

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

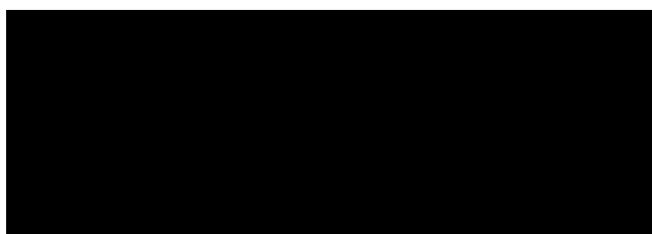
ATTACHMENT LM-2 TO STATEMENT OF LEEANNE MILLER

Date of document: 26 July 2015
Filed on behalf of: State of Victoria
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This is the attachment marked 'LM-2' produced and shown to **LEEANNE MILLER** at the time of signing her statement on 26 July 2015.

Before me



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

Attachment LM-2

Child Protection Litigation Office (CPLO)

Date of Advice: **5 November 2012**

Advice no: **1070**

This advice is endorsed by the: Assistant Director, Child Protection Policy, Practice and Planning.

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This Advice provides information for Child Protection practitioners and managers regarding the role and responsibilities of the Child Protection Litigation Office (CPLO).

Being well prepared for court can significantly reduce the stress of the court process. CPLO staff can assist Child Protection practitioners to be fully prepared for all court matters

Legislation

Note: Use the Legislation link on toolbar to access full text versions of the legislation.

Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Children, Youth and Families Act

Children, Youth and Families Act 2005 (CYFA)

- s. 215 Conduct of proceedings in the Family Division of the Children's Court

Service description

The *Children, Youth and Families Act 2005 (CYFA)* makes provision for Child Protection practitioners to appear as applicant in the Family Division of the Children's Court on their own behalf, be represented by another Child Protection practitioner, by a legal practitioner or by any other person authorised by the Secretary pursuant to section 215.

The CPLO is a legal unit within the department. The CPLO has lawyers, paralegals and administrative staff and provides a service to Child Protection practitioners.

All Child Protection cases requiring advice and information on legal matters are eligible for assistance from the CPLO.

The CPLO:

- is responsible for providing legal representation for the metropolitan regions of Child Protection for all matters before the Family Division of the Children's Court
- provides legal advice regarding law to Child Protection throughout the state
- conducts litigation on behalf of the Secretary in a range of other jurisdictions including Family Court, County Court, Supreme Court and Victorian Civil and Administrative Tribunal (VCAT)
- offers a model of early legal advice service for metropolitan regional offices, with CPLO solicitors attending the metropolitan regional offices to provide early advice
- offers a statewide daily telephone duty service to Child Protection for advice in relation to court matters and other legal issues
- offers advice and representation regarding Child Protection's role in Family and Federal Magistrate Court matters
- provides training for Child Protection practitioners in court and legal processes
- plays a role in identifying case practice issues and court related trends, and conveying this information to the Child Protection, Placement and Family Services Branch.

Role of a legal representative

The role of a legal representative is to provide legal advice to Child Protection practitioners and to take instructions from practitioners as delegates of the Secretary in Child Protection matters.

Model of early legal advice

The CPLO model of early legal advice service provides for solicitors from the CPLO to attend each of the metropolitan Child Protection offices a number of days per week. They offer a legal consultation service and provide legal advice to Child Protection practitioners at the earliest point of statutory intervention to ensure the ongoing protection of children from abuse and neglect.

Considerations for good practice

Note: Use the Practice Resources link on the toolbar to access further Practice Guidance and Research.

Child Protection practitioners should:

- Have a good understanding of the role and responsibility of the solicitors and court officers of the CPLO.
- Understand the nature of a legal representative's responsibility to the court.
- Attend court well prepared.
- Consult their supervisor about the legal options, and be clear about the scope for negotiation before attending court.
- Consult regional solicitors prior to court hearings

Contact for further procedural advice

- Supervisor
- Regional solicitor/Court Officer
- Child Protection Litigation Office

Level 3, 456 Lonsdale Street

Melbourne 3000

Phone: 1300 650 685

Related content and external links

Note: Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

1339 - Early Legal Advice

External Links:

For this Advice, there are no specific external links.

Definition and purpose of intake phase

Date of Advice: **5 November 2012**

Advice no: **1119**

This advice is endorsed by the: Assistant Director, Child Protection Policy, Practice and Planning.

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This Advice provides the definition and purpose of the intake phase of the statutory Child Protection process, the role of the intake practitioner and the range of work undertaken in the intake phase. It also outlines the distinction between Child Protection intake and Child and Family Information Referral and Support Teams (Child FIRST) as reflected in the provisions of the Children, Youth and Families Act 2005 (CYFA).

The five phases of the statutory Child Protection process are intake, investigation, protective intervention, protection order and case closure.

Detailed information regarding practice in the intake phase can be found in subsequent Advice in the 'Intake phase' chapter.

Legislation

Note: Use the Legislation link on toolbar to access full text versions of the legislation. Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Children, Youth and Families Act

- s. 10 Best interests principles
- s. 11 Decision-making principles
- s. 12 Additional decision making principles
- Part 3.2 Concern about wellbeing of child
- Part 4.1 Children in need of protection
- Part 4.4 Reporting
- Part 4.5 Disclosure of information

Standards and procedures

Definition

Intake is the phase through which new work to Child Protection flows (including re-reports and new allegations regarding previously reported children).

The intake phase is the first of the five phases of the statutory Child Protection process. As with all Child Protection work, the best interests and decision making principles of the CYFA form the basis for practice in the intake phase.

Purpose

In the intake phase the Child Protection practice involves:

- Receiving and recording reports from persons regarding:
 - an unborn child, before the birth of the child, if the reporter has significant concerns for the child's wellbeing after his or her birth
 - significant concern for a child's wellbeing
 - children in need of protection (at risk of significant harm).
- Conducting an assessment of the information related to the child's safety and wellbeing, which may involve contacting 'authorised' professionals.
- Considering if the report meets the requirements of a protective intervention report, and therefore requires a Child Protection investigation (s. 187, CYFA).
- Responding to each report in a manner consistent with policy and the legal requirements of the CYFA (see section (1) of this Advice).

At intake, Child Protection also receives and records reports and requests for assessments from interstate and New Zealand child protection programs, overseas statutory authorities via Legal Services Branch (Hague Convention), Centrelink regarding youth homelessness, the Family Court regarding children in need of protection, and applications for conciliation counselling (s. 260, CYFA).

