

Mackillop Family Services
Response to Families with Complex Needs and the Intersection of the
Family Law and Child Protection Systems

A. Information sharing

Question 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 facilitated in a way that maintains the integrity of therapeutic service provision?

Question 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?

Purposeful information sharing, to ensure the safety of family members, is not at odds with therapeutic service provision. When the primary concern of the courts and services involved with a family is the best interest of the child, information sharing that will protect the child is in fact an important element of a therapeutic approach.

As a provider of family relationship services through the Broadmeadows Family Relationship Centre (FRC), we are of the view that enhanced information sharing through the use of the Family Law Act 1975 section 60I certificates would be very beneficial. As the certificates are currently composed, it is possible to alert the court that family dispute resolution (FDR) is “not appropriate” in cases of family violence. However FDR practitioners are unable to provide any more information about this, even where it would be in the child’s best interests to do so.

Were FDR practitioners able to provide more information, it is likely that this would not be in breach of the requirement that discussions in FDR are inadmissible, because FDR has not actually taken place. Additionally, the court would not be expected to make a finding based on the information shared in the s60I certificate, but it would act as an alert within the system, guiding court staff and legal practitioners to explore the issue of family violence more thoroughly.

Information sharing also has the capacity to enhance the services and supports a family is receiving. For example, while a party may be experiencing mental illness, they may already have appropriate mental health support and parenting assistance in place from a community agency. Being able to share information about the supports being received and improvements in parenting capacity is important in family law decision making, when it is for supportive, rather than punitive purposes.

There is evidence to suggest that the experience of trauma, for example in a survivor of family violence, can cause the survivor to present as “confused and utterly disoriented ... their stories can be fragmented, highly emotional and contradictory”.¹ This, in turn, may impact on their credibility within the family law system and perceptions about their capacity to parent. In such cases more in depth information should be shared amongst relevant services so as not to penalise women who have experienced family violence and have acted protectively by seeking the support of the family law system.

In relation to information sharing, we wish to express broad support for the recommendations contained in Professor Richard Chisholm’s report *The sharing of experts’ reports between the*

¹ Hill, J., “What I’ve learned about domestic violence in my year reporting on it” *The Guardian* 11 September 2015, referring to Judith Herman’s research on trauma.

child protection system and the family law system (a 2014 report for the Commonwealth Attorney-General's Department). The report provides strategic and practical solutions to some of the barriers that have existed between the family law system and other key areas of family support.

B. Risk assessment

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

Developing an accurate assessment of risk within families is extremely important. It is difficult, however, to find a risk assessment tool that can be used across a range of domains. The predominant tool in use in Victoria, the Common Risk Assessment Framework (CRAF) is limited in that it does not allow for an in-depth analysis of a family's circumstances. While it can be useful for universal services (for example, maternal and child health nurses) it lacks the detail required for use with services working with complex families. The Detection of Overall Risk Screen (DOORS) tool is also limited in that as it is designed for use by legal practitioners, it is not easily translatable for those outside the family law system.

As a result, the Broadmeadows FRC has developed a risk assessment tool that allows MacKillop staff to immediately and safely access a broad range of information, including family safety. Any referrals required as a result of the risk assessment are made with the consent of the client, and permission is sought to share as much information as required to ensure they receive the services they need.

Given the different needs of service providers in the family law, child protection and family support areas, it will be difficult to develop a universally accepted assessment tool. In spite of this, risk assessment should be a high priority for these services. We therefore recommend that a range of standard definitions and questions should be adopted, rather than a standard tool. Agreement on key definitions, ensuring that each service captures what they need, and agreement on the paramount nature of the safety of children should be a starting point. Significant skills are required to undertake risk assessment, requiring sensitivity, empathy and competence.² Resourcing is required to ensure family law services staff are appropriately skilled.

C. Integrated and holistic support services

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

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

As described by Bromfield, Lamont, Parker and Horsfall, disjointed approaches to service delivery can be unhelpful for families with complex needs and presenting issues. They found:

When working with a parent who is dealing with multiple and complex problems, practitioners are likely to have to try to support them on different fronts. Referring the family to a different service or professional for each problem or trying to tackle all problems simultaneously will be overwhelming for the family. An effective intervention

² Robinson, E. and Maloney, L. (2010) "Family violence: Towards a holistic approach to screening and risk assessment in family support services" Australian Family Relationships Clearinghouse Briefing No. 17 <https://aifs.gov.au/cfca/sites/default/files/publication-documents/b017.pdf> accessed 19/7/15

is planned and purposeful, based on a comprehensive assessment and staged to meet the family's needs and capacities over time.³

Child FIRST is an effective, integrated child protection and family services response for families with complex needs. In Victoria, it is a well established and legislatively backed service integration initiative. We are supportive of its further expansion, rather than replication or duplication within the family law system. In our view, generalist family and child support should be at the centre of service integration initiatives with other specialists “coming to the table” depending on the needs of the family concerned. This might include mental health specialists, homelessness services, alcohol and other drug supports. We also acknowledge that agencies need resourcing to facilitate integrated responses, including at governance and operational levels. These issues should be considered as part of any expansion of existing integrated responses into the family law space.

MacKillop would encourage the forging of closer links between the family law system and Child and Family Service Alliances. The Alliances were established in staged phases across Victoria from 2006-2009 as part of the roll out of the Strategic Framework for Family Services. Alliance partnerships include State Government funded family services (Integrated Family Services and Child FIRST) and Child Protection and Department of Health and Human Services area team representatives. We are of the view that relevant family law system representatives would be a welcome addition to the Alliances, in relevant cases.

