWA has increased the knowledge and understanding of FCWA, CPFS and LAWA of each other, their respective roles and their shared responsibility for the welfare of children. The worker has also facilitated the development and successful implementation of the information sharing arrangements.

### **Email Notifications:**

Importantly, in respect of early assessment of risk, notification arrangements have been implemented in relation to complex families known to CPFS. When CPFS refers a party to the FCWA to seek parenting orders or becomes aware that an application is to be made to the Court

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<sup>17</sup> section 202K *Family Court Act 1997 (WA)*

<sup>18</sup> [http://www.familycourt.wa.gov.au/files/Form4\\_InfoSheet\\_and\\_Form4.doc](http://www.familycourt.wa.gov.au/files/Form4_InfoSheet_and_Form4.doc);  
[http://www.familycourt.wa.gov.au/files/Practice\\_Directions/PD2\\_of\\_2014.pdf](http://www.familycourt.wa.gov.au/files/Practice_Directions/PD2_of_2014.pdf)).

<sup>19</sup> pp 11-13

in circumstances where CPFS has had involvement with the family and has information relevant to the Court's consideration of the parenting orders that are in the best interests of the child an email notification is sent to the Family Court Counselling and Consultancy Service who forward the information to the FCWA Registry who create an alert in the computer system<sup>20</sup>. The email is also sent to the administration (not the lawyers) of the Legal Aid WA duty lawyer service at the FCWA. If proceedings are commenced the alert on the system is included on the court file when it is created.

### **Ex Parte Recovery Order Applications:**

Early assessment of risk is also facilitated by the processes in place for obtaining information from CPFS to assist in the determination of ex parte recovery order applications<sup>21</sup>.

### **Section 69ZW procedures:**

The procedure for obtaining information from CPFS pursuant to section 69ZW *Family Law Act 1975* (202K *Family Court Act 1997*) has been designed to ensure timely information sharing which minimises the need for subpoena but maximises the Court's opportunity to consider relevant information at an early stage to make informed decisions in relation to the welfare of children. It also minimises the resource implications for CPFS by only requesting the production of documents **already in existence**. This also minimises duplication of work for CPFS in the event that a response to a Notification of Child Abuse or Family Violence or Risk of Child Abuse or Family Violence (Form 4) is also required.

### **Subpoena:**

In respect of subpoena, a Practice Direction from the Chief Judge of the FCWA (March 2014) requires that the leave of FCWA be obtained for the issue of subpoena to CPFS in circumstances where documents have already been produced pursuant to section 69ZW of the *Family Law Act 1975* or section 202K of the *Family Court Act 1997* or where they could have been produced by means other than subpoena<sup>22</sup> The Chief Judge has also, in consultation with CPFS, issued an Information Note to Practitioners which lists the documents that may be contained on a CPFS file to facilitate more specific requests for information using section 69ZW and section 202K and subpoena<sup>23</sup>.

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<sup>20</sup> Paragraph (2.1) MOU between FCWA, CPFS and LAWA (updated Feb 2009)

<sup>21</sup> Paragraph (2.2) MOU between FCWA, CPFS and LAWA (updated Feb 2009)

<sup>22</sup> [http://www.familycourt.wa.gov.au/files/Practice\\_Directions/PD1\\_of\\_2014.pdf](http://www.familycourt.wa.gov.au/files/Practice_Directions/PD1_of_2014.pdf)

<sup>23</sup> [http://www.familycourt.wa.gov.au/files/Practice\\_Directions/InfoNote\\_To\\_Practitioners\\_July\\_2014.pdf](http://www.familycourt.wa.gov.au/files/Practice_Directions/InfoNote_To_Practitioners_July_2014.pdf)

## Supporting children where safety concerns are identified

4. What services are needed to support families and children who use the family law system where child safety concerns are identified?

### Independent Children's Lawyers:

Independent Children's Lawyers (ICLs)<sup>24</sup> are appointed in parenting order proceedings in circumstances where there are concerns that children are at risk. They play a very important role in ensuring that evidence relevant to the welfare of the child is before the court to ensure that the decisions made in relation to their care arrangements are made in their best interest. They have an important role in organising and liaising with the Single Expert Witnesses that provide forensic assessment of the families in respect of the safety concerns that have been identified and in respect of the support services necessary for families to address these concerns.