The role of the intake practitioner

The intake practitioner's responsibilities include:

- engaging the reporter.
- providing clear and accurate information regarding the Child Protection role and processes.
- gathering and clarifying information from the reporter regarding the nature and seriousness of their concerns.
- gathering information from the reporter about the child and family including whether the child is Aboriginal.
- completing a search on the client information system to see if there have been previous reports about the child or siblings.
- conducting an initial assessment of risk and needs based on report details.
- opening an electronic (and if necessary paper) file to record in detail the report, consultations and assessment.
- contacting agencies, services and professionals who may be involved with the family where necessary to verify, corroborate or gather further information regarding the concerns identified in the report.
- consulting with the Aboriginal Child Specialist Advice and Support Service (ACSASS) program where the subject child is Aboriginal.
- attending or convening an intake case conference, where required or appropriate.
- classifying the report, in consultation with team leader.

- advising reporters of the outcome of the report.
- completing the intake phase and
 - providing advice to the reporter as appropriate,
 - making referrals to Child FIRST or other relevant services as appropriate, where the case is to be closed,
 - closing the case where required.

The range of work undertaken

During the intake phase the work of Child Protection includes:

- information gathering
- analysis
- decision making
- consultation
- referral
- casework
- documentation.

Child Protection and Child FIRST intake

While Child Protection receives and responds to reports regarding significant concerns for a child's wellbeing or the wellbeing of an unborn child after that child's birth, the CYFA also enables Child FIRST to receive and respond to referrals regarding significant concerns for a child's wellbeing or the wellbeing of an unborn child after that child's birth.

If Child FIRST receives a referral where it considers the child may be in need of protection it must report the matter to Child Protection.

Considerations for good practice

For this Advice, there are no specific considerations for good practice.

Contact for further procedural advice

- Supervisor
- Intake team manager or practice leader
- Policy and Practice Unit – Child Protection Policy, Practice and Planning

Related content and external links

Note: Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

Best interests case practice chapter

Child Protection practice overview

Intake phase

External Links:

For this Advice, there are no specific external links

Checklist of required standards

For this Advice, there are no required standards.

Receiving and processing reports

Date of Advice: **17 April 2014**

Advice no: **1154**

This advice is endorsed by: Assistant Director, Child Protection, Statutory and Forensic Services Design.

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This Advice outlines the practice requirements for receiving and processing a report to Child Protection intake and covers:

- confidentiality for reporters
- receiving a report
- other intake types
- gathering further information
- informing the police (Sexual Offences and Child Abuse Investigation Team (SOCIT)) of cases of physical or sexual abuse or serious neglect
- completing the intake assessment
- consultation with team manager
- classification of report or other intake
- possible responses to the report or other intake type.

This Advice should be read in conjunction with other Advice in the intake chapter of the manual and with Advice in the 'Confidentiality, privacy and information management' section - see Related links.

Legislation

Note: Use the Legislation link on toolbar to access full text versions of the legislation. Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Children, Youth and Families Act

Children, Youth and Families Act 2005 (CYFA)

Provides the legislative framework for the making of reports to Child Protection by professionals and other persons in the following sections:

- Part 3.2 Concern about wellbeing of child
 - s. 28 Report to Secretary about child
 - s. 29 Report to Secretary about unborn child (Practice Instruction 144)
 - s. 30 Response by Secretary to report
 - s. 34 Is the report about a child in need of protection?
 - s. 35 Who may the Secretary consult?
 - s. 37 Disclosers protected
 - s. 38 Consultation with Secretary
 - s. 39 Records of disclosures
 - s. 40 Reporters and referrers protected
 - s. 41 Identity of reporter confidential
- Part 4.1 Children in need of protection
 - s. 162 When is a child in need of protection?
- Part 4.4 Reporting
- Part 4.4 (1) Introduction
 - s. 181 Who is a protective intervener
 - s. 182 Who is a mandatory reporter?
- Part 4.4 (2) Report to protective intervener
 - s. 183 Report to protective intervener
 - s. 184 Mandatory reporting
 - s. 185 Report on a child in need of therapeutic treatment (once proclaimed)
 - s. 186 Grounds for belief
 - s. 187 Determination by Secretary about report
 - s. 188 Record of report
- Part 4.4 (3) Protection of reporters
 - s. 189 Reporters protected
 - s. 190 Evidence and legal proceedings
 - s. 191 Confidentiality

For details about the legislative requirements regarding information sharing, see Advice number 1090, 'Information sharing in Child Protection practice' - see Related links.

Standards and procedures

Confidentiality for reporters

Reporters should be informed that under the CYFA, their identity as the reporter, and any information likely to lead to their identification as the reporter, cannot be disclosed by Child Protection unless they give written consent or by order of the court. (CYFA s. 41, s. 191).

In some situations it may be appropriate to discuss with reporters the possible benefits for the family to know who made the report, as this may help them to engage with services. Reporters may decide to tell the family they have made a report, or may provide written consent for this information to be disclosed.

Professional reporters may be informed that a report made in good faith does not constitute unprofessional conduct or a breach of professional ethics, and does not make them liable in respect of it (CYFA s.40, s.189). Reporters who are health professionals may be informed that a report made in good faith does not constitute a contravention of s. 141 of the Health Services Act 1988 or s. 120A of the Mental Health Act.1986 (CYFA s.40 (c), s.189 (c)).

Refer to Advice number 1090, 'Information sharing in Child Protection practice' – see Related links.

Receiving a report

Before taking details

If the contact is during business hours, check that the address of the caregiver with whom the child usually resides is within the division contacted. If not, the reporter should be referred to the correct division and provided with contact details prior to discussing their concerns, unless there is any reason to believe that the reporter will not make their report to the other division. In this situation the report is to be taken and the reporter should be informed that the report will be transferred to the appropriate division for assessment. (Refer to Advice number 1065, 'Inter- and intra-region transfer of cases' – see Related links.)

Gathering information from the reporter

To inform the assessment and decision-making about how the report should be managed information is gathered about:

- the child and siblings
- the parents and other family members
- the concern held by the reporter and the basis for their concerns
- social and professional network.

The reporter should be allowed to tell the story, with the assistance of open questioning. Specific questions should then be asked to assist collection of all relevant information is obtained. Care should be taken to distinguish between facts and assumptions or opinions.

