

Submission to the Family Law Council

from

Northern Territory Legal Aid Commission

- 1. How can the exchange of information between the family law 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?**

The NT backdrop

Striking the balance of information exchange and preserving therapeutic service provision, is a difficult and at times, a conflicting concept, particularly in a small jurisdiction such as the Northern Territory where a small demographic exists but a high indigenous population with extensive family networks. Professionals working in this area as a consequence, need to be significantly more vigilant in ensuring client confidentiality and privacy in order not to compromise the therapeutic relationship.

The mandatory reporting laws in the NT also place additional pressures on the therapeutic relationship and may jeopardise the service provider/client relationship altogether where it is necessary to make a mandatory report. There is the risk that, for example, victims of domestic or family violence will not seek out family law advice if they are informed that the practitioner may need to make a report. This compromises the ability of the person to engage with the service altogether. By extension, if a client is aware that engagement with the service may result in certain information being exchanged with other organisations such as the family law system, this may impact on the person's ability and willingness to engage.

Whilst there would be some benefit to further information being provided in section 60I certificates and the provision of objective observational or assessment reports prepared by a Children's Contact Service, the information divulged may need to be targeted for the specific purpose of addressing child risk or family vulnerability issues.

The nature and extent of the information exchanged may also need to be clearly defined, and possibly limited, so that service users understand the parameters of that exchange as well as the benefits that will flow from such exchange. For example, easier and more direct access to information provided previously and possibly a more contemporary account rather than that based on recall.

Categories of information that could and should be exchanged may include:

1. Date & reasons for accessing the service
2. Parties/children involved
3. Whether mandatory reports were required or raised
4. Whether the family has had involvement with family violence, law enforcement, child protection, health, drug and alcohol and mental health agencies.

Other ways in which the exchange of information could be facilitated might be:-

- Using the risk factors contained in the Notice of Risk as framework to identify which information should be exchanged.
- Expanding the s.69ZW provision to obtain information from these agencies if something is identified as a risk factor would also be useful. This is particularly so where two or more issues appear to be themes in the family dynamics, such as family violence and drug and alcohol use. This should be a trigger point for information requests to police, health and courts of summary jurisdiction/tribunals.
- Encouraging parents accessing programs to opt into sharing information (eg allow the Independent Children’s Lawyer (‘ICL’)) to make enquiries.
- Requesting (and funding) services to provide brief reports on the quality of someone’s engagement/progress to an ICL if the participant consents. ICLS are well placed to assist in such information gathering when they are appointed. Judges describe ICLS as adding great value.
- Legal Aid Commissions should be funded adequately to appoint an ICL in each matter the Court orders that an ICL be appointed.
- A child safety liaison officer role at the Court and the family relationship services should be funded to enable information exchange and collaboration within the parameters of information defined above.

In the NT, there is currently information sharing legislation in the Care and Protection of Children’s Act¹ between the child welfare agency and other ‘Information Sharing Authorities’² which include carers, education and healthcare providers, police officers and lawyers. It is submitted that this part of the Act be amended to also include the family, domestic violence, mental health and criminal courts/tribunals.

As a way of improving the information sharing protocols in the NT and adopting Richard Chisholm’s recommendation for the establishment of an Information Sharing Agreement, a working group comprising the Family, Federal Circuit and Local Court representatives, the Department of Children and Families and the NT Legal Aid Commission has been established. This group has now met twice and a third meeting will be held before the end of the year.

This will be particularly important as current information sharing is variable and may result in either inadequate information being provided or no information at all as it is entirely dependent on the person requested to provide that information.

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

Common risk assessment tools such as DOORS may not achieve the desired objective in circumstances where the language and legislative imperative may differ (such as child abuse in the context of the criminal jurisdiction and that as defined in the Family Law Act), and the willingness of agencies to adopt universal risk assessment tools.

¹ Part 5.1A

² S.239C

Standardising certain questions or elements across agencies may be more indicated.

Section 11F reports, if ordered shortly after proceedings commence, can be a very valuable tool in assessing possible risk to children. So too, is the appointment of an ICL in all matters where family violence, drug and alcohol abuse and involvement of child welfare agencies are identified. In a smaller jurisdiction, at risk children may already be flagged with different agencies such as the child welfare agency, Education, Health or Police.

