

**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

STATEMENT OF LEEANNE MILLER

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I, LEEANNE MILLER, Director, Child Protection – West Division, Department of Health and Human Services, SAY AS FOLLOWS:

1. I am the Director of the Child Protection – West Division in the Department of Health and Human Services (**Department**). I have held this position since August 2012. I have worked in child protection positions, in various operational and management roles, since 1992. I have a Bachelor of Social Work, a Postgraduate Certificate in Family Therapy and a Masters of Public Administration.
2. The Child Protection – West Division is responsible for delivery of child protection services across the geographic area of Western Victoria. The West Division consists of five distinct areas: Western District Area; Central Highlands Area; Barwon Area (which includes Geelong); Western Melbourne Area; and Brimbank Melton Area. The communities in these areas range from highly urban to rural. The West Division has three branches: the Divisional Child Protection Branch; the Divisional Corporate Services Branch; and the Divisional Client Outcomes and Service Improvement Branch.
3. In my role as director of the West Division, I oversee across the region, among other things:
 - 3.1 child protection investigations;
 - 3.2 Children's Court proceedings relating to child protection orders;
 - 3.3 cases contracted to community service organisations; and

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- 3.4 the permanent care and adoption of children who are in the care of the Secretary to the Department (**Secretary**).
4. I also oversee the delivery of services by area-based teams in the Division. I am regularly involved in matters requiring interaction with police and courts. I also have responsibility for sensitive operational matters relating to child protection in the region and provide advice to relevant Ministers and the State Government about child protection issues.
5. In this statement, I broadly refer to the areas of the Department responsible for delivery of child protection services as '**Child Protection**'.

SCOPE OF STATEMENT

6. I have received a notice from the Royal Commission into Family Violence pursuant to s 17(1)(d) of the *Inquiries Act 2014* (Vic.) requiring me to attend to give evidence at the Royal Commission and to provide a written witness statement.
7. I understand that I am asked to provide information about matters the subject of Module 15 (Intersection with family law and child protection laws). In this regard, I understand the Royal Commission is particularly interested in:
- 7.1 when and how Child Protection becomes involved in family law matters;
- 7.2 when and how family violence and family law issues are relevant to and investigated in Child Protection investigations and related cases;
- 7.3 the threshold for intervention by Child Protection and the courts; and
- 7.4 the effect of intervention orders on investigations and proceedings.
8. I am aware that Ms Beth Allen has given evidence to the Royal Commission. I have read her statement dated 13 July 2015, which has been filed with the Royal Commission. In that statement, Ms Allen gave evidence about the work of Child Protection. Save where it is necessary to do so, I do not repeat that evidence in this statement.

OVERVIEW OF RELEVANT LEGISLATIVE FRAMEWORK

Family Law Act 1975 (Cth)

9. The *Family Law Act 1975 (Cth)* (**FLA**) is Commonwealth legislation applicable throughout Australia. It provides for, among other things, divorce and separation proceedings and, in this context, parenting orders. Section 43 of the FLA states that courts must, in exercising jurisdiction under the Act, have regard to, among other things, the need to ensure protection from family violence and the need to protect the rights of children and to promote their welfare. The FLA promotes the best interests of any affected children as the paramount consideration in proceedings involving children. In particular, a child's best interests are the paramount consideration in any decision about the nature of a particular parenting order in relation to that child (s 60CA; see also, for example, s 69ZN).
10. The *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011 (Cth)* relevantly came into effect on 7 June 2012. It introduced changes to the FLA. The key changes included wider definitions of the terms 'abuse' and 'family violence' (see ss 4 and 4AB) and strengthened requirements for the reporting of family violence or abuse in relation to children (see, for example, ss 60D, 67Z, 67ZA and 67ZBA). I refer to the effect of these changes at paragraph 64 below.

Children, Youth and Families Act 2005 (Vic.)

11. The *Children, Youth and Families Act 2005 (Vic.)* (**CYFA**) makes provision for community services to support children and families, protection of children, and children who have been charged with, or found guilty of, offences. The CYFA continues the Children's Court of Victoria as a specialist court dealing with matters relating to children. Section 10 of the CYFA provides that, for the purposes of the CYFA, the best interests of the child must always be paramount and identifies a comprehensive list of principles and considerations to assist in determining whether a decision or action is in the best interests of the child.

Family Violence Protection Act 2008 (Vic.)

12. The purpose of the *Family Violence Protection Act 2008 (Vic.)* (**FVPA**) is to maximise safety for children and adults who have experienced family violence,

to prevent and reduce family violence to the greatest extent possible, and to promote the accountability of perpetrators of family violence for their actions (see s 1). The Act aims to achieve its purpose by providing an effective and accessible system of family violence intervention orders and family violence safety notices and creating offences for contraventions of family violence intervention orders and family violence safety notices (see s 2).

THE CHILD PROTECTION SYSTEM

Introduction

13. The delivery of the child protection and family services system in Victoria is premised on the safety and protection of children being a shared responsibility between the community and government.
14. In this context, Child Protection intervenes only when other systems are unable to ensure the safety and wellbeing of children. The work of Child Protection is specifically targeted to children and young people who are in need of protection and who do not have a parent or other suitable adult who is able or willing to protect them.
15. The main roles of Child Protection are to:
 - 15.1 receive and review reports concerning the wellbeing or protection of children under 17 years;
 - 15.2 investigate allegations that children have been harmed or are at risk of harm;
 - 15.3 refer children and families to services (including ChildFIRST providers and community-based child and family services) that assist in providing for the safety and wellbeing of children;
 - 15.4 initiate applications before the Children's Court where children are in need of protection because their parents have not protected, or are unlikely to protect, them from harm;
 - 15.5 provide care for, and make decisions in respect of, children who are the subject of custody and guardianship orders granted by the

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Children's Court, and supervise the care of children who are the subject of other orders granted by the Court; and

- 15.6 provide and fund accommodation services, specialist support services, and adoption and permanent care services for children and adolescents in need of such services.