Key information to be gathered from the reporter as far as is available is set out below.

Child

Information should be sought regarding:

- name, age, gender, and address
- Aboriginality
- cultural identity, language spoken at home, need for an interpreter
- current whereabouts
- current presentation or functioning
- development
- custody arrangements.

Where the child is under two years, additional information is required, such as where the child was born, and at which hospital – refer to Advice number 1012, 'High risk infants (HRI) – practice requirements' for standards and procedures to be followed - see Related links.

Family

- family composition: name, date of birth (or age) and gender of each parent and sibling (including step and de facto family)
- cultural identity, language spoken at home, need for an interpreter
- name and address of those responsible for the care of the child
- relationship status of parents
- family interaction and parent-child relationships
- functioning and behaviour of parents, carers and siblings
- any efforts made by the family to address their needs or circumstances
- parent's capability to protect the child from harm

- parents capability to prioritise and meet the child's needs
- any history of violence or other criminal behaviour.

Need for protection or significant concern for wellbeing

- reporter's relationship to child and family
- reporter's reason for reporting, including whether may gain from having the report validated (for example family law dispute)
- whether the reporter is willing to inform the family of the report, or consent to disclosure of this information
- nature of reporter's concerns
- specific details of any incidents of abuse or neglect, and details of all those involved and any potential witnesses
- what the reporter has been told, and by whom
- disclosures by the child of harm or of incidents of abuse or neglect, including what was said, to whom and in what circumstances
- physical or behavioural indicators of impact on the child
- length of time abuse or neglect has been occurring and any change in frequency or intensity
- reporter's view of severity of harm or significance of concern
- name and address of those alleged to be responsible for harm to the child or the child's circumstances, their contact with the child, and attitude to the situation
- attitude of caregivers
- whether there is imminent or escalating exposure to harm
- reporter's opinion about the urgency of the situation
- reasons for the report being made at this time and what the reporter believes should happen.

Social and professional network

- name, date of birth (or age) and gender of relevant extended family members
- details of any others in the household
- social and cultural functioning of the family, including informal supports, or issues of isolation
- the nature and extent of involvement of any other services or agencies with the child or family, including universal, secondary and tertiary services.

Gathering further information

Check CRIS for the subject child and siblings

As part of gathering information at intake, any information already held by the Child Protection is to be considered.

The child protection practitioner is able to undertake the following searches in CRIS:

- a search by name using any family or given name details known (including aliases) and possible similar spellings which may have been used by practitioners in the past
- a search by address using current and any known past addresses for the subject child and any known siblings or parental figures
- a search of 'person responsible for harm' to determine if the alleged perpetrator has care of or contact with other children not linked to the child/family group subject to the report.

Any records identified in CRIS should be reviewed and used to contribute to the intake assessment.

Note should be taken of any alerts and a review of the common client layer should occur.

The number of previous reports and their outcomes must be noted, and the practice requirements regarding re-reports must be met. Refer to Advice number 1147, 'Re-reports regarding children known to Child Protection' – see Related links.

Details of previous reports, the action taken and the outcome of any intervention should be considered. The identity of any previous reporters should be noted.

Any indication that the child or family may have resided interstate in the past should lead to inquiries of other state child protection departments as appropriate.

In addition to the subject child and any siblings, consideration should be given to whether there may be other associated records that should be accessed and considered, for example, relating to parents, or other children for whom a parent has cared.

If at the conclusion of gathering information from the reporter and considering the Victorian child protection history it appears that the reporter's concerns for wellbeing or protection do not meet the threshold for further action of any kind by Child Protection – that is, no follow-up is required – providing advice to the reporter only may be an appropriate outcome of the report – refer to 'Completing the intake assessment' below.

Criminal history check to ascertain current and past police contact

Where information from the reporter suggests there may be a history of violent or other criminal behaviour within the family, including family violence, it may be appropriate to undertake a criminal history check.

Refer to Advice number 1524, 'Criminal history checks' – see Related links.

Contact with other agencies or professionals

Informing police (SOCIT) of physical or sexual abuse or serious neglect

Child Protection and the police both have statutory responsibilities as protective interveners pursuant to the CYFA. Child Protection is responsible for assessing a child or young person's safety, stability and development and police are responsible for investigating crimes.

When Child Protection receives a report under s 183 or 184 of the CYFA, from a source other than police, regarding a child in need of protection due to sexual abuse, physical abuse or serious neglect, Child Protection must notify police at the point of intake and undertake joint planning of an appropriate response. Police must be notified prior to Child Protection visiting any parties or directly commencing an investigation.

Refer: Protecting Children – Protocol between Department of Human Services – Child Protection and Victoria Police 2012 – see Related links

Aboriginal child

Where the child is Aboriginal, the Aboriginal Child Specialist Advice and Support Service (ACSASS) is consulted.

Refer to Advice number 1059, 'Responding to Aboriginal children' – see Related links.

Child under two years

Where the child is under two there are specific standards to be met requiring contact with other agencies.

Refer to Advice number 1012, 'High risk infants (HRI) – practice requirements' – see Related links.

To assess risk or service provision

If there is uncertainty about the level of concern for the child, or how the report should be responded to, based on the information available to this point, it may be appropriate to contact other agencies or professionals. Refer to the Advice number 1090, 'Information sharing in Child Protection practice' and Advice number 1124, 'Confidentiality for the reporter and other sources' – see Related links.

It may be appropriate to arrange or participate in a case conference during the intake phase. Refer to Advice number 1159, 'Case conferences at intake phase' – see Related links.

Where a child or a family member has a mental health issue or intellectual disability, consultation should occur in a manner consistent with the spirit of existing protocols.

Where the child or family is of culturally or linguistically diverse (CALD) background there should be consideration of the significance of this when assessing the report.

Completing the intake assessment

Having gathered sufficient intake information the intake assessment continues, consistent with the Best Interests Case Practice Model, with analysis of that information. The aim at intake is to make a professional judgement of risk and needs to determine whether the child may be in need of protection, and how urgent the matter is, or whether there are significant concerns for the child's wellbeing.

At all stages of Child Protection involvement, including intake, the best interests of the child is the paramount consideration. Therefore assessment at intake will always involve consideration of protection of the child from harm, protection of their rights, and promotion of their development.