Expanding the information sharing mechanisms to enable someone like an ICL or a Family Consultant, once appointed/allocated, to contact these different agencies to make enquiries would be of significant value. Providing anonymity and immunity to individuals in making reports or exchanging information similar to the notification provisions in child protection legislation may make that exchange of information done more readily.

Compelling a child welfare agency in the NT to undertake a forensic investigation of child risk issues is very difficult in light of the significant resourcing and staffing issues. Establishing a dedicated investigatory service for family law matters to address this gap with access to both the family law and child protection systems (databases, agencies, and information exchange provisions/legislation) would be an excellent manner to address this gap. This person should, however, be distinct and separate from a family consultant.

It is suggested as a way of building the family law system's capacity to conduct or access forensic risk assessments, that dedicated roles/positions be created within the family law courts. For example, a child risk liaison officer in addition to Indigenous / CALD family liaison officers who could be contact/access points for information sharing and gathering to pass on to the family consultant.

3. How can services such as 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?

Facilitating information sharing between community sector services and the family law systems could be achieved by:

- Encouraging (or possibly mandating) and funding services to provide brief reports and using a reporting template developed for this specific purpose and forwarded by the Court.
- Creating a position of a 'case co-ordinator' (or an integrated role of child risk liaison officer) at the Court to be the contact person for these agencies to ensure support and resources are made available for the provision of the relevant information.
- Standardising intake assessment type forms in various agencies with specific questions around involvement of parties in family law and/or child welfare court proceedings could be a useful way of prompting the service provider to make the relevant information available to the courts.
- Establishing a mechanism for community sector services to raise red flags with the ICL, a Family Consultant or a child risk liaison officer (as suggested earlier).
- Allowing ICLs and parties to attach letters from service providers to Notices of Risk and affidavits upon the filing of an Initiating Application, Response to Initiating Application, Applications in a Case or Responses/Replies and Contravention Applications.
- Extending the exchange of information to domestic violence courts, drug and therapeutic courts and mental health review tribunals by amending existing Territory legislation as suggested above.

- Mandating drug and alcohol services to provide results of urinalysis, mental health agencies providing progress against treatment plans and compliance, admissions, relapses etc.

The quality of information provided needs to be controlled so that the information is not purely opinion or perception based, but based on the facts.

Due to the limited number of service providers in the Northern Territory with resulting pressures on services and high turnover of staff, there is little capacity for these services to make relevant information available in the absence of strong co-ordination and funding.

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

Support and referral services are generally made available to families of children at risk where a child protection notification has been made and investigated. In the Northern Territory, these referrals could be, for example, to Save the Children Intensive Family Support Services³ or the Council for Aboriginal Alcohol Program Services (CAAPS) 'Healthy Families' residential programmes.⁴

Referrals are usually done by the child welfare agency or community sector service providers, who may also be involved with the family either prior to or following the child protection notification.

Difficulties arise, as highlighted in the Discussion Paper, where the safety concerns do not meet the threshold for child protection intervention where one parent has been deemed to be protective, and therefore left up to that parent to tap into the necessary support services. For example, parents fleeing domestic and family violence, may find themselves leaving the home with the children, who may all be traumatised by the violence and may need intensive therapeutic counselling, educational and financial support and legal representation in the family law context.

As a way of improving access and assistance to these families, it is suggested:

- There be better funded programmes supporting at risk families rather than only after children have been removed from families
- Social workers/case co-ordinators who can operate as a hub or referral point, similar to the Centrelink Case Coordination Pilot (see below) who could link clients with various agencies, do warm referrals and follow-up.
- Creation of a child risk liaison officer (or families support officer) role or position in each agency (health, courts, education, child welfare agency, police, domestic violence services, drug/alcohol, Family Relationship Centres, counselling and similar organisations) to facilitate information exchange and collaboration similar to the Suspected Child Abuse and Neglect ('SCAN') Team System model in Queensland⁵, who can be an access or referral point when families are traversing their services and find themselves in the family and/or child protection jurisdictions.

³ <http://www.savethechildren.org.au/our-work/program-selector/intensive-family-support>

⁴ <http://www.caaps.org.au/services/healthy-families>

⁵ <https://www.communities.qld.gov.au/childsafety/partners/our-government-partners/suspected-child-abuse-and-neglect-scan-team-system>

- Adopting a model such as SupportLink⁶ trial in the NT to provide a referral service for vulnerable families traversing the family law and child protection system.

