

Submission to the Family Law Council

from

Northern Territory Department of Children and Families

Introduction

The Family Law Council has called for submissions to inform its report in regard to 'Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems', in particular, 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 migrant settlement services. This submission addresses the topic from the perspective of the Department of Children and Families who is responsible for child protection services.

About the Department of Children and Families

The Department of Children and Families provides a range of services focused on protecting children in the Northern Territory from harm. The Department undertakes child protection investigations and assessments, provides care to children through foster care and other out of home care services, and administers adoption and family and parenting support services. The Department's main offices are located in Casuarina, Palmerston, Katherine, Nhulunbuy, Alice Springs, and Tennant Creek.

The *Care and Protection of Children Act 2007* provides the Department with the mandate to intervene in the lives of vulnerable children and families. In intervening in the lives of children and families, the Department strives to:

- protect children from harm and increase their safety and wellbeing;
- support and improve the wellbeing of children in the care of the Chief Executive Officer; and
- provide parenting and family support to assist families to minimise harm and strengthen capacity.

The Northern Territory Government funds the Department of Children and Families to provide:

- services aimed at the protection and minimisation of harm to children, including receiving and investigating reports of abuse and responding to ensure the safety of children;
- services provided to children in the care of the Chief Executive Officer. This includes placement and case management, as well as recruitment,

assessment and support of carers to provide a range of placement options for children; and

- targeted support to vulnerable families to prevent their children entering the child protection system and to assist them to improve the wellbeing of their children.

The Department of Children and Families works with a broad range of internal and external stakeholders, including government agencies and non-government providers, the community sector, and those who provide placement and family support services to children across the Northern Territory.

The Department also undertakes a number of programs that are specifically designed to support and protect vulnerable Aboriginal children and families in remote areas of the Northern Territory, with a particular focus on community based staff working collaboratively with families, communities and other government and non-government agencies.

The Northern Territory Context

The Northern Territory has a total land area of 1.42 million kilometre squared. Compared with other states, the Northern Territory is significantly more remote. Excluding the Greater Darwin area, the Northern Territory's remaining landmass (over 90 per cent) is classified as remote, the majority of which is classified as very remote.

The Northern Territory has a population of approximately 229,675 people of whom, 28 percent are Aboriginal and Torres Strait Islanders. Over half of the total population live in the Greater Darwin area and the remainder are located in the four towns of Alice Springs, Tennant Creek, Katherine, Nhulunbuy and in very remote communities.

Child Protection in the Northern Territory

The relevant legislation regarding child protection matters in the Northern Territory is the *Care and Protection of Children Act 2007* (the Act). The Act, among other things, creates an appropriate judicial process for safeguarding the wellbeing of children, particularly children who are or might be in need of protection. The Act establishes a family matters jurisdiction of the Local Court to determine matters brought before it under the Act. The power of the family matters jurisdiction can be exercised only by a Magistrate sitting alone. A decision of this Court can be appealed in the Supreme Court of the Northern Territory.

A feature of the Act is section 26 which makes it mandatory for all persons in the Northern Territory to report, if they believe on reasonable grounds, that a child is suffering or has suffered harm or exploitation. The Department of Children and Families has a Central Intake Team that operates 24 hours a day, seven days a

week to receive, record and assess notifications. The Central Intake Team is also the point of contact for requests for information that can be shared under the 'sharing information for safety and wellbeing of children' part of the *Care and Protection of Children Act*.

Like other jurisdictions, the Northern Territory has seen a steady increase of notifications of suspected abuse and neglect of children over recent years. In 2013-14, there was a 30 per cent increase in notifications from the previous year. It is suspected that this trend will continue.

Nearly two thirds of notifications received by the Department are made by government employees, particularly police (44 percent of notifications). This high percentage of police notifications can be attributed largely to police attendance at domestic and family violence incidents where children are present. Not all notifications reach the threshold to be investigated. When an investigation has occurred and harm has been substantiated, 50 per cent relate to neglect, 30 per cent emotional abuse, 18 per cent physical abuse, and two per cent are substantiated sexual exploitation.¹

The Intersection of Family Law and the Child Protection Systems in the Northern Territory²

There are a number of points at which the Family Law system intersects with the child protection system in the Northern Territory.

Notifications of Suspected Abuse and Neglect

When the Department of Children and Families Central Intake Team receives a notification of risk, it is assessed in accordance with usual screening processes and the notifier will be advised as to whether it has met the threshold for investigation or not. In 2013-14, there was a total of 12,993 notifications made to the Department. As well as recording the alleged harm, the context of the report is also recorded. In 113 notifications, the report context was recorded as 'Family Law Dispute'. This means that the notification was made in the context of a family law dispute over care and control of the child. The harm alleged could have been neglect, physical, emotional or sexual abuse. Of these notifications, only one proceeded to investigation, and this was substantiated.

It should also be noted that approximately 76 per cent of all notifications received by the Department were in relation to Aboriginal and Torres Strait Islander children.

¹ Department of Children and Families Annual Report 2013-2014, Northern Territory Government, Darwin 2014.

² In this submission the term Family Court is used to include the Federal Circuit Court. The Federal Circuit Court is located in Darwin with regular sittings in Alice Springs. The majority of family law matters are dealt with by this Court. There is a permanent Federal Circuit Court judge located in Darwin. In the case of complex family law hearings, the Family Court would be presided over by a visiting Family Court judge who would attend from interstate.