The requirements s. 162, CYFA, regarding when a child is in need of protection should be taken into account

Practice guides

The practice resources part of the manual may be used as appropriate during the intake phase.

Intake analysis of risk and protective factors and current assessment

Analysis of the information gathered, including both risk and protective factors, will lead to a decision about whether the matter should be investigated by Child Protection, or whether other interventions are required to safeguard the wellbeing of the child.

Critical reflection and analysis of the meaning of information gathered and consultation with a supervisor supports balanced, well informed and child centred assessment of the report

Recording the analysis and current assessment

The following prompts may assist in articulating the intake assessment:

- Given all the information gathered, how do you make sense of it? What does it mean in relation to the vulnerability of each child in the family?
- In your professional judgement, what is the likelihood of future harm if nothing changes?
- From the point of view of each child and family member, what needs to change to enable safety, stability and healthy development of the children?
- If circumstances were improved within the family, what would you notice was different - what would there be more of? What would there be less of? What would you notice?

Child under two years

Where the child is aged under two years there are specific standards requiring contact with other agencies.

Standard

Where a report is received for a child aged less than two years and identified as a high risk infant the child protection practitioner must consult a regional practice leader (or more senior practitioner) to inform the course of action.

Standard

Prior to closure of a case involving a high risk infant the practitioner and their supervisor must consult with a senior practitioner, practice leader or principal practitioner to confirm the decision to close is appropriate, and that the closure plan is appropriate. The agreed rationale for closure and associated planning is to be recorded on CRIS prior to closure occurring.

Refer to Advice number 1012, 'High Risk Infants (HRI) - practice requirements' - see Related links.

Threat to kill a child

Where a threat has been made against the life of a child, parent or carer, the child protection practitioner must consult with their supervisor.

Refer to Advice number 1047, 'Threats to kill a child' - see Related links.

Classification of intake

The intake child protection practitioner, in consultation with their supervisor, needs to classify reports and other intakes. Where possible, this classification should be determined within three working days.

The first step is to determine whether, based on the information provided in the intake contact itself, follow-up is required. In most instances it will be necessary to gather further information from other sources – so follow-up will be required. The various pathways the intake may follow are set out below. In some instances, it will be clear based only on the intake contact itself and consideration of any Victorian child protection history that the reporter's concerns do not meet the threshold for further action of any kind by Child Protection. Alternatively there may be insufficient identifying information upon which to base any further inquiries.

Follow-up required – intake reports**Protective intervention report**

Where a child may be in need of protection through issues of risk of significant harm, including cumulative harm, or abandonment or parents death or incapacity (s. 162, CYFA), the report is to be classified as a protective intervention report (s. 30(1)(d) or s. 187(1)(b), CYFA).

Child wellbeing report

Where the issues relate to significant concern for a child's wellbeing, and the intake assessment is that the child is not in need of protection, the report is to be classified as a child wellbeing report.

Unborn child report

Where the report relates to significant concern for the wellbeing of an unborn child after the child is born the report is to be classified as an unborn child report.

New allegations regarding a current client

Where a contact at intake relates to an existing client and contains new allegations, the matter should be referred to the allocated practitioner or team and the procedures for investigating a new allegation regarding a current client should be followed. Refer to Advice number 1149, 'New allegations on open cases' – see Related links.

Therapeutic treatment report

Where the report relates to a child aged 10 years or above and under 15 years exhibiting sexually abusive behaviours it is to be classified as a therapeutic treatment report – refer to Practice guide PG1561 'Therapeutic treatment report and order guidance'. This type of report may be recorded as a second intake type concurrently with other Child Protection involvement.

Follow-up required – other intake types

Child Protection receives and processes other types of intakes, which do not constitute reports, and should be classified as appropriate as follows:

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- Requests from interstate and New Zealand
- Applications for conciliation counselling (irreconcilable difference)
- Streetwork Outreach Service voluntary clients
- Court report requests
- Requests under the Hague convention

Refer to 'Intake – Other intake types' for advice regarding each of these – see Related links.

Follow-up not required

Wellbeing – advice to reporter only

Where the reporter held significant concern for a child's wellbeing or believed a child was in need of protection but, following consideration of the information they provided and any Victorian child protection history, the reported issues do not meet the threshold for further action of any kind by Child Protection the report should be classified as a wellbeing report – advice to reporter only.

Insufficient information

This classification should only be used where there is insufficient information to take any action, such as making enquiries to establish the identity or address of the child, and therefore cannot be classified in any other way.

General calls regarding existing or previous clients

Where an intake practitioner takes a call regarding an existing or previous client that does not constitute any other intake type, a case note should be recorded in the client file.

Re-reports

When to investigate

Standard

Where child protection has received two consecutive reports in 12 months, neither of which has been investigated, irrespective of classification, any subsequent report received in that 12 month period must be investigated unless the area manager or their delegate reviews the case and assesses that an investigation is not warranted.

If it is assessed an investigation is not warranted, the decision-maker must record an explicit rationale for this decision in CRIS.

Refer to Advice number 1147 'Re-reports regarding children known to Child Protection' – see Related links.

Review by an independent Area Manager or delegate:

The purpose of an independent review is to provide an assessment of the facts and circumstances of a report free of any preconception or influencing factors arising from previous knowledge of the current report.

The independent review is to provide an outcome assessment that is consistent with best interest's case practice model with heightened attention to issues of potential cumulative harm. The review will focus on:

- Age at first report and subsequent reports.
- Themes of the reported concerns in context of child's age and stage of development at the first and subsequent reports, consideration of cumulative impact.
- Risk factors that have remained persistent over time that indicate escalation of risk through impact and or frequency of direct or indirect exposure.
- Parenting factors over time that suggest strengthening or deterioration in parenting capacity.

- Formal and informal support networks that have been and/or are currently present, and may influence the child's experience - positive or negative. Have the support networks reduced, is the child becoming isolated from supports that may assist their safety, stability and development.
- Reporter behaviour - is the reporter the same person, or are there multiple reporters, are the reporters reporting the same concerns but from differing perspectives (validating the concerns) or are the reports from one person and one perspective, have we made attempts to validate the concerns from other sources?
- Review of recommendations, actions and outcomes from previous reviews and or service interventions.
- In cases previously referred on closure to a support service was the previous referral strengthened by:
 - Case conferencing with professionals and/or the family?
 - Joint visit and/or co-work by the support agency with the reporter/child protection/a service supporting the family?