The appointment of an ICL by the Court is based on factors identified in *Re:K (1994)*<sup>25</sup>. LAWAA suggests that these factors need to be reviewed to ensure that they identify contemporary safety concerns, including family violence. This is particularly important in an environment of limited resources.

### Therapeutic Services:

The referral of families and children to a range of therapeutic services when safety concerns are identified is a very beneficial aspect of the services provided by Family Relationship Centres (FRCs) in the context of family breakdown. The challenge for FRCs is the demand for these services when available resources are very limited and safety concerns don't meet child protection authority thresholds for support and intervention.

### Parenting Order Proceedings:

### Case Assessment Conferences:

When risk issues are identified in a parenting dispute the proceedings are adjourned from the first hearing date in the Child Related Proceedings list to a Case Assessment Conference with a

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<sup>24</sup> See section 68L and 68 *LA Family Law Act 1975* and sec 164 and 165 *Family Court Act 1997* and the *Guidelines for Independent Children's Lawyers*(2013) <http://www.familycourt.wa.gov.au/files/ICL%20Guidelines%202013.pdf>

<sup>25</sup> (1994) FLC 92-416

Family Consultant for the purpose of risk assessment. This involved almost 70% of parenting order matters in the 2014/2015 financial year.

These conferences are not confidential, and generally, as a consequence of the streamlined section 69 ZW procedures information from sources such as CPFS and the Police is available for consideration for the purposes of that assessment. The Conference Memorandum produced sets out the issues, the parties concerns in respect of those issues and the Family Consultant's recommendations in relation to the management of the matter including programs to be attended by the parties and the children, and whether an ICL should be appointed. This information is a valuable snapshot of what is happening in the family and is of great assistance to FCWA and to ICLs in relation to the ongoing management of the proceedings.

LAWA would welcome the expansion of the current conference arrangements to include meeting with the children, including them as appropriate, in the process, in a similar way to what we understand happens in the section 11 F Conferences in the federal family courts.

### **Therapeutic Services in the context of Family Court Proceedings:**

In parenting order proceedings following Case Assessment Conferences and court hearings referrals are often made to supervised contact services, parenting order programs, family violence counselling and behaviour change programs drug and alcohol treatment programs and child and family therapy.

To facilitate the provision of appropriate support in these circumstances and to inform decision-making in relation to the care arrangements for children, family courts need to be able to provide the support services with relevant information. The services also need to provide reports to the family courts as to whether assessments and services have been attended, and, if so, what has been observed and what progress, if any, has been made in respect of the identified issues. Court orders are necessary to facilitate compliance with the requirements of the service, the workability of the arrangements and clarity in respect of the consequences of non-compliance (that the family court will review the arrangements and the associated parenting orders). Independent Children's Lawyers play an important role in implementing and managing these arrangements.

Drug and alcohol and family violence services are referred to in more detail in response to Question 6 below. In addition to these services, Supervised Contact Services and Child/Family Therapy services are commonly identified as needed to support families and children with complex needs in the family law system. The availability of these services is very limited particularly for families with limited or low incomes.

### **Supervised Contact Services:**

It is important that supervised contact services be provided with information from the court explaining the need for, and the aim of, supervision (for example, in WA, the Case Assessment Conference Memorandum). Demand for supervised contact services is very high and the availability of government funded services is extremely limited. The waiting list for such services in WA is approximately 12 weeks in metropolitan areas and their availability in regional areas is very limited. Private contact supervision services are more expensive, are not subject to the same service requirements (including staff training) as government funded services and the quality of the supervision and the reports provided, and is variable. In some families, for example where there is a history of children refusing contact, where timely intervention is necessary, it is essential that supervision be provided by highly skilled supervisors. The experience of LAWA is that such supervisors are only available in a very small number of government funded services and, as such, they are in high demand, with waiting lists and very limited availability.