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

The service pressures on a small jurisdiction such as the NT, may be a roadblock to some joint initiatives such as training and taskforce type collaboration. Despite challenges, sometimes close alliances are forged by individuals in various agencies which facilitate a more holistic approach to the referral and service provision process. For example, there is enhanced interaction between the women's refuge, the Domestic Violence Legal Service and the NT Legal Aid Commissions Family Law Section services. Any of these agencies, in turn, can make referrals for clients to specialist domestic violence counselling, mental health or drug and alcohol services, such as Healthy Families programme, as mentioned above.

This is based largely on knowledge of the services available and capacity to make the contact and subsequent referral. Often when families are presenting to various services, it is either in a clinic type setting or by appointment, which may be quite limited in time due to service pressures.

Sometimes, due to the time constraints, not all the issues may be identified or if they are, there may be limited time in order to make the necessary referral/s. For example, a referral to the CAAPS Healthy Families programme mentioned above with an Aboriginal non-English speaking client, may require an appointment of 2 or more hours in order to complete the form, request the necessary police checks etc. in order for the first stage of the referral process to be completed. This is from one service to another. Where there are multiple services needed for the family/individual and different service provision imperatives, it may not be physically possible for wider interaction unless a specialist child risk liaison/family support officer role were created or a family law courts liaison officers as suggested in the Discussion paper.

Regular stakeholder meetings are vital, such as the Family Law Pathways Networks ('FLPN'), but are dependent upon strong co-ordination efforts by a central convenor.

The NT is trialling a service referral kiosk on court duty list days in the Federal Circuit Court in Darwin in order to facilitate better referral and access to support services. Early indications are that appropriate premises are essential to the success of such a model. Co-location of, for example, domestic violence support services and a representative from the child welfare agency would assist the court and parties to focus on the risks and collaborate to facilitate a more integrated response to the needs of the family. However, it is acknowledged that co-location of an officer from these services and agencies may not be feasible given the number of Federal Circuit Court users, the size of the population and resource pressures on that department.

Specialised tools and training to assist services understand the role and processes of the courts when meeting complex needs of vulnerable client groups in the NT will enhance interaction between the courts and these groups.

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

⁶ http://www.territorystories.nt.gov.au/bitstream/10070/251475/1/Giles-190314-Supportlink_trial_expanded.pdf

We support an integrated response endorsed by relevant stakeholders and tasked with coordinating and supporting its implementation. The NT Legal Aid Commission has undertaken consultation in relation to this and we attach the 2007 Report which details this and the findings. There is a successful domestic and family violence integrated response model in Alice Springs which has been in place for some years and is funded by the Alice Springs Transformation Plan.

The NT Government has implemented a Domestic and Family Violence Reduction Strategy 2014-2017 – Safety is Everyone’s Right (funded by the NT & Cwth Governments). The lead agencies involved are the NT Departments of the Attorney General and Justice, Community Services, Police, Fire and Emergency Services. The 5 key areas include prevention, early intervention, protection – safety for victims, rebuilding lives of victims and survivors; and accountability and positive change for perpetrators. It has adopted an integrated response based on the success of the Alice Springs model.

Part of the Strategy includes a Family Safety Framework, an integrated response, which includes:

- Common risk assessment;
- Interagency referral process
- Information sharing protocol
- Fortnightly family safety meetings

This model provides for:

- A common risk assessment tool (for which training is provided)
- Information sharing and fortnightly meetings for high risk family and domestic violence cases in addition to monitoring and evaluating the impact on safety.

Although it involves families at high risk of violence, arguably there is scope for the involvement of the family law courts or family law service providers, as relationship breakdown and parental disputes requiring court intervention, sometimes involve high risk family and domestic violence cases.

A model, in non high risk cases, could also be developed and implemented with a view to assisting families with complex needs in the family law system with key agencies such as those who are, for example, members of the FLPN in the NT.

The size of the jurisdiction in the NT would allow easier connection between agency personnel. The Top End and Central Australian Family Law Pathways Networks are an excellent means of pulling agencies together and developing closer collaboration. They are particularly necessary in the NT because of the transient nature of the population and high staff turnover, which deplete corporate knowledge, retention and key agency personnel contacts.