For more information regarding this issue and the associated workflow refer to Advice number 1147, 'Re-reports regarding children known to Child Protection' – see Related links.

Intake action following classification of intake

Protective intervention reports

The case is moved to the investigation and assessment phase using the process appropriate to the location. (Divisional and after hours procedures will vary.) Refer to Practice phases: 'Investigation and assessment phase' – see Related links.

Note that the key performance indicators (KPI) for response for urgent (two day) and non-urgent (14 day) reports apply from the time of first contact regarding the report.

Once the decision is made to classify a report as a protective intervention report, information sharing provisions under the CYFA regarding investigations apply. Refer to Advice number 1090 'Information sharing in Child Protection practice' – see Related links.

Child wellbeing reports

After a report is classified as a child wellbeing report the possible intake responses are:

- providing advice to the reporter, or
- referring for service provision.

Wellbeing – advice to reporter only

Where a child wellbeing report has been received, and it has been determined that no follow-up is required because the reported issues do not meet the threshold for further action of any kind by Child Protection the intake Child Protection practitioner may provide advice to the reporter, including where the reporter is a child or family member. The reporter may be in a position to take some action to assist or support the child that will be a sufficient response in the circumstances. It may be appropriate to provide the reporter with general information to assist them with understanding why the issues they are raising would not constitute a basis for child protection involvement.

Please note that during contact with the reporter or other sources of information, additional information may be disclosed which indicates risk to the child or young person. On that basis the child protection practitioner can, in accordance with s.34 of the CYFA, reclassify the report as a protective intervention report.

Referral

Where significant concern for a child's wellbeing exists and some action needs to be taken to ensure that the concern is addressed, the matter should be referred to the Child and Family Information Referral and Support Team (Child FIRST) in consultation with the community based Child Protection practitioner (CBCPP) and following local procedures.

In some instances Child FIRST may not be the most appropriate referral option and an alternative service may be identified as being more beneficial to assist the child and family. Referrals made by child protection to any service (other than Child FIRST) require the consent of the parent. The child protection practitioner needs to work in a collaborative way with the parent and service provider to make sure that:

- all parties are clear of the basis for the referral
- how and when to re-report to child protection if concerns regarding significant risk to the child arise or
- how and when to refer to Child FIRST if significant concerns for the child's wellbeing arise.

Unborn child report

Where the report is classified as an unborn child report the possible intake responses are:

- providing advice to the reporter, or
- referring to Child FIRST or another service, or
- providing a direct service to the mother.

Refer to Advice number 1144, 'Reports regarding unborn children' – see Related links.

Recording the report

In accordance with the provisions of s 39 and 188 CYFA, an intake record must be created in CRIS for each report received by Child Protection.

Refer to Advice number 1094, 'Case recording' for further practice requirements regarding case recording - see Related links.

Feedback to reporters

The reporter may have an important role in protecting a child and should generally receive timely feedback about the report they have made, unless this would be contrary to the child's best interests.

Standard

Child protection intake must inform each professional reporter of the outcome of their report, unless this would not be in the best interests of the child, or there are exceptional circumstances.

Where appropriate, non-professional reporters may be informed of the outcome of their report.

Feedback to reporters would usually be provided verbally (by phone) rather than in writing, and should not be provided to another party, as this may jeopardise the reporter's confidentiality. If it is considered appropriate to provide feedback in writing to a professional reporter, care should be taken to ensure that the reporter's confidentiality is not breached. For example, wording should be carefully considered, and any letter should be addressed directly to the professional concerned and marked 'private and confidential'.

Information provided to a reporter should be restricted to the intake outcome (that is the classification of the report). It may be appropriate to provide general information regarding the way family services or Child Protection may work with families.

The reporter should not be informed of any further details, unless the child or their parent consents or where the sharing of this information would be covered by the information sharing provisions of the CYFA. Refer to Advice 1090 'Information sharing in child protection practice' – see Related links.

Considerations for good practice

Note:

Use the Practice Resources link on the toolbar to access further Practice Guidance and Research.

Information gathering at time of intake

When receiving a report respond to the reporter sensitively and respectfully and make sure that the information they provide is recorded accurately and in sufficient detail.

Engaging reporters

The Child Protection practitioner should support the reporter and emphasise that the action of reporting is an important step in protecting children.

People who report concerns regarding abuse or neglect are a rich source of information. They may also have a relationship with the family which can be invaluable in the future.

It may be useful to say something like "as adults we all have a responsibility to ensure children are safe and well cared for. Where we are concerned that the parent or caregiver is unable or unwilling to protect the child, we need to act to ensure this occurs".

It may help to reassure reporters that it is the role of Child Protection to determine what to do in response to the concerns they have expressed.

It is also important to provide clear information regarding the role of the Child Protection service, the legislative requirements which underpin our role, and the possible course of action for reports made to Child Protection. Occasionally people reporting concerns regarding abuse and neglect can have unrealistic expectations about what Child Protection can do.

Malicious reports

Refer to Advice No. 1125 for detailed information if you think a report may be malicious.

Reviewing previous contacts

How to look

Consider the dates, length of involvement, and outcome of previous contacts. Check the details of previous intakes to reveal previous reporters, alleged abuses and intake outcomes. The source of previous reports may reveal a pattern in itself.

Scan file entries to check for relevance, then read in detail any you identify as pertinent. Look for information that is credible and as original, firsthand or relating to actual events as possibly providing:

- evidentiary information
- examples of strengths or things that have worked
- psycho-social history.

Keep an open mind

While it is appropriate to note earlier assessments (by Child Protection or others) it is important to keep an open mind and gather factual information to contribute to a fresh intake assessment.

Cumulative harm

The client record will be a significant source of information relevant to assessing cumulative harm and preventing continuation of any inappropriate pattern of episodic intervention. Refer to the specialist practice resource 'Cumulative harm – see Related links.

Consulting with supervisor or a team manager

It is preferable to have completed a preliminary assessment based on your analysis of the available information before approaching your supervisor. Be prepared to present your assessment and make a recommendation regarding the proposed outcome.

Consultation should be sought as soon as all relevant information is available to inform a decision regarding further action. Keep in mind that further information may be required and that the consultation process allows you to review your assessment.

Patterns evident though history of harm

Analysis of a carefully researched and considered history to identify patterns in past behaviour will assist significantly with the assessment of harm, and in particular, cumulative harm and is well worth the time and effort.