Integrated approaches should also incorporate the views of all family members, and it is of critical importance to provide children and young people a voice in the family law process. Ensuring the needs and safety of children and young people whilst also supporting and working collaboratively with families is an important focus of our work at MacKillop. We utilise a client feedback tool, Viewpoint to seek feedback from clients about their care and interactions with MacKillop.

We note the approach adopted by the Logan Family Relationship Centre, using the Child Informed Family Dispute Resolution model. It involves meaningful engagement with children, especially in cases where there are concerns about children’s safety. In the view of the child practitioners in that program:

“ the child is the most important source of reliable information about the impact on their wellbeing of the parent’s separation.”⁴

“ the child’s voice is the most compelling as a motivator for behavioural change in parents entrenched in high conflict. Through supporting parents to look beyond their own needs and seriously consider the needs of their children, power can be shifted away from their conflicted way of relating towards a more co-operative way of parenting”.⁵

³ Bromfield, L., Lamont, A., Parker, R., and Horsfall, B. (2010) “Issues for the safety and wellbeing of children in families with multiple and complex problems: The co-occurrence of domestic violence, parental substance misuse, and mental health problems” *National Child Protection Clearing House Issues* No. 33, page 14

⁴ Cameron, M. and Kinnane K. “Support, Encourage, Empower, Repair!”, page 4, <http://www.childinclusivepractice.org.au/Portals/0/2015/20Presentations/Support,/20EncouragE,/20EmpoEmp,/20Repair!/20-/20Margaret/20Cameron 20and/20Kristal/20Kinnane.pdf> accessed 17/9/15

⁵ Cameron and Kinnane, page 11

D. Partnerships with Aboriginal Community Controlled Organisations

Question 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?

It is critically important for the family law system to recognise and acknowledge the reasons behind the reluctance of some members of the Aboriginal community to engage with the system and associated supports. Mathew Willis writes:

“Coupled with a lack of confidence in the ability of the justice system to deliver positive results, victims may be fearful of the justice system generally or police in particular. This is especially likely to be true for those from communities that have had negative experiences with police or authority figures, such as ... Indigenous Australian communities who have experienced racism, past ill-treatment by police or others in positions of power and the effects of government decisions such as the forced removal of children. This is supported by research from Canada and New Zealand and anecdotal evidence from counselling services in Australia ... Fears of not being believed or taken seriously and inappropriate responses by police have also been found among marginalised or vulnerable groups experiencing sexual victimisation, such as homeless women or women with disabilities”.⁶

This view was reinforced recently for MacKillop when the FRC was asked to facilitate family dispute resolution with a separating Aboriginal couple. The relationship had ended when the woman and her children entered a family violence refuge. Usually, MacKillop would deem that family dispute resolution could not proceed where the woman was in a family violence refuge, for a range of reasons, including that the power imbalance between the parties was too great to allow for an equitable outcome.

However, in the view of the woman, family dispute resolution of this kind was preferable to entering the court system, in which it was likely that “some magistrate will decide where my kids live”. The reality for the Aboriginal community is that the legal system is viewed with apprehension, suspicion and contempt, and that equitable outcomes continue to be rare for Aboriginal people within the mainstream legal system.

As noted above in relation to integrated services approached, it is MacKillop’s experience that services that work together provide better outcomes for children, young people and their families. This is especially the case in regard to the work MacKillop does in the out of home care sphere, in partnership with the South Coast Medical Service Aboriginal Corporation (NSW) and Wirraka Maya Health Service Aboriginal Corporation (WA). In these partnerships, the focus is on placing Aboriginal children with Aboriginal kin and foster carers. In these partnerships, MacKillop relies on the agencies to forge pathways with community and build relationships. MacKillop works with the agencies with capacity building in relation to Aboriginal foster carer recruitment and support.

This approach was recently endorsed in a report handed down by the Senate Community Affairs References Committee:

The committee recognises the importance of empowering Aboriginal communities to take responsibility for child protection issues, including decision-making processes and delivery of services. The committee considers ACCAs [Aboriginal community controlled agencies] should be introduced across all jurisdictions and should be

⁶ Willis, M. (2011) “Non-disclosure of violence in Australian Indigenous communities” *Trends & issues in crime and criminal justice* No. 405 page 3

involved in the full range of family support services for Aboriginal and Torres Strait Islander families, not just out-of-home care, and must be supported by flexible funding models.

The committee supports examples of partnerships between the government and non-government sector to empower ACCAs to take responsibility for some out of home care services, particularly in NSW and Western Australia. The committee notes these partnerships are in the early stages of implementation and that more work needs to be done to develop them across jurisdictions, and expand capacity of ACCAs to develop and deliver services across the continuum of care.⁷

True partnering with ACCAs, in which the outcomes for the partnership are identified by the ACCAs and supported by mainstream organisations, would be an effective approach in the family law system.

E. Better co-ordinated legal system

Question 7: How might a more co-ordinated legal system for families with complex needs be created?

The recommendations contained in the report *Information-sharing in family law and child protection – Enhancing collaboration* are supported as they provide foundational strategies to support and promote better outcomes for complex families across the legal system.

Conclusion

There are often multiple presenting issues for vulnerable families experiencing disadvantage. As well as interactions with the family law system, a family might be at risk of child protection intervention, experiencing family violence, parenting a child with a disability or at risk of homelessness. The needs of the family should be addressed holistically, regardless of which system they are interacting with. As outlined in this submission, in our view there are a range of existing structures that the family law system could be part of, to ensure that the family's needs are met and the children's best interests remain paramount.

⁷ The Senate Community Affairs References Committee (2015) *Out of home care*, Cth of Australia, page 254