The involvement of Child Protection under the CYFA

16. Under the CYFA, any person who has a significant concern about the wellbeing of a child or who believes on reasonable grounds that a child is in need of protection may make a report to the Secretary.
17. Following receipt of such a report, the Secretary is empowered by s 30 of the CYFA to provide advice or assistance, to refer the matter to a community-based child and family service or a service agency, or to make a determination that the report is a 'protective intervention report'. If a report is determined to be a 'protection intervention report', the Secretary must investigate the subject matter of the report.
18. Following any substantiation of abuse or neglect, Child Protection may continue involvement (by way of protective intervention) with a child and family without the need to make a protection application under the CYFA. Such intervention generally may continue up to 90 days from the time of the report or in exceptional circumstances up to 150 days with the approval of a Child Protection team manager. During this time, Child Protection works with a child and family in an effort to address the substantiated concerns and to strengthen protection for the child and prevent the need for court intervention. Referral to ChildFIRST and family services or any other support services relevant to the protective concerns may occur.
19. It is not uncommon for Child Protection to close substantiated cases without the need for court intervention. This most often occurs where the parents acknowledge the substantiated concerns and the need for change, or are actively involved in addressing the concerns or have addressed the concerns, or the concern for the child's safety and wellbeing is not significant and does not warrant court intervention.

20. However, following an investigation and the substantiation of concerns, Child Protection may file a protection application in the Children's Court if it is determined that a child is in need of protection by reason of the existence of any of the grounds specified in s 162(1) of the CYFA. These grounds include abandonment of a child and risks of significant harm to a child where the child's parents have not protected, or are unlikely to protect, the child from that harm.

Protective parents

21. In investigating child protection matters, Child Protection considers whether or not there is a protective parent. This involves considering the parent's attitudes and response to substantiated concerns concerning the child, as well as the parent's willingness and capacity to protect the child. Assessment of the parent's capacity to protect the child requires sound information-gathering and an analysis of parental attitudes, past behaviours that may be predictive of future behaviours, parental strengths, support systems and the parent's willingness and capacity to engage with support services to achieve change.
22. In Victoria, the State's right to intervene in the lives of families and act in place of parents is limited to the circumstances in which a child has suffered, or is likely to suffer, significant harm as a result of physical, sexual or emotional abuse or neglect, and the parents have not protected, or are unlikely to protect, the child from harm. This is in accordance with the following principles specified in the CYFA:
- 22.1 the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that which is necessary to secure the safety and wellbeing of the child (s 10(3)(a));
- 22.2 that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child (s 10(3)(g)).

INTERSECTION BETWEEN CHILD PROTECTION AND FAMILY LAW MATTERS

The Family Court and the Federal Circuit Court

Jurisdiction of the Family Court and the Federal Circuit Court

23. Both the Family Court and the Federal Circuit Court hear matters under the FLA and can relevantly make orders in relation to parental responsibility for, residence of, contact with and maintenance of children. In doing so, courts must have regard to the best interests, welfare and development of children.
24. The Federal Circuit Court was established to create a jurisdiction to deal with less complicated matters under the FLA and to ease the burden of the work performed by the Family Court. The Federal Circuit Court was intended to provide a quicker and cheaper option for litigants. Over time the Federal Circuit Court's role has increased significantly in family law matters and it now hears over 86 per cent of family law matters. For the purposes of this statement, a reference to the 'Family Law Courts' is a collective reference to both the Family Court and the Federal Circuit Court.
25. In making any parenting order, the Family Law Courts must have regard to the best interests of the child as the paramount consideration (s 60CA of the FLA). In determining what is in the child's best interest, the Family Law Courts must have regard to certain matters set out in s 60CC of the FLA. Those matters include the following primary considerations:
 - 25.1 the benefit to the child of having a meaningful relationship with both of the child's parents; and
 - 25.2 the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.
26. Subsection 60CC(3) of the FLA sets out additional considerations, including but not limited to the views of the child, the nature of the child's relationship with significant people, and parental capacity, attitude, cultural heritage and involvement. Those additional considerations also include the existence of any family violence and a relevant family violence order. Pursuant to s 60CC(3)(k), a court must, if a family violence intervention order applies, or has applied, to the child or a member of the child's family, consider any relevant inference that can be drawn from the order.

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27. When making a parenting order in relation to a child, the court must apply a presumption that it is in the best interests of the child for the child's parents to have equal shared parental responsibility for the child (s 61DA of the FLA). This presumption is displaced if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in abuse of the child or family violence.

Limitation of jurisdiction if pre-existing Children's Court orders or concurrent proceedings

28. The jurisdiction of the Family Law Courts is limited by s 69ZK of the FLA, which provides that a court must not make an order in relation to a child who is under the care (however described) of a person under a child welfare law, unless:
- 28.1 the order is expressed to come into effect when the child ceases to be under that care; or
- 28.2 the order is made with the written consent of the relevant child welfare officer which, in Victoria, is the Secretary.
29. Further, where it appears to the Family Law Courts that a State court proposes to make an order (for example, an interim order or a protection order of the Children's Court under the CYFA), or take any other action, the Family Law Courts may adjourn any family law proceedings in relation to that child (s 69ZK(3) of the FLA).

Memorandum of understanding between the Department of Human Services, the Family Court and the Children's Court

30. The Family Court of Australia, the Children's Court and the Department of Human Services (as it then was) signed a memorandum of understanding in 1995 (**Memorandum of Understanding**). The Memorandum of Understanding is Appendix 1 to the Protocol which is **Attachment LM-1** (see paragraph 32 below). The central principles underpinning the Memorandum of Understanding are:
- 30.1 recognition of the specialised nature and separate jurisdictions of the Family Court and Children's Court;

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- 30.2 recognition that the Department has statutory responsibilities which may involve, or result in the involvement of, both the Family Court and the Children's Court;
 - 30.3 recognition that multiple hearings, over prolonged periods in separate jurisdictions, can be harmful to a child and should where possible be minimised;
 - 30.4 recognition that parents have a right to have their disputes resolved expeditiously, efficiently and where possible within a single jurisdiction; and
 - 30.5 recognition that the Children's Court should not be utilised as a de facto court of appeal from the Family Court.
31. In the Memorandum of Understanding, it was relevantly agreed that:
- 31.1 the Department reserves the right to choose the jurisdiction in which protective concerns in relation to children are determined;
 - 31.2 if the Department has serious concerns and is not satisfied that its evidence will be fully presented or wishes to raise jurisdictional arguments, it may apply to be made a party to family law proceedings;
 - 31.3 provided no new protective concerns emerge during family law proceedings which suggest that a child is at further risk, the Department will not apply to change the jurisdiction;
 - 31.4 during the course of proceedings in the Family Court, if, as a result of new information, the Department assesses that a child is at significant risk and that none of the parties will protect the child, proceedings will be initiated through the Children's Court;
 - 31.5 where the Department decides to initiate proceedings through the Children's Court, it will appear before the Family Court at the earliest opportunity to inform the Family Court of its intentions;
 - 31.6 if, as a party to family law proceedings, the Department is dissatisfied with the outcome of those proceedings and considers the child to be at