Because an integrated response requires resources and agencies committing to working collaboratively to improve outcomes, it will be necessary to establish and resource a leader of this project to plan with and facilitate the coordination of the response.

7. Is there a need for specialist case co-ordination approach to families with complex needs, and what opportunities exist for developing such an approach?

There is a strong need for a specialist case co-ordination approach to families with complex needs. Often families in the NT present with significant personal, social and geographical pressures and as such require referral to, and engagement with, a number of different agencies for support.

For example, a client of the NT Legal Aid Commission presented for legal advice when the child welfare agency removed one of the two children from her and her ex-partner's care due to physical abuse of the child by the other parent.

The client needed urgent legal advice in order to navigate the child protection system. Upon conclusion of the child protection proceedings, the client found herself requiring family law advice and representation because of the breakdown in the parental relationship. The client also accessed advice and representation from the Domestic Violence Legal Service for assistance to vary domestic violence order obtained by police, to include the other child in the order. The other parent was subsequently charged with aggravated assault on the child, the subject of the child protection proceedings.

The client sought permission from the other parent to relocate interstate with both children which was refused, necessitating family law representation.

Unfortunately, the client in the meantime was also charged with criminal offences relating to the neglect of the subject child and had to obtain legal representation for that matter as well.

The client's social pressures increased due to the breakdown in the parental relationship placing the client under significant financial and accommodation stress. Various referrals were made for the client to access domestic violence counselling, a parenting programme, and tenancy advice and advocacy.

Three different legal professionals were involved and all three needing to make different referrals to support or allied agencies.

Having specialist case co-ordination for clients such as this would save significant time and provide a seamless referral and monitoring process which would be significantly enhanced by appropriate information exchange.

The opportunities that exist in the NT for such an approach includes the precedent for the development of an integrated response to high risk families and domestic violence cases model discussed above.

A specialist case co-ordination approach could be modelled on a former Centrelink Case-Coordination Pilot that was established in 2011-12. This pilot was designed to work with Centrelink clients with complex needs linking them to a range of welfare, crisis, education and employment services. The coordination trials operated in 19 locations Australia wide.

Centrelink provide an example⁷ of how the trial operated:

Case coordination

Mary* presented to a DHS office and asked if 'Centrelink' provided travel vouchers and, if not, could she be advanced \$20 from her next payment. Upon further exploration of her needs, it was identified that she was in the process of fleeing from her partner due to domestic violence. She was offered the opportunity to receive some more support and was referred to the Case Coordination team.

⁷ Department of Human Services Capability Review – page 38

When Mary was referred to Case Coordination, a Customer Service Advisor and Social Worker worked together to assist Mary. Mary was given additional professional support and counselling by the social worker to help her deal with the grief, loss and trauma she had experienced during the course of her relationship. Mary, the Case Coordination Customer Service Advisor and Social Worker worked together to establish a plan to achieve her goal of safety. Mary's key strengths of resilience and courage, as she took steps to be safe, were identified and included in the case plan.

The Social Worker was able to grant a crisis payment to ensure that Mary's relocation did not result in further financial hardship. The Case Coordination team worked with Mary's probation and parole case worker on changes to her probation conditions, including an amendment of the address she was required to reside at. The Case Coordination team was able to advocate for a police escort for Mary to her sister's home to minimise the risk of an incident on public transport. The police were also able to enact an interim apprehended violence order, and assist Mary with the process of making a statement. Mary was provided with referral options to pursue counselling and support once she was settled in her new area. The case worker also advised that once Mary was transferred to the probation and parole office in her new location, the case worker would work with her colleague to ensure that Mary was linked with support as part of their ongoing case plan.

8. Any other submissions

Universal screening for family violence or child abuse, should include a mandatory tick-a-box question for agencies dealing with vulnerable families, to establish whether there is a family law connection. If 'yes', the Court via appropriate channels, should be notified of the agency's/ies' intervention or work with the family/child/children. In the NT many agencies have developed these tools for internal use in response to mandatory reporting laws in relation to domestic and family violence.

An ICL, appointed in each case, may provide opportunity for information exchange where the filing of their Notice of Address for Service, is sent to all the agencies nominated/included or identified as possibly being involved with the family/individual, much in the same way as with the NOR being forward to the child welfare. Such an approach could be adopted in circumstances where children at risk have been identified and an ICL has been appointed in the family law proceedings.