### **Child and Family Therapy:**

The provision of family and child therapy in the context of parenting disputes is very challenging for therapists and involves different dynamics to the provision of therapeutic services when families are intact. Therapists are often very concerned about the potential to be called as witnesses in family court proceedings. It is important that clinicians providing services to children meet with both parents/parties, where possible, have knowledge of the family court and family court processes, and are familiar with the research in relation to the dynamics and impact of issues such as family violence, high conflict and alienation. It is also important that they be familiar with the research in relation to interviewing children (particularly suggestibility and memory) and understand that effective child therapy may involve more than just accepting the child's view of the reality of one parent's narrative. Evidence from family and children's therapists can be of great assistance in determining the care arrangements for children that are in their best interests. Independent Children's Lawyers play an important role in the provision of that evidence to the Court, where possible seeking reports from them that address the relevant issues, but minimise the impact on the therapeutic relationship.

LAWA also refers to our response in relation to integrated responses and case co-ordination for families with complex needs (Questions 6 and 7) below.

## Services outside the family law system: collaboration

5. How can interaction between the family courts and relevant services, including child protection departments, family violence, mental health services, drug and alcohol services and support services for Aboriginal and Torres Strait Islander families, be enhanced?

LAWA refers to our response to Questions 2, 3 and 4 and in particular to our comments in respect of the benefits associated with the development and implementation of MOUs between the Family Courts and services such as those identified in this Question.

The Family Law Pathways networks in each State and Territory play an important role in enhancing interaction and collaboration between the family courts and other service providers through their professional development and networking activities.

In WA the *Walk in their Shoes Tours*<sup>26</sup> run for family service providers at FCWA on a bi-monthly basis in partnership between the WA Family Pathways Network (WAFPN) and FCWA has been of particular benefit in enhancing the interaction between FCWA and other service providers and their understanding of each other's roles and services. Influenced by the success of this tour Communicare, a WAFPN steering group member and men's family violence behaviour change program provider, is about to commence monthly *Walk in His Shoes* tours for service providers, to help them to develop their understanding of the family violence behaviour change programs they provide. Similar initiatives from other service providers would be of great benefit to professionals providing legal representation and other non-legal support for complex families.

The Chief Justice of the FCWA has a Reference Group of stakeholders in the family law system who meet on a quarterly basis to share information in relation to the work of their services and to discuss shared issues. This also facilitates the interaction of FCWA with family law system service providers.

## Integrated responses for families with complex needs

6. What opportunities exist for developing integrated responses to families with complex needs who use the family law system?

In relation to the development of integrated responses LAWA refers to *Bridging the Gaps between Family Law and Child Protection: Is a unified family court the key to improving services in the family law system?*<sup>27</sup> ("the Churchill Report") and, in particular to the jurisdictions where, at

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<sup>26</sup> LAWA response for Interim Report

<sup>27</sup> Julie Jackson, Churchill Fellowship Report 2010 (12 April 2011)

the Family Courts, there was an on-site presence or warm referral arrangements to required support services. Some examples of issues which would benefit from an integrated response:

### **Drugs and Alcohol:**

The significant prevalence of drug and alcohol abuse issues amongst families involved in parenting disputes in the family courts, suggests that it would be of benefit for related services to be available to families at the family courts. The availability and funding of such resources is an issue, however, it is possible that relevant agencies might consider incorporating a regular attendance at the family courts, perhaps for limited periods of time each day, to provide services such as drug testing and assessments for referrals to appropriate treatment programs, into their current services. Fees associated with these services could continue to be met by parties in the same way as currently required when these services are accessed off site.

An example of such services, are those currently being piloted in child protection proceedings in the Family Drug Treatment Court in the Melbourne Children's Courts. This Court is partly modelled on the Family Drug and Alcohol Court (FDAC) at the Wells Street Inner London Family Proceedings Court, in England, referred to in the Churchill Report. Services provided at the FDAC included a specialist multi-disciplinary team which included adult substance abuse workers, child and family social workers used a variety of methods, including motivational interviewing, to engage parents, identify appropriate treatment programmes and monitor progress. Blood testing, hair sampling and urinalysis (as appropriate) was carried out by members of this team at Court, which proved to be timely and cost effective. The team also worked closely with the support network around the family and other services that were providing treatment and support. Regular planning meetings were held to ensure that everyone involved understood their responsibilities and duplication of services was avoided. In other jurisdictions the subject of the Report, drug testing services would attend family courts on a regular schedule to provide these services.