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significant continuing risk, an appeal will be initiated through the Family Court;

- 31.7 provided no new protective concerns arise following family law proceedings, the Department will not commence further proceedings in the Children's Court;
- 31.8 if, following the conclusion of family law proceedings, new protective concerns are raised about the safety or wellbeing of a child, the Department will determine whether the concerns are best addressed through protection application proceedings in the Children's Court or initiation of further proceedings in the Family Court and this determination will be based on the length of time since the FLA order was made, whether or not any family members are able to adequately care for the child, and the level of Departmental supervision required; and
- 31.9 where there have been or are family law proceedings, the Department will ensure, to the extent that it is aware, that this information is communicated clearly to the Children's Court in any report submitted to that Court by the Department.

Protocol between the Department of Human Services, the Family Court of Australia and the Federal Circuit Court

32. Building on the Memorandum of Understanding, a protocol was established in May 2011 between the Department of Human Services (as it then was), the Family Court of Australia and the Federal Magistrates Court (as it then was) to facilitate contact and cooperation between the Department and the Family Law Courts in relation to child protection (**Protocol**). A copy of the Protocol is attached as **Attachment LM-1**. The Memorandum of Understanding continues in effect and is Appendix 1 to the Protocol (see section 11 of the Protocol).
33. The Protocol is designed to assist cooperation, clarify procedures and improve decision-making in cases that may occur in either or both of the Commonwealth and State jurisdictions. The Protocol articulates the responsibilities of the Department, the Family Court and the Federal Circuit Court to each other. While the Department has statutory responsibility for investigation of allegations

of child abuse or neglect, it requires the cooperation of the Family Law Courts in cases that also involve those courts.

34. Following receipt of the draft report pertaining to an evaluation of the co-located practitioner initiative (see paragraph 77 below), the Department proposes to review the Memorandum of Understanding and the Protocol. Once the evaluation report is finalised in late July 2015, the Department will work closely with the Family Court and the Federal Circuit Court to determine an approach to, and timeframe for, this work.

Reports to the Department arising from proceedings in the Family Law Courts

35. While proceedings are underway in the Family Law Courts, notifications, or reports, to Child Protection of alleged abuse, neglect or risks to safety of a child might be made in accordance with three different processes under the FLA. Those processes arise, respectively, pursuant to:
- 35.1 s 91B, which relates to a discretionary power of the Family Law Courts to request that the Secretary to intervene in the proceedings where the family law proceedings do or may affect the welfare of a child;
- 35.2 s 67Z, which relates to mandatory notification of Child Protection by the Family Law Courts where a person has filed, in family law proceedings, a notice alleging abuse of a child; and
- 35.3 s 67ZA, which relates to mandatory notification of Child Protection by relevant staff of the Family Law Courts and others if they have reasonable grounds for suspecting that a child has been abused or is at risk of being abused, and discretionary notification if they have reasonable grounds for suspecting that a child has been ill-treated or is at risk of being ill-treated, or has been exposed or subjected or is at risk of being exposed or subjected to behaviour which psychologically harms the child.
36. Sections 60CF and 60CI of the FLA oblige the parties in family law proceedings to disclose information to the court about any concurrent orders made in child protection or family violence jurisdictions.
37. The Family Law Courts are required to take prompt action in relation to allegations of child abuse or family violence (s 67ZBB of the FLA). This is in

conjunction with the principles for conducting child-related proceedings set out in s 69ZN and the associated general duties of the court set out in s 69ZQ.

38. The procedures followed by the Family Law Courts and Child Protection on the making of a report of abuse or family violence in family law proceedings are the subject of the Protocol (section 7). Additional details relating to the Department's procedures are set out in the Department's Child Protection Practice Manual, the relevant extracts of which are Advice nos 1070, 1119, 1154, 1344, 1345, 1346 and 1349 (**Attachment LM-2**), and the Department's specialist practice resource document entitled *Working with families where an adult is violent* (2014) (**Attachment LM-3**).

Request for the Secretary to intervene pursuant to s 91B of the FLA

39. Section 91B of the FLA states that, in proceedings relating to the welfare of a child, the Family Law Courts may request the intervention of the Secretary. On behalf of the Secretary, Child Protection may seek to intervene in such proceedings and, if the court grants this application, the Secretary will be a party to the proceedings with all the rights, duties and liabilities of a party.
40. Section 8 of the Protocol relevantly states that, where a Family Law Court makes an order under s 91B requesting intervention in a proceeding by Child Protection:
- 40.1 the parties to the proceeding will receive a sealed copy of the order;
 - 40.2 the court will promptly notify the Department of the request and the next court date; and
 - 40.3 the court will promptly provide to the Department the necessary and relevant information from the court file, including affidavit material, to enable the Department to respond appropriately to the request.

Notification by courts and court professionals pursuant to s 67ZA of the FLA

41. Section 67ZA of the FLA provides that certain staff members of the Family Law Courts and others must notify Child Protection when they have reasonable grounds for suspecting that a child has been abused or is at risk of being abused. It also provides that certain staff members and others may notify Child Protection when they have reasonable grounds for suspecting that a child:
- 41.1 has been ill-treated or is at risk of being ill-treated; or
- 41.2 has been exposed or subjected, or is at risk of being exposed or subjected, to behaviour which psychologically harms the child.
42. The relevant court staff members and professionals are registrars, deputy registrars, family consultants, family counsellors, family dispute resolution practitioners, any arbitrator and any lawyer representing a child's interests.
43. Section 8 of the Protocol relevantly states that notification of alleged child abuse, neglect or risk of harm should be made to the Child Protection intake in the relevant region in which the child normally resides or, where appropriate, the after-hours emergency child protection service. The Child Protection regional intake office will acknowledge receipt of the notification directly to the person who has made the notification.