Contact for further procedural advice

- Supervisor
- Team manager
- Area manager or deputy area manager
- Child protection manager

Related content and external links

Note:

Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

- 1012 - High risk infants (HRI)- practice requirements
- 1045 - Professional supervision
- 1047 - Threats to kill a child
- 1065 - Inter- and intra- region transfer of cases
- 1090 - Information sharing in Child Protection practice
- 1094 - Case recording
- 1125 - Malicious reports
- 1144 - Reports regarding unborn children
- 1147 - Re-reports regarding children known to Child Protection
- 1149 - New allegations on open cases
- 1159 - Case conference at intake phase
- 1524 - Criminal history checks
- 1535 - Analysis and Assessment in best interests case practice
- Confidentiality, privacy, and information management
- Intake outcomes
- Other intake types

Worker safety and wellbeing chapter

After Hours Child Protection Emergency Service - regional Child Protection protocol

Cumulative harm: a conceptual overview

Protocol between DHS Child Protection and the Victorian Aboriginal Child Care Agency 2002

Protocol between Child Protection and Victoria Police

Child Protection and family violence: Guidance for child protection practitioners

External Links:

Staff safety in the workplace

Occupational violence prevention policy

Health, safety and wellbeing policy

Checklist of required standards

Note: A checklist of the required standards follows. It can be utilised as a reference point for practitioners and supervisors or printed and utilised in supervision to assist in ensuring required tasks are undertaken.

No.	Standard	Completion due
	Where a report is received for a child aged less than two years and identified as a high risk infant the child protection practitioner must consult a regional practice leader (or more senior practitioner) to inform the course of action.	
	Prior to closure of a case involving a high risk infant the practitioner and their supervisor must consult with a senior practitioner, practice leader or principal practitioner to confirm the decision to close is appropriate, and that the closure plan is appropriate. The agreed rationale for closure and associated planning is to be recorded on CRIS prior to closure occurring.	
	Where child protection has received two consecutive reports in 12 months, neither of which have been investigated, irrespective of classification, any subsequent report received in that 12 month period must be investigated unless the area manager or their delegate reviews the case and assesses that an investigation is not warranted. If it is assessed an investigation is not warranted, the decision-maker must record an explicit rationale for this decision in CRIS.	
	Child protection intake must inform each professional reporter of the outcome of their report, unless this would not be in the best interests of the child, or there are exceptional circumstances.	

Family Court and Federal Circuit Court

Date of Advice: **15 April 2013**

Advice no: **1344**

This advice is endorsed by the: Assistant Director, Child Protection, Statutory and Forensic Services Design Branch.

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This Advice provides child protection practitioners and managers with information about the jurisdiction of the Family Court of Australia and the Federal Circuit Court of Australia.

Legislation

Note: Use the Legislation link on toolbar to access full text versions of the legislation.

Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Family Law Act

- *Family Law Act 1975 (Cth)*

Federal Magistrates Act

- *Federal Magistrates Act 1999*

Standards and procedures

Protocol between the Department of Human Services and the Family Court

In 1996 a protocol was established between the Department of Human Services and the Family Court of Australia (Family Court) to facilitate contact between the department and the Family Court in order to ensure that a child's needs for protection are met. The protocol was designed to assist cooperation, clarify procedures and improve decision making in cases that may occur in either or both jurisdictions.

Since the commencement of the protocol some changes have taken place that have a direct impact on the protocol and therefore have necessitated the need to update the protocol. For example, privacy legislation has

been introduced, legislative changes to federal legislation have occurred, Magellan has been introduced and the Federal Circuit Court now hears Family Court matters. An updated protocol was released in May 2011.

The Protocol between the Department of Human Services and the Family Court of Australia must be referred to by the child protection practitioner in all cases where the Family Court is involved (for example, where the department has received a report from the Family Court or where there are concurrent proceedings in the Children's Court and Family Court). It is important for child protection practitioners to familiarise themselves with the protocol which can be located in the protocol section on the homepage.

The Family Court of Australia

Powers of jurisdiction

The Family Court hears matters under the Family Law Act (FLA) 1975. In Victoria there is a Family Court located in Melbourne, Dandenong and circuit sittings are held periodically in major country centres. The Family Court can make orders in relation to parental responsibility, residence of, contact with, maintenance of, or having regard to the best interests, welfare and development of all children in Australia under the age of 18 years.

The Family Court, in exercising that jurisdiction, is obligated under the provisions of the Family Law Act to regard:

- the best interests of the child as the paramount consideration in determining those issues, and
- the need to protect the child from physical or psychological harm.

Section 69ZK of the FLA provides that Orders must not be made under the FLA in relation to a child who is under the care (however described) of a person under a child welfare law, unless:

- the order is expressed to come into effect when the child ceased to be under such care, custody, guardianship and control, or supervision, as the case may be; or
- the order is made with the written consent of the Secretary of the Department of Human Services.

Where it appears to the Family Court that another court proposes to make an order or take any other action, the Family Law Court may adjourn any proceedings before it in relation to that child.

Appeals from the Family Court

Appeals from the Family Court may be made on a point of law. Appeals from a single justice of the Family Court are heard by the 'Full Court' of the Family Court. This consists of three to five judges. If leave is granted an appeal from the Full Court may be heard in the High Court of Australia.

Federal Circuit Court

Powers of jurisdiction

The Federal Circuit Court, formally known as the Federal Magistrates Court, was established by the Federal Magistrates Act to create a jurisdiction to deal with less complicated matters under the Family Law Act and to ease the burden of the work performed by the Family Court.

Although the jurisdiction is very similar, the major difference is that the Federal Circuit Court hears less complex matters than the Family Court and there are certain applications that are only heard by the Family Court, such as applications for nullity of marriage. The Federal Circuit Court provides for a quicker and cheaper option for litigants. The court also hears non family law matters such as bankruptcy matters, unlawful discrimination matters and consumer protection issues.

Limitations to jurisdiction

The Federal Circuit Court, in exercising jurisdictions under the provisions of the Federal Circuit of Australia Legislation Amendment Act, has the same obligations and limitations as the Family Court.

Appeals from the Federal Circuit Court can be made on a point of law. Appeals from final decisions of Federal Circuit Court Judges go to the Full Court of the Federal Court or the Family Court depending on the jurisdiction exercised.

Considerations for good practice

For this Advice, there are no specific considerations for good practice.