### **Family Violence:**

In WA, family violence allegations are made in the majority of parenting order matters (approximately 70%) referred to Case Assessment Conferences for risk assessment. Early assessment of alleged perpetrators and their suitability for inclusion in a behaviour change program would facilitate the early resolution of parenting disputes. In the event that the party assessed is considered suitable for inclusion in a program and their response (to participate or not) is relevant evidence in the determination of the care arrangements for the children. In the event that the party chooses to participate, feedback in relation to their progress in the program

is vital for safety planning purposes and for review of interim parenting orders. LAWA understands that FCWA may recently have trialled an integrated response of this kind.

Another model of service that could be considered is that provided in some courts in the Family Violence Court Division in the Magistrates Court in Victoria involving the co-location of non-legal support services for both victims and alleged perpetrators of family violence.

## **Case co-ordination for families with complex needs**

### **7. How might a more co-ordinated legal system for families with complex needs be created?**

In response to this question LAWA supports the view of the Commissions in the Australian Law Reform and New South Wales Commissions Report *Family Violence - A National Legal Response*<sup>28</sup> that, wherever possible, matters involving children should be dealt with in one court or as seamlessly as the legal and support frameworks can achieve in any given case.

LAWA refers to the Churchill Report, the work of Dr Tatum Hands and Ms Victoria Williams *Report on the Intersection of the Family Law and Child Protection Jurisdictions in Western Australia*<sup>29</sup>, *Wisdom from the West?*<sup>30</sup> and the previous LAWA submission for the interim FLC Report in respect of the current terms of reference.

Development and enhancement of current collaborative working relationships between support services in the broader family law system, is likely to be a more realistic outcome than the establishment of a separate investigatory body for the family courts. Such a body would still need to engage and liaise with local child protection authorities seeking intervention by them in appropriate circumstances.

The priorities for reform require, where possible, the promotion and facilitation of a “one court-one family” approach to the determination of child welfare issues and the achievement of timely, streamlined, effective and transparent information sharing arrangements, which minimise the resource implications for stakeholders.

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<sup>28</sup> 11 November 2010

<sup>29</sup> Hands TL and Williams VM, *Child Protection Jurisdictions in Western Australia* (Perth, Family Court of Western Australia, (2012). Currently the release of this report has been limited to the stakeholders, Family Law Council and National Legal Aid (the Legal Aid Commissions). The main findings of the report are set out in Jackson J *Wisdom from the West?* Paper (National Family Law Conference Sydney October 2014)

<sup>30</sup> Julie Jackson, Paper (National Family Law Conference Sydney October 2014)

Streamlined information sharing arrangements between Family Courts and Children's Courts such as those in place in Western Australia<sup>31</sup> would facilitate the development of a co-ordinated legal system. Regular meetings between the Courts to monitor the information sharing arrangements and manage shared issues will improve their understanding of the work of each other and facilitate the potential for combined judicial education in respect of shared issues.

There would also be benefit in the development and implementation to the extent possible, of shared data bases, with appropriate confidentiality safeguards, to ensure transparent, timely, streamlined information sharing between the family courts, the Children's Courts and the Magistrates Courts in each jurisdiction.

Opportunities for interdisciplinary training in relation to shared issues-where the focus is the issues that are experienced by complex families –rather than which aspect of the system-family law, family violence, child protection or criminal justice-is currently dealing with them, will facilitate collaborative case management and the potential to make best use of limited resources that are available.

These arrangements will minimise the potential for inconsistency in case management and court orders removing the requirement for attendance of families and professionals in multiple courts and services whilst ensuring the safety of children and other family members.

6 November 2015

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<sup>31</sup> see [http://www.familycourt.wa.gov.au/files/Practice\\_Directions/PD1\\_of\\_2015\\_Childrens\\_Court.pdf](http://www.familycourt.wa.gov.au/files/Practice_Directions/PD1_of_2015_Childrens_Court.pdf)  
[http://www.childrencourt.wa.gov.au/files/Practice\\_Direction\\_1\\_of\\_2015.pdf](http://www.childrencourt.wa.gov.au/files/Practice_Direction_1_of_2015.pdf)