Notification by a party pursuant to s 67Z of the FLA

44. Section 67Z of the FLA provides that, where a party to family law proceedings alleges that a relevant child has been abused or is at risk of being abused, that person must file a notice in the prescribed form. Where a party to the proceedings files such a notice, the court will write a return date on the front of the notice.
45. As soon as practicable after the notice has been filed, the court registry must provide a copy of the notice to Child Protection. Section 8 of the Protocol relevantly provides that the court's registry manager will forward the notice within five days to Child Protection and Child Protection will acknowledge receipt of the notice in writing directly to the registry manager.

Child Protection's treatment of notices under ss 67Z and 67ZA of the FLA

46. Child Protection treats these notices of alleged risk to a child as, for the purposes of the CYFA, a report of significant concern for the wellbeing of a child. On 12 January 2015, the *Federal Circuit Rules 2001* (Cth) were relevantly amended by the *Federal Circuit Court Amendment (2014 Measures No. 1) Rules 2014* (Cth). The amendments to the Rules require that a person filing an application for a parenting order or a response to such an application must include, with the application or the response as the case may be, a notice of risk. The amendments also introduced a new form for the notice of risk. A copy of the notice of risk form is attached to this statement at **Attachment LM-4**.
47. Since the time of the amendments coming into effect, a notice of risk form must be completed by all parties to parenting order proceedings, regardless of whether there is a perceived risk to the child. The new notice of risk form asks the person completing the form to indicate whether the child has been abused or exposed to family violence, or is at risk of abuse or family violence. Where the form indicates that the child has been abused or exposed to family violence or is at risk of either, the Federal Circuit Court registry manager notifies Child Protection. This change has resulted in a significant increase in s 67Z notifications from the Federal Circuit Court. (This change does not apply to proceedings in the Family Court, where a different form, the Notice of Child Abuse, Family Violence or Risk of Family Violence, is used) All notices of risk received by Child Protection are assessed by Child Protection. I discuss the impact of this change in more detail below.

Procedure by Child Protection upon receipt of a notice from the Family Law Courts

48. Upon receiving a notice of risk from the Family Law Courts, which is treated as a report under the CYFA, Child Protection must make a determination regarding the classification of the report in the same manner as would occur for other reports. In determining how the Department should respond to a report, it may be necessary for Child Protection to seek access to orders or documents from the Family Law Courts. This can be achieved either through the court registry or through one of the parties to the proceedings.
49. Child Protection will usually require a minimum of 21 days to prepare a response. Child Protection will endeavour to comply with the request return date and will notify the court as soon as practicable prior to the return date if

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more time is required. Generally, the Family Law Courts will defer making a judgement on a case where Child Protection's response is pending. They are not, however, obliged to do so.

50. When responding to a Family Law Court, Child Protection has the following options:
 - 50.1 initiate a protection application in the Children's Court;
 - 50.2 inform the Family Law Court that the Department does not intend to intervene, but has information in which the court may be interested (the Family Law Court may then wish to issue a subpoena for that information to be provided to it);
 - 50.3 inform the Family Law Court that the Department does not intend to take any further action;
 - 50.4 inform the Family Law Court that the Department seeks to appear as *amicus curiae* to assist the Court by advising of the Department's involvement and views about the child protection issues; or
 - 50.5 seek leave to intervene in the proceedings as a party.
51. To determine the most appropriate course, Child Protection practitioners are advised to discuss any decision to appear as *amicus curiae* or to intervene as a party in the proceedings with their regional solicitor or the Child Protection Litigation Office. Endorsement by a team manager is required for Child Protection to appear as *amicus curiae*. Authorisation of the Child Protection manager is required for Child Protection to seek leave to become a party to the proceedings.
52. The information supplied to Child Protection by the Family Law Courts includes information in the affidavits completed by parties to the family law proceedings. This information forms part of the information used by Child Protection to complete a risk assessment and determine the most appropriate response.
53. Where immediate action is required to protect the child, Child Protection must determine whether a protection application will be issued or whether an urgent application should be made to the Family Law Court, for example, to vary access arrangements. A protection application is made when Child Protection

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considers that there are grounds for an application and that the case will be more appropriately managed in the Children's Court.

54. In determining the appropriate course of action and the appropriate jurisdiction in which to take that action, there are a number of factors which need to be considered, including but not limited to:
- 54.1 the seriousness of the protective concerns;
 - 54.2 the likelihood of abuse occurring;
 - 54.3 whether the Department has evidence it wants to put to the court;
 - 54.4 whether the Department can abide by a decision that is not the preferred outcome;
 - 54.5 whether the Department has a substantial history with the child or family;
 - 54.6 the scope of the family law matter and whether a determination in the Family Law Court will ensure the safety of the child; and
 - 54.7 whether there is a child representative appointed in the family law proceeding who is adequately representing the child's best interests.
55. During the course of family law proceedings, new information may arise and the Department may, at that point, assess a child to be at risk of harm. This new information may come to light via a new Child Protection report to the Department or by the Department becoming aware of new information while in the process of completing an assessment and investigation of protective concerns. In such a situation, Child Protection will again consider the circumstances in the same way to determine the most appropriate course of action.

The Magellan list in the Family Court

56. The Magellan list is particular to the Family Court. It was established to better deal with parenting disputes involving allegations of serious physical or sexual abuse of a child. Key features of case management in the Magellan list include the imposition of strict timelines, early application of resources (such as the appointment of an independent children's lawyer), provision of information to

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Child Protection, and close liaison on case management between external information providers and a small team of court personnel. Generally, the aim is to complete Magellan cases within six months from the date of the case being placed on the Magellan list.

57. In accordance with the Protocol, if Child Protection receives a notification from the Family Court requesting that the Department provide a written report regarding a child who is the subject of proceedings in the Magellan list, Child Protection will:
 - 57.1 make a decision about any investigation arising out of the notification; and
 - 57.2 determine whether the Department should intervene in the Family Court proceedings.
58. In the event of an investigation by Child Protection at the Family Court's instigation, Child Protection will, in accordance with the Protocol, endeavour to provide written information to the Family Court within five weeks of the request. The information will be contained in a report, which will:
 - 58.1 outline the actions taken by the Department, including the names of those persons interviewed by Child Protection;
 - 58.2 set out the Department's views about the risk to the child;
 - 58.3 explain the reasons for the Department's views; and
 - 58.4 refer to the actions of the Department.
59. If more time is required to complete the investigation, Child Protection will advise the Family Court. The Child Protection practitioner conducting the investigation will liaise with the independent children's lawyer and the Family Court registrar in charge of the Magellan list.
60. If Child Protection obtains a report for a child who is the subject of a proceeding in the Magellan list, the Child Protection practitioner must consult with the Child Protection Litigation Office to determine whether the Department will intervene in the Family Court proceedings. Some information relating to the Department's

procedures is set out in the Department's Child Protection Practice Manual, the relevant extract of which is Advice no. 1349 (see **Attachment LM-2**).