Contact for further procedural advice

- Supervisor
- Team Manager
- Regional solicitor
- Child Protection Litigation Office

Related content and external links

Note: Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

1329 - The structure of the court system

1344 - Family Court and Federal Circuit Court

1345 - Family Court protocols and memorandum of understanding with child protection

1346 - Family Court or Federal Circuit Court request for child protection intervention

1348 - External court orders affecting case practice

1349 - Magellan reports to Child Protection

1377 - Responding to subpoenas for Child Protection files and documents

Protocol between the Department of Human Services, the Family Court of Australia and the Federal Magistrates Court [PDF, 397.4 KB]

External Links:

www.federalcircuitcourt.gov.au

Checklist of required standards

For this Advice, there are no required standards.

Family Court protocols and memorandum of understanding with Child Protection

Date of Advice: **15 April 2013**

Advice no: **1345**

This advice is endorsed by the: Assistant Director, Child Protection, Statutory and Forensic Services Design Branch.

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This Advice provides Child Protection practitioners and managers with a brief overview of the protocol between the Department of Human Services and the Family Court of Australia. It provides a summary of the Memorandum of Understanding between the two services.

Legislation

For this advice, there is no specific reference to legislation

Standards and procedures

Protocol between the Department of Human Services and the Family Court

Child protection practitioners should refer to the *Protocol between the Department of Human Services and the Family Court of Australia* in cases where the Family Court is involved (for example, where the department has received a report from the Family Court or where there are concurrent proceedings in the Children's Court and Family Court).

In 1996 a Protocol was established between the Department of Human Services and the Family Court of Australia (Family Court) to facilitate contact between the department and the Family Court to assist children's need for protection. The protocol was designed to assist cooperation, clarify procedures and improve decision-making in cases that may occur in either or both jurisdictions.

Since the commencement of the protocol some changes have taken place that have a direct impact on the protocol and therefore have necessitated updates. For example, privacy legislation has been introduced, legislative changes to Federal legislation have occurred, Magellan has been introduced and the Federal Circuit Court now hears Family Court matters. An updated protocol was released in May 2011.

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Memorandum of Understanding

A **Memorandum of Understanding** was signed in 1995 by the Magistrates Court, Family Court of Australia and the Department of Human Services, Victoria. The Memorandum is based on a number of cases in both Victoria and interstate where families had been the subject of proceedings in the Family Court at the same time as intervention from a state welfare authority. This prompted concerns about the overlap of federal and state jurisdictions and the role of state welfare authorities in such proceedings.

The central principles underpinning this agreement are:

- A recognition of the specialised nature and separate jurisdictions of the Family Court and Children's Court.
- A recognition that the Department of Human Services has statutory responsibilities which may involve, or result in the involvement of, both the Family Court and the Children's Court.
- A recognition that multiple hearings, over prolonged periods in separate jurisdictions can be harmful to the child and should where possible be minimised.
- A recognition that parents have a right to have their disputes resolved expeditiously, efficiently and where possible within a single jurisdiction.
- A recognition that the Children's Court should not be utilised as a de facto court of appeal from the Family Court.

It is agreed that:

1. Department of Human Services reserves the right to choose the jurisdiction in which protective concerns in relation to children are determined, guided by the principles above.
2. If the Department of Human Services forms the view that the Family Court is the appropriate jurisdiction to decide matters of a protective nature, it may choose not to become a party to the proceedings but to give evidence in support of one or another party, or the child's separate representative, if appointed. This decision will be based on the level of concern, the preparedness of the other parties' legal representative to call the Department as a witness. The Department will be required to accept the orders of the Family court without the avenue of appeal.
3. If the Department of Human Services 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 the proceedings.
4. Provided no new protective concerns emerge during the proceedings to suggest that the child is at further risk, the department will not apply to change the jurisdiction.
5. During the course of proceedings in the Family Court, if, as a result of new information, the Department of Human Services assessed that the child is at significant risk and that none of the parties will protect the child, proceedings will be initiated through the Children's Court.
6. Where the department decides to initiate proceedings through the Children's Court, it will appear in person before the Family Court at the earliest opportunity to inform the Court of its intentions.
7. If, as a party to the proceedings, the Department of Human Services is dissatisfied with the outcome of the Family Court proceedings and considers the child to be at significant continuing risk, an appeal will be initiated through the Family Court.
8. Provided no new protective concerns arise following Family Court proceedings, the Department of Human Services will not commence further proceedings in the Children's Court, regardless of judgement.
9. If following the conclusion of Family Court 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 through the Family Court. This decision will be based on the length of time since the Family Court order was made, whether or not any family members are able to adequately care for the child and the level of the department's supervision required.
10. Where there have been previous proceedings in the Family Court or proceedings are current in the Family Court, 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 jurisdiction by the department.

Considerations for good practice

Note: Use the Practice Resources link on the toolbar to access further Practice Guidance and Research.

For any matter that involves both the Children's Court and the Family Court, the protocol and Memorandum of Understanding should be referred to.

Contact for further procedural advice

- Supervisor
- Team Manager
- Regional solicitor
- Child Protection Litigation Office

Related content and external links

Note: Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

1331 - Legal representatives and Child Protection's roles and responsibilities in court proceedings

1344 - Family Court and Federal Circuit Court

1346 - Family Court or Federal Circuit Court requests for Child Protection intervention

1348 - External court orders affecting case practice

1349 - Magellan reports to Child Protection

1377 - Responding to subpoenas for Child Protection files and documents

Protocol between the Department of Human Services, the Family Court of Australia and the Federal Magistrates Court [PDF, 397.4 KB]

External Links:

For this Advice, there are no specific external links.

Checklist of required standards

For this Advice there are no required practice standards.

Family Court or Federal Circuit Court requests for Child Protection intervention

Date of Advice: **15 April 2013**

Advice no: **1346**

This advice is endorsed by the: Assistant Director, Child Protection, Statutory and Forensic Services Design Branch.

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This Advice provides information for child protection practitioners and managers about Child Protection involvement with the Family Court or Federal Circuit Court.

It outlines the sections of the Family Law Act 1975 and the associated procedures that guide the Family Court of Australia (Family Court) and Federal Circuit Court of Australia on when to make a report to Child Protection.