Anecdotal evidence from legal service providers in the Northern Territory suggests that the majority of *Family Law Act* matters in the Northern Territory do not involve Aboriginal or Torres Strait Islander people.

Summary: When considering all notifications received by the Department, the number recorded in the context of a family law dispute is very small and an overwhelming majority of these do not meet the threshold for investigation.

Subpoenas, Section 69ZW and Requests for Preliminary Child Protection

Information

Subpoenas issued by the Family Court are received by the Department's Information and Privacy Unit who collate the required information and provide it to the Court. The Northern Territory Department of the Attorney-General and Justice provides legal support and guidance and also represents the Department, for example, if contesting the scope of the subpoena. In 2014-15, Family Court requests to the Department's Information and Privacy Unit, totalled 58.

Table 1: Number of Family Court requests to the Department of Children and Families in 2014-15

REQUEST TYPE	NUMBER
Subpoena	37
69ZW	21
TOTAL	58

Family Court requests for 'Preliminary Child Protection Information' are sent by the Family Court to the Central Intake Team and is completed by the Manager and returned to the Family Court by fax within seven working days. No specific data is compiled by the Department in regard to these requests, however anecdotal information suggests that there is an average of two per week received.

Summary: The information requests from the Family Court are dealt with in a systematic way and in accordance with departmental policy and procedures. Where matters of law arise in regard to these requests, the Department is represented by Northern Territory Government Legal Services.

Magellan Cases

Magellan matters are prioritised for commencement and completion of child protection investigations to enable timely reporting of the investigation outcomes to the Family Court. Where possible, the Family Court will set a return date which allows the Department sufficient time to adequately complete the child protection investigation, and furnish the report using the child protection report for Family Court.

The completed report is forwarded to the Department's Lawyer for return to the Family Court.

In Magellan matters, the Department's Lawyer is responsible for liaising with the Family Court Registrar and ensuring a timely and coordinated response on behalf of the Department. The Department has not had any Magellan matters over the past 12 months.

Summary: The Department has not had any recent Magellan matters but is confident that the established policy and procedures have worked effectively in the past and would continue to do so.

Independent Children's Lawyers

The *Care and Protection of Children Act* makes it easy to share information to ensure the safety and wellbeing of a child or young person in the Northern Territory. People and organisations with responsibility for children may share information under the information sharing framework.

People such as teachers, lawyers, registered foster carers, doctors and child care workers are able to share information relating to the safety and wellbeing of a child without fear of criminal or civil liability. Many other people and bodies are authorised to share information. The information sharing framework permits the sharing of information in circumstances where privacy or confidentiality rules may prevent people or bodies from providing important information to ensure the safety and wellbeing of a child or young person. The legislation makes it clear how information can be provided, requested and received from other authorised people or bodies who are helping a child and the child's family.

Information that can be shared about a child or children includes information about other people as long as that information directly or indirectly relates to the safety or wellbeing of the child. Therefore, information about parents, carers, siblings or others may be information in relation to the child if it relates to the child's safety or wellbeing, directly or indirectly.

Independent Children's Lawyers are able to seek information from the Department and other agencies, individuals and services as specified in the legislation, in regard to a specific child or group of children under the information sharing provisions within the *Care and Protection of Children Act*.

Opportunities for enhancing collaboration and information sharing between the family law system and the child protection system.

Effective Communication and Problem Solving

There are opportunities for enhancing collaboration and information sharing through effective and timely communication between the two systems to address any issues

or problems that are identified. A Federal Circuit Court Judge has recently been appointed in Darwin. In the period since the previous judge departed, the Northern Territory was serviced by fly in/fly out judges. Having a permanent Judge in the Northern Territory means that regular meetings can occur in a timely way between senior Northern Territory Government officers and the Family Court in the Northern Territory.

Information Sharing

The arrangements that are currently in place appear to work effectively and efficiently in regard to the sharing of client information. These arrangements are appropriately guided by the relevant legislation, policy and procedures.

If there are concerns regarding possible risk to a child in a family law matter, then utilising the current arrangements regarding making a notification or making requests for 'Preliminary Child Protection Information' would appear to be the most effective way of addressing such concerns.

At a more general level, the Department can participate in the Pathways Networks in the Northern Territory. These networks provide an opportunity to identify broader systems issues and find solutions.

New Knowledge from Research

The Family Law Council has asked what opportunities exist for developing integrated responses to families with complex needs who use the Family Law system. There appears to be significant research being undertaken in regard to domestic and family violence, child protection and Family Law. The outcomes from this research can be used to inform better practices in all jurisdictions, including the Northern Territory. For example, the PATRICIA Project (PATHways and Research In Collaborative Inter-Agency working), funded by federal, state and territory governments through the National Research Organisation for Women's Safety, is seeking to develop an understanding of the barriers and facilitating factors for collaborative work across statutory child protection, women's domestic and family violence support services, and services provided in the family law area.

Conclusion

It is the Department of Children and Families view that the current arrangements that exist regarding collaboration and information sharing between the Department and the Family Law system are sufficient and operate effectively. However, the Department would consider any recommendations that may arise from the work the Family Law Council is undertaking that will enhance the safety of children and the Department's service delivery to those children and their families.