Reports to Child Protection from the Family Law Courts

61. Many reports from the Family Law Courts do not meet the threshold for Child Protection intervention (see, in this regard, **Attachments LM-2** and **LM-3**). There has been a continuing increase of reports from the Family Law Courts to Child Protection and this has the potential to have an impact on the Child Protection workload. The Department is working with the Federal Circuit Court to ensure that optimal arrangements are in place to identify children who are at risk.
62. I now set out figures relating to numbers of various reports to Child Protection arising out of family law proceedings. All figures cited below were extracted on 2 July 2015 from the Department's database known as the 'Client Relationship Information System' or 'CRIS'.
63. Reports to Child Protection from the Family Law Courts do not distinguish between family violence and other types of abuse. The table below sets out the annual number of reports pursuant to provisions of the FLA each financial year from 2009-2010 to 2014-2015. The table shows an increase in reports made under s 67Z (from parties to the proceeding) and s 67ZA (from courts and court professionals) and a decrease in reports made under s 91B (requests by the court for the Secretary to intervene).

Table 1: Reports to Child Protection pursuant to s 67Z, s 67ZA and s 91B of the FLA

Year	Section 67Z	Section 67ZA	Section 91B	Total
2009-10	304	5	188	497
2010-11	276	2	181	459
2011-12	471	5	241	717
2012-13	927	19	119	1,065
2013-14	1,174	32	74	1,280
2014-15	1,943	49	53	2,045
Total	5,095	112	856	6,063

64. It is likely that at least some of the increased numbers of reports from 2012 onwards can be attributed to the amendments to the FLA which came into effect on 7 June 2012 (see paragraph 10 above). The distinct increase in the number of reports in 2014-2015 is likely to be directly attributable to changes to the

Federal Circuit Court's notice of risk procedure, which came into effect on 12 January 2015 (see paragraphs 46 and 47 above).

65. It is nonetheless important to observe that, while the numbers of reports to Child Protection arising out of family law proceedings is increasing, those reports still represent only a small proportion of the total number of reports to Child Protection, many of which are made by parents not engaged in family law proceedings. In 2013/2014, the total number of reports to Child Protection was 82,101 reports. Of this figure, reports from family law proceedings accounted for 1.5% of all reports. In 2014/2015, the total number of reports was 91,348 reports. In this year, reports from family law proceedings accounted for 2.2% of all reports, representing a 0.7% increase.
66. In respect of all types of reports to Child Protection in 2013/2014, 25.8% of those reports proceeded to a protective investigation. In 2014/2015, this figure was 27.1%.

Section 67Z reports made by parties

67. In 2013/2014, there were a total of 1,174 s 67Z reports. In 2014/2015, there were a total of 1,943 reports.
68. In 2013/2014, 11% of s 67Z reports to Child Protection proceeded to investigation. In 2014/2015, 8.8% proceeded to investigation. Compared with the proportion of all types of reports which proceed to investigation (see paragraph 66 above), this reflects a lesser proportion of cases meeting the threshold for a protective investigation.

Section 67ZA reports made by courts and court professionals

69. In 2013/2014 there were a total of 32 s 67ZA reports and, in 2014/2015, this figure increased to 49 reports. Although this increase does not appear significant, I note that there were only five reports made under s 67ZA in 2011/2012. Since the 2011 amendments, and the Department's introduction in late 2012 of the co-location initiative (to which I refer at paragraphs 75 to 78 below), there would appear to be greater awareness and greater use of this reporting mechanism.
70. In 2013/2014, 31.3% of these reports moved to investigation, decreasing to 24.5% in 2014/2015. Compared with reports made pursuant to s 67Z, a greater

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percentage of these s 67ZA reports meet the threshold for protective investigation. These figures are more consistent with the overall number of cases proceeding to investigation (see paragraph 66 above).

Section 91B reports made by courts

71. Reports pursuant to s 91B of the FLA have decreased significantly. The decrease in the numbers of s 91B reports may be attributed to the early identification of child safety, abuse and wellbeing concerns and the timely sharing of information in response to ss 67Z and 67ZA reports.
72. In 2013/2014, there were a total of 74 requests made by courts pursuant to s 91B of FLA. This figure decreased to 53 requests in 2014/2015. In 2011/2012, there were 241 requests under s 91B of the FLA. It is possible that the reduction in the number of such requests is attributable to the increased presence of a Child Protection worker in court and the more timely sharing of information between courts and Child Protection. It is also possible that the increase in the use of s 67Z and s 67ZA reports means that Child Protection are invited to provide input via other channels.
73. In 2013/2014, 39.2% of s 91B reports proceeded to investigation. This figure increased to 62.3% in 2014/2015. This increase has coincided with a decrease in the overall use of s 91B procedures in the last two years. It would appear that s 91B reports are made in circumstances which often:
- 73.1 satisfy the threshold for further involvement by Child Protection; and
 - 73.2 reflect, given the earlier opportunities to involve Child Protection through the making of s 67Z and s 67ZA reports, the likelihood that s 91B reports are made when significant new information arises during proceedings.
74. It is difficult for the Department to report specifically on when family violence is a factor in the context of the reports being made. The available data does not specifically address this issue.

Co-located Child Protection practitioners

75. A Child Protection Practice Leader is co-located at the Melbourne Family Law Registry that services both the Federal Circuit Court and the Family Court. A

senior Child Protection practitioner is also co-located in a part-time capacity at the Dandenong Federal Circuit Court.

76. These arrangements have been in place since December 2012 and aim to assist with the operation of the Protocol. In practical terms, the role of a co-located Child Protection practitioner facilitates the exchange of timely and relevant information in matters where families and children are engaged in both the State child protection system and the Commonwealth family law system.
77. These arrangements have recently been evaluated by the Australian Institute of Family Studies. The evaluation report is currently due to be finalised by the end of July 2015. A copy of the draft report entitled *Evaluation of the Co-located Child Protection Practitioner Initiative* is attached to this statement at **Confidential Attachment LM-5**. The draft report is a confidential document. The finalised report will be produced to the Royal Commission for publication when it becomes available.
78. The evaluation is based primarily on qualitative data obtained from stakeholders, including Family Law Court judges, family law practitioners and Child Protection practitioners. The preliminary findings are that, overall, the initiative has achieved most of its objectives and has contributed to enhanced decision-making in family law proceedings and, to a lesser degree, child protection matters.

