

Prof Helen Rhoades  
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Dear Prof Rhoades,

**Family Law Council Reference on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems**

Terms 3 and 4 of the Terms of Reference for this inquiry ask the Family Law Council to consider:

- the opportunities for enhancing collaboration and information sharing within the family law system, such as between the family courts and family relationship services

and

- the opportunities for enhancing collaboration and information sharing between the family law system and other relevant support services such as child protection, mental health, family violence, drug and alcohol, Aboriginal and Torres Strait Islander and migration settlement services.

Professor Richard Chisholm has extensively examined the issues involved in information sharing between the Family Courts and State Child Protection Authorities in his 2013 report, *Information Sharing in Family Law and Child Protection – Enhancing Collaboration*. Overall, the Legal Services Commission of South Australia supports the report's conclusion that there should be specific, formal Agreements in place which facilitate information sharing between and within the two jurisdictions in family law matters.

While the *Family Law Act* provides for the notification of allegations of child abuse to State welfare authorities, the Commission agrees that there is a wider category of information which should inform the Family Courts when they make decisions which impact on families.

The Legal Services Commission has already established strong links within the family law system through the Pathways Network (<http://www.pathwaysnetworksa.com.au/>). The Pathways Network fosters general information sharing and collaboration between family law practitioners and professionals and would provide an excellent platform for the sharing of more confidential information by Agreement.

Outside of the family law system, the Commission has strong links with child protection authorities through the provision of legal aid in care and protection orders. The Commission works collaboratively across a range of legal issues with community organisations and is a member of the South Australian Council of Social Services (SACOSS). Collaboration with peak bodies such as SACOSS would provide a means to identify all relevant agencies who would be parties to any information sharing Agreement between the family law and State systems and other relevant support services.

Statutory provisions in the *Family Law Act*, Commonwealth *Privacy Act*, and other pieces of legislation, various State laws, and common law confidentiality principles around information privacy present an initial barrier to effective collaboration through Agreements. The Commission recommends that an initial scoping study be undertaken to identify all legal barriers to information sharing within the family law system and between the family law system and other agencies. There are also a number of ad hoc Agreements already in place between various agencies which need to be identified and taken into account. Much of this work has already been done by Prof Chisholm in his report. The outcome of the scoping study should be a program for national legislative change through agreement between the Commonwealth, States and Territories. While the Commission does not advocate the wholesale abandonment of the confidentiality provisions in the family law system, building some flexibility to allow the appropriate sharing of personal information would improve the system for all users.

Experience in South Australia has shown that there are practical and legal issues which make shared communication difficult. Some problems are caused by a simple lack of awareness by one jurisdiction of the involvement of the other. The number of agencies which may be potentially involved in any single case makes the sharing of information between them complex, expensive and time consuming. Within the existing systems, there are opportunities for greater co-operation which can be implemented without major restructuring. Uniform, compulsory training on interagency practice in child protection for community workers, police and family law practitioners and professionals would greatly assist in raising awareness of the need to make wider enquiries beyond the individual's own agency.

### **Information Sharing Portals**

The development of information sharing Portals within the family law and between the family law system and other relevant support services would provide excellent opportunities for collaboration and information sharing in a virtual environment. Information Portals can be made secure and restricted to any number of authorised users. One of biggest advantages of Portals is that they do not require the organisations involved to have compatible ICT systems. As far back as 2010, the Australian Law Reform Commission was recommending the use of Portals for information sharing in family violence matters. (*Family Violence – A National Legal Response* ALRC Report 114 <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>)

An excellent example of a Portal working in a justice environment is the United Kingdom's *Y2A Information Sharing Portal* which enables information about young people to be shared

with a range of organisations within the criminal justice system (<http://www.justice.gov.uk/youth-justice/information-sharing-and-technology/y2aportal>)

In January 2015 Edith Cowan University and the ATSI health organisation *The Healing Foundation* agreed to develop an information portal called *The Healing Portal*.

“The healing portal will engage users from a broad range of areas including health, justice, child protection and family violence, and will include a free on-line yarning place to encourage a rich exchange of knowledge and information.

At the heart of the portal and yarning place is the connection with culture, knowledge systems and information sharing.” (<http://www.healthinonet.ecu.edu.au/about/news/2858>)

In the United States, Portals are used in the health industry for patient information sharing to ensure appropriate medical treatment and avoid conflicting treatments.

### **Single ‘Contact Officer’ based in Family Courts**

The Chisholm report recommended that cross- agency Agreements specify the officers who are authorised to make inquiries about confidential information in order to reduce the risk of misuse of personal data. Building on that concept, the Family Courts could have a specific team of officers who not only make enquiries across agencies but work directly with clients, assisting their interaction with the courts and interviewing them about their involvement with other agencies.

### **Sharing of Expert Reports**

The sharing of expert reports between the two jurisdictions would save time and money where the reports cover issues which are relevant to proceedings in both jurisdictions. Some experts, particularly those in the medical field, may have concerns about a breach of client confidentiality in the sharing of reports between different jurisdictions and contexts. Advising experts that their reports may be shared between like agencies and jurisdictions at the time the reports are requested would assist them in framing their reports. If necessary, legislative protection from civil law action for alleged breach of confidentiality could be provided for experts whose reports are shared between agencies and across jurisdictions.

### **Section 60I**

The current certificate under this section of the *Family Law Act 1975* does not provide the court with any information regarding the reasons for the failure of the particular FDR process. In general, the certificate is poorly worded. A requirement that the FDR practitioner state the possible reasons for the failure of FDR and alert the court to any issues regarding the child’s best interests would be of benefit.

### **Common Risk Assessment**

A lack of common criteria for assessing risk to children across agencies and jurisdictions poses a difficulty for collaboration and information-sharing. The Commission agrees that the *Family Law Doors* program could provide an excellent starting point for discussions on a

common assessment test. However, there are many different attitudes to standardised tests in the child protection area and there is by no means any agreement on the benefits of standardisation. The different approaches used to assess whether children are at risk of maltreatment and some of the issues and criticisms surrounding the use of standardized risk assessment instruments in child protection were examined by the Australian Institute of Family Studies in its 2011 paper *Risk Assessment in Child Protection* (<https://aifs.gov.au/cfca/publications/risk-assessment-child-protection>). The study concluded that: "there is no one "ultimate tool" that will solve the difficulties of assessment in child protection. Instead, there is an acknowledgment that while some tools may indeed be more effective than others at classifying risk, this does not rule out the need for alternative approaches and for the continued utilization of clinical judgement and practice knowledge."

On this basis, the Council's alternative option of an investigatory service which is part of the family law system may be a more achievable solution. Logically, if the service is to report to the Family Courts, it should be based there. However, regardless of where the service is located, cost may be a major impediment to its establishment.

Overall, the opportunities for enhancing collaboration and information sharing in the family law system cannot be fully realised without additional funding. However, longer term, there would be savings in court time and resources as well as benefits to clients from a more streamlined system.

Thank you for the opportunity to provide further comment on this inquiry. The Manager of our Family Law Practice, Mr Graham Russell, would be happy to discuss this response further.

Yours sincerely,



Gabrielle Z Canny  
Director