Conflicting orders in the Family Law Courts and the Children's Court

79. As stated at paragraph 28 above, s 69ZK(1) of the FLA limits the jurisdiction of the Family Law Courts in relation to a child who is under the care of any person (including the Secretary) by reason of an order made pursuant to the CYFA. This limitation does not apply if the FLA order will come into effect after the Children's Court order has ceased or the FLA order is made with the consent of the Secretary.
80. Subsection 69ZK(2) provides that, where there are already FLA orders in place, the Children's Court may make child protection orders and those orders will prevail over the FLA orders. In effect, s 69ZK ensures that child protection orders made by the Children's Court under the CYFA prevail over orders made by the Family Law Courts under FLA.

The Magistrates' Court

Family law matters

81. In addition to its jurisdiction under State laws, the Magistrates' Court of Victoria has jurisdiction to hear and determine some matters arising under Commonwealth legislation and, in particular, the FLA. In this regard, the FLA confers certain powers on the Magistrates' Court to deal with family law matters (see, for example, s 69J). In particular, the Magistrates' Court has power to hear and determine a range of matters relating to children. Those matters include the making of parenting orders. The powers of the Magistrates' Court are, however, limited in some respects by the FLA and court procedures developed by the Magistrates' Court. For instance, if matters heard before the Magistrates' Court are contested, they will be transferred to the Family Court.
82. The Department is giving consideration to the development of a Memorandum of Understanding with the Magistrates' Court, drawing on the Protocol between the Department, the Family Court and the Federal Circuit Court.

Intervention orders

83. Most family violence intervention orders under the FVPA are issued in the Magistrates' Court. Victoria Police has power to issue family violence safety notices outside court hours where necessary to ensure immediate protection.

The Family Violence Court Division

84. The Family Violence Court Division commenced sitting at the Magistrates' Court of Victoria at Ballarat and Heidelberg on 14 June 2005. In the Family Violence Court Division:
- 84.1 There are special support services located at the Court to help people with their case. These services include advocacy, referral, increased legal services and assistance from the Court to link people to family violence organisations in the community.
- 84.2 There are specially-assigned Magistrates, trained applicant and respondent support workers, family violence outreach workers, additional legal services from Victoria Legal Aid and Community Legal Centres, dedicated prosecutors and additional security officers. A

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dedicated Family Violence Court Registrar coordinates these services at the Court.

- 84.3 The Magistrates, family violence registrars, police prosecutors, applicant support workers, respondent support workers, outreach workers and lawyers have special training in and knowledge of family violence matters.
- 84.4 There is an increased focus on recognising and responding to the needs of applicants from culturally and linguistically diverse communities, Indigenous applicants and applicants with a disability, as well as children affected by family violence.
- 84.5 The Magistrate can hear other related matters at the same time as hearing intervention order cases. These matters include bail applications and pleas in criminal cases, family law parenting order proceedings and victims of crime applications that are related to family violence.
- 84.6 In some cases, the Magistrate can order respondents who use violence against their family members to attend a behaviour change program to address their violent and abusive behaviour.

The Children's Court

85. The Children's Court has two divisions:
- 85.1 the Family Division, which hears:
- (a) applications relating to the protection and care of children and young persons at risk; and
 - (b) applications for intervention orders; and
- 85.2 the Criminal Division, which hears matters relating to criminal offending by children and young persons and includes the Children's Koori Court (which deals with Aboriginal youth who have pleaded guilty or been found guilty of committing a criminal offence).
86. The Children's Court Clinic is an independent body within the Department of Justice and Regulation. The functions of the Clinic are set out in s 546(2) of the

CYFA. The functions of the Clinic are to make clinical assessments of children, to submit reports to courts and other bodies, and to provide clinical services to children and their families. The Clinic is located in the Melbourne Children's Court building. It is independent of all of the parties in every case.

The Family Division of the Children's Court

87. In the Children's Court, Child Protection practitioners primarily work within the Family Division in relation to children who are deemed to be in need of protection (see paragraph 20 above).
88. The Child Protection Litigation Office represents the Secretary in proceedings in the Family Division of the Children's Court. Lawyers generally represent children over the age of 10 years (see s 524 of the CYFA). Independent children's lawyers or "best interests" children's representatives are only appointed to represent children under the age of 10 years in exceptional circumstances (see s 524(4) of the CYFA).
89. The Children's Court has jurisdiction to hear an application under the FVPA if the application is related to a child protection proceeding in the Children's Court and each affected family member or protected person and each respondent for the application is an adult (see s 147A). Further information on this topic is set out in the Department's Child Protection Practice Manual, the relevant extract of which is Advice no. 1578 dated 1 December 2013 (**Attachment LM-6**).

Child protection orders

90. In accordance with s 274 of the CYFA, the Children's Court may make a protection order if the Court finds that:
- 90.1 the child is in need of protection; or
- 90.2 there is a substantial and irreconcilable difference between the person who has custody of the child and the child to such an extent that the care and control of the child are likely to be seriously disrupted.
91. In making a protection application to the Children's Court, Child Protection must provide evidence that the child has suffered or is likely to suffer significant harm, but also that the parent or parents have not protected, or are unlikely to protect, the child from harm of that type (see ss 162 and 243 of the CYFA). In some

situations a child may be harmed in circumstances where no reasonable parent could have prevented the harm.

Conflicts between family violence intervention orders and other orders

Circumstances involving a pre-existing FLA order

92. Section 68R of the FLA relevantly deals with inconsistency between:
- 92.1 family violence intervention orders made under State legislation; and
 - 92.2 parenting and other orders under the FLA which provide for or require or authorise a person to spend time with a child.
93. Section 68R empowers the court making the interim or final intervention order to revive, vary, suspend or discharge an existing FLA order to the extent that the FLA order provides for or requires or authorises a person to spend time with a child.
94. If the court decides to make a family violence intervention order and the protected person or respondent is the parent of a child, the court must enquire as to whether a FLA order such as a parenting order is in force in relation to the child (s 89 of the FVPA). In practice, this enquiry is ordinarily made of the person who is applying for the intervention order.
95. If, after making enquiries, the court is satisfied that:
- 95.1 there is a FLA order in force in relation to the child; and
 - 95.2 the intervention order and the FLA order will be inconsistent;
- the court must, in accordance with its powers under s 68R of the FLA, revive, vary, discharge or suspend the FLA order to the extent that it is inconsistent with the intervention order (s 90 of the FVPA).
96. If the court makes an interim family violence intervention order and also varies, suspends or revives a FLA order, the interim family violence intervention order has effect (see s 68T of the FLA) until the earlier of:
- 96.1 the time the interim order ceases to be in force; and
 - 96.2 the end of 21 days after the interim order was made.

97. As such, a person may wish to make an application to vary or suspend the FLA order before the interim family violence intervention order ceases to have effect.

Circumstances involving a pre-existing child protection order

98. An interim or final family violence intervention order prevails over a child protection order (s 173(1) of the FVPA). If the court decides to make a family violence intervention order and the protected person or respondent is the parent of a child, the court must enquire as to whether a child protection order is in force in relation to the child (s 89 of the FVPA).
99. If the Magistrates' Court or the Children's Court makes a family violence intervention order that is inconsistent with a child protection order, the registrar of the Court must give written notice of the making of the order and its terms to the Secretary (s 174 of the FVPA).

Circumstances involving a pre-existing family violence intervention order

Child protection orders

100. If the Children's Court is hearing an application for a child protection order in relation to a child and the child is a protected person or respondent under a family violence intervention order, the Court may, on its own initiative, revoke or vary the family violence intervention order to the extent the order would be inconsistent with the child protection order which the Court proposes to make (s 173(2) of the FVPA).
101. However, if the Children's Court proposes to revoke or vary the family violence intervention order:
- 101.1 the registrar of the Court must give notice of the Court's intention to all of the parties to the proceeding in which the intervention order was made; and
 - 101.2 the Court must not revoke or vary the intervention order until all of the parties have had an opportunity to be heard.
102. The Children's Court may also make an interim order varying the family violence intervention order until all the parties have been given an opportunity to be heard (s 173(3) of the FVPA).

FLA orders

103. If a Family Law Court makes an order providing for a person to have contact with a child, and the order is inconsistent with a family violence intervention order, the family violence intervention order is invalid to the extent of the inconsistency (s 68Q of the FLA).
104. If a Family Law Court makes an order that is inconsistent with a family violence intervention order, the court must specify in the order that it is inconsistent with an existing family violence intervention order, and give a detailed explanation of how the contact that the FLA order provides for is to take place (s 68P).

Information sharing

105. As observed above, Child Protection receives notifications and information from the Family Law Courts under ss 67Z, 67ZA and 91B of the FLA.
106. The Family Law Courts can also obtain information from Child Protection. In proceedings under the FLA, a Family Law Court can, where there are concerns about suspected child abuse or family violence affecting a child, require information from Child Protection by an order under s 69ZW or by subpoena.
107. An order under s 69ZW of the FLA requires the Department to provide the court with documents or information specified in the order. Nothing in the order is to be taken to require Child Protection to provide the court with documents or information that include the identity of the person who made a notification to Child Protection (s 69ZW(3)). In its use of documents or information provided by Child Protection, the court must not, subject to certain limited exceptions, disclose the identity of that person (s 69ZW(5)).
108. A subpoena requires the production of documents or the giving of evidence by a person in court or both. In most circumstances, subpoenas addressed to Child Protection seek documents on its file.
109. The CYFA contains a number of provisions relating to privacy and the management and sharing of information held by the Department. The *Privacy and Data Collection Act 2014* (Vic.) and the *Health Records Act 2001* (Vic.) also apply. All information collected by Child Protection must be handled in accordance with relevant legislation and Departmental guidelines. Section 10 of the Protocol sets out the principles and procedures for information exchange

between the Department and the Family Law Courts. The principles that underlie the exchange of information are that:

- 109.1 any action or decision taken by the Department or the Family Law Courts in relation to a child will be based on the best interests of the child, recognising that the best interests of the child are the paramount consideration;
 - 109.2 the best interests of a child are better secured by the exchange of relevant information between those concerned with the child and the family;
 - 109.3 courts are in a better position to make appropriate orders if they are fully aware of proceedings in other jurisdictions; and
 - 109.4 information exchange must always be subject to any privacy and confidentiality obligations in relevant legislation.
110. I am aware that the Royal Commission intends to hear evidence from others, including a witness from the Department, in relation to information sharing. I therefore do not provide any detailed evidence about this topic in this statement. I do, however, observe that Professor Richard Chisholm has published a report on this topic entitled *Information sharing in family law and child protection – Enhancing collaboration* (March 2013) (**Attachment LM-7**).

CHALLENGES

111. Families with complex needs involved in multiple jurisdictions, either concurrently or sequentially, can experience processes which are confusing, distressing and expensive.

Conflicting and incompatible orders

112. Orders between jurisdictions can be inconsistent and incompatible, can offer different levels of protection, and can require and result in duplication of effort for both parties and courts. This may also be confusing for those who are the subject of such orders.
113. As outlined at paragraphs 92 to 97 above, the Magistrates' Court has the power, in making an interim family violence intervention order which is

inconsistent with a contact condition in an existing parenting order under the FLA, to vary or suspend that inconsistent contact condition. However, any variation or suspension of such a contact condition in the parenting order will operate for no more than 21 days after the interim order is made.

114. In addition to the inherent complexity of the legislative arrangements, this timeframe is challenging for parents, particularly women, who post-separation are faced with navigating emergency housing arrangements, complex family law issues, an increased risk of post-separation family violence and, at times, involvement with the child protection system.

The effect of definitional differences on Child Protection's involvement

115. Child Protection has a legislative responsibility to investigate and respond to concerns that a child has been, or is likely to be, harmed. Information relating to child abuse, neglect or safety is received from the Family Law Courts in the ways outlined above. However, allegations made within the context of a family law dispute may not meet the threshold for an investigation by Child Protection.
116. The CYFA establishes the statutory powers and functions of the Secretary in relation to children. A child is defined, in the case of protection matters, as being under 17 years old or, if subject to a relevant Children's Court order, under 18 years old (see s 3 of the CYFA). This is in contrast to the FLA, which concerns children under the age of 18 years old (see s 4 of the FLA). This means that the Department is unable to accept or investigate a report from the Family Law Courts in relation to a child who is 17 years old and not subject to a relevant Children's Court order.
117. The best interests principles in the CYFA and the decision-making principles and paramount considerations in the FLA appear similar. However, the application of these principles and considerations may appear to differ in practice because of the different focus of each jurisdiction.

Legal representation

118. There are distinct differences in the focus of legal representation of children in different jurisdictions.
119. Legal representation arrangements in the CYFA include that a child aged 10 years and over is represented on the basis of an ability to give instructions.

There is also the ability of the Children's Court to order representation of other children in certain exceptional circumstances. An independent children's lawyer is generally appointed in instances where there are very high degrees of conflict or where children are not able to give instructions due to cognitive abilities or in particularly complex matters in which the court assesses such representation as appropriate. This might arise, for example, where the options proposed by the Secretary for accommodating the child are unusual or less than ideal.

120. Child representation under the FLA occurs on the basis of the child's best interests even where they may be at odds with a child's wishes.
121. Independent children's lawyers are specifically trained legal professionals appointed in some family law children's matters as best interests representatives for children rather than as a legal advisor. They are described as a best interests representative rather than a child advocate and are not obliged to act on the child's instructions. The duties and obligations of independent children's lawyers are set out in s 68L of the FLA and described further in guidelines issued by legal aid organisations. Some parents and children and young people have raised concerns about the capacity of independent children's lawyers to understand and advocate for best interests outcomes (Carson, R et al, Australian Institute of Family Studies *The role and efficacy of Independent Children's Lawyers* Family Matters 2014 No. 94, pages 58-69).

Impact of reports

122. I have referred above to the recently introduced requirement in Federal Circuit Court family law proceedings that all parties to parenting order applications file a notice of risk. This requirement has created an additional burden on Child Protection to manage a significant increase in the volume of reports which it receives in relation to family law proceedings.
123. Also, the information provided does not always indicate a reasonable belief of risk to a child. Nonetheless, the notice of risk is still reported to Child Protection and each report must be assessed. In general, these reports have lower rates of concerns and less frequently meet the threshold for investigation. This has the potential to detract from the capacity of Child Protection to focus on more critical cases.

OPPORTUNITIES FOR REFORM

124. There have been important developments to improve the intersection between family law, family violence and child protection jurisdictions over recent decades. There is need, opportunity and appetite for further reforms.
125. The Commonwealth Attorney-General, the Honourable George Brandis QC, has asked the Family Law Council to report on ways of improving responses to families with complex needs who use the family law system, including concerns about child abuse, family violence, substance abuse and mental illness. The terms of reference ask the Family Law Council to examine the benefits for families of enabling the Family Law Courts to exercise the power of relevant State and territory courts, including Children's Courts, and vice versa.
126. The Family Law Council has also been asked to investigate the opportunities for enhancing collaboration and information sharing between the Family Law Courts and relevant services such as child protection agencies, family violence services, and drug and alcohol services.
127. The Family Law Council is presently considering these questions which are concerned with the needs of families who are involved in both family law and child protection proceedings, along with enhancing decision-making and support for the growing number of client families with multiple and complex needs. The Family Law Council has called for written submissions and this presents an opportunity for government and relevant stakeholders to consider these issues in depth.
128. It is envisaged that the Family Law Council's report will promote ways in which state and federal jurisdictions may interact in a better integrated, coordinated, informed and client-centred way to ensure a more responsive and client sensitive system.
129. Matters canvassed in submissions to the Family Law Council include but are not limited to:
- 129.1 Enhanced and simplified information-sharing provisions. For example, in New South Wales under s 245C of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), Child Protection may provide to the family courts information relating to the safety, welfare or well-being

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of a child if Child Protection reasonably believes that the provision of the information would assist the courts to make any decision or provide any service relating to the child's safety, welfare or well-being.

- 129.2 Re-drafting legislative provisions with greater consistency and co-ordination. For instance, the capacity for the Magistrates' Court to make family law orders by consent.
- 129.3 The establishment of a systems solution for current and past orders that provides a single repository of family law, family violence and child protection orders or involvement. Such a system would be capable of being accessed by each of the relevant courts and by state and territory Child Protection authorities. This would allow for greater capacity to understand risk and enable informed timely decision-making.
- 129.4 Giving consideration to the streamlined sharing of expert reports and Child Protection reports prepared for court proceedings between the courts and Child Protection authorities.
- 129.5 Exploring integrated cross-jurisdictional approaches to family violence to enable a single judicial officer, where appropriate, to determine a range of proceedings that a family experiencing family violence may require.
- 129.6 The provision for ongoing training and professional development to promote understanding of family violence, child protection and family law jurisdictions and the legislative frameworks and features of each jurisdiction.
- 129.7 Giving further consideration to expanding co-location models such as the Child Protection practitioners presently located within the Family Law Courts' registries in Melbourne and Dandenong. This includes models of imbedded support services and programs for parties and families to access, such as those provided by the Family Violence Court Division of the Magistrates' Court and other specialist courts.
- 129.8 Further understanding the outcomes which might be achieved by integrated and unified court models, including by referral of

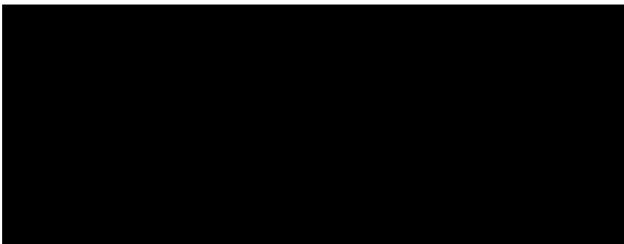
jurisdictional powers. Consideration of specialist courts which exist in jurisdictions of other states and overseas.

130. I otherwise note that the Department has established liaison arrangements with both the Federal Circuit Court and the Family Court to consider matters of mutual interest. Those matters include but are not limited to information exchange, the Magellan list, monitoring of the impacts of the new notice of risk form in the Federal Circuit Court, co-location of Child Protection practitioners, and exploration of training opportunities.

Signed by Leeanne Miller
at Melbourne
this 26th day of July 2015

) 
) Leeanne Miller
) Director Child Protection

Before me



An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)