This advice does not discuss in any detail the protocol between the Department of Human Services and Family Court (2011). However, it is important for child protection practitioners to familiarise themselves with that protocol which can be located in the Protocol section on the homepage, and refer to Advice number 1345, 'Protocol and Memorandum of understanding between Child Protection and the Family Court' for further information (see Related content for a link).

Legislation

Note: Use the Legislation link on toolbar to access full text versions of the legislation. Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Children, Youth and Families Act

Children, Youth and Families Act 2005 (CYFA)

Family Law Act

Family Law Act 1975 (Cth)

Federal Magistrates Act

Federal Magistrates Act 1999

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Federal Magistrates (Consequential Amendments) Act

Federal Magistrates (Consequential Amendments) Act 1999

Standards and procedures

Reports from the Family Court or Federal Circuit Court to the Department of Human Services

The *Family Law Act 1975 (Family Law Act)* provides a number of different ways in which the Family Court and the Federal Circuit Court can make a report to Child Protection in relation to a child that is subject to proceedings in that Court. Upon receiving a report from the Family Court or Federal Circuit Court, Child Protection must record this as a report in CRIS and make a determination regarding the classification of the report in the same manner as 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 Court or Federal Circuit Court to determine whether the child may be in need of protection and an investigation is necessary. This can be achieved either through the Court Registry or through one of the parties to the proceedings.

Further information about the procedures to be followed by the Family Court, the Federal Circuit Court and Child Protection when such a report is made are located in the Protocol between the Department of Human Services and the Family Court and the Federal Magistrates Court of Australia.

The *Family Law Act* provides for the Family Court and the Federal Circuit Court to make reports to the department pursuant to the following sections:

Section 91B

Section 91B of the *Family Law Act* states that in proceedings relating to the welfare of a child, the Family Court and Federal Circuit Court **may** request the intervention of the state officer who is responsible for the administration in that state of child welfare laws (in Victoria, Department of Human Services, Child Protection Service). Upon receipt of this request Child Protection must investigate and make a decision about the most appropriate response to the Court's request. Child Protection may seek intervene in the proceedings and if this occurs, will be a party to the proceedings and able to file affidavits, call witnesses, cross-examine witnesses, present expert evidence and appeal.

Section 67Z

Section 67Z of the *Family Law Act* provides that where a party to proceedings under the *Family Law Act* alleges that a child to whom those proceedings relate has been abused or is at risk of being abused then that person must file a notice in the prescribed form (Form 4 Notice of Child Abuse, Family Violence or risk of Family Violence) in Court and the Court **must** notify a prescribed child welfare authority (in Victoria, Department of Human Services).

As a result of amendments made to the *Family Law Act* by the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*, which became law on 7 June 2012, the definition as to what constitutes child abuse and domestic violence for the purposes of the *Family Law Act* has widened to encompass serious neglect as well as psychological and financial abuse, with the definition of abuse adopted being:

Abuse, in relation to a child, means:

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person; or
- (c) causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence; or
- (d) serious neglect of the child.

Section 67ZA

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Section 67ZA of the *Family Law Act* provides that where a member of the Family Court or Federal Magistrates Court personnel (that is, the registrar, deputy registrar, family consultant, family counsellor, family dispute resolution practitioner, arbitrator or child representative) in the course of carrying out their duties has reasonable grounds for suspecting that a child has been abused or is at risk of being abused, that member **must**, as soon as practicable, notify the Department of Human Services of their suspicion and the basis for the suspicion. A report will be made to the child protection intake worker in the region where the child normally resides or, if appropriate, the After Hours Emergency Child Protection Services (AHCPEs).

Time lines following referral to Child Protection pursuant to s 91B , s 67Z or s 67ZA

Wherever possible the Family Court and the Federal Circuit Court will set a return date which allows Child Protection sufficient time to adequately respond to the request.

Child Protection will usually require a minimum of 21 days to prepare a response. If there is inadequate time to prepare a response in time for the next hearing date, Child Protection will notify the court as soon as practicable and prior to the date of the court hearing. However, Child protection should make best endeavours to comply with the request return date within reason.

Generally the Family Court and Federal Circuit Court will defer making a judgement on the case pending the department's response to the referral.

Responding to a report arising out of s 91B, s 67Z or s 67ZA

When responding to the Court about a report arising out of s 91B, s 67Z or s 67ZA, Child Protection must do one of the following:

- respond to the court in writing explaining the outcome of the report, for example:
 - no investigation
 - investigation substantiated or not substantiated, and that information is held which may be of interest to the court
 - initiate Children's Court proceedings
- appear amicus curiae (friend of the court)
- seek leave to become party to the proceedings

Practitioners should discuss the decision to appear as 'friend of the court' or intervene in Family Law proceedings at the earliest possible time with their regional solicitor, court officer or the Child Protection Litigation Office (CPLO) to determine the most appropriate course. Endorsement by a team manager is required for Child Protection to appear as a friend of the court. The endorsement of the child protection manager is required for Child Protection to seek leave to become a party to the proceedings (ie. to intervene).

In cases where Child Protection chooses not to intervene, there is no avenue for appeal if a decision is made which is contrary to Child Protection's opinion about the best outcome and Child Protection should not issue Children's Court proceedings unless new protective concerns arise.

Concurrent proceedings

There are several instances where families can be simultaneously involved in both the Family Court or Federal Circuit Court and the Children's Court. This situation can arise where:

- Child Protection have issued proceedings in the Children's Court and subsequently become aware that there are ongoing proceedings in the Family Court or Federal Circuit Court;
- Child Protection are aware proceedings are on foot before the Family Court or Federal Circuit Court, however, make a decision that the most appropriate Court to determine the issues relating to that child is the Children's Court and issue proceedings in that Court. The selection of which Court is the most appropriate to determine the issues relating to the child is a difficult one and should be made on a case by case basis. Consultation with the regional solicitor, court officer or CPLO is recommended to assist in the decision making process; and
- A parent or interested person makes an application to the Family Court or Federal Circuit Court for orders in relation to a child when there are ongoing proceedings before the Children's Court.

Upon learning that there are proceedings listed in both the Children's Court and a Family Law Court, child protection practitioners must advise the particular Family Law Court in writing of the existence of Children's Court Orders and/or proceedings.

Section 69ZK prevents the Family Court or Federal Circuit Court from making an order (other than a child maintenance order) if the child is under the care of a person pursuant to an order of the CYFA unless the order is expressed to commence when the child ceases to be under that care or it is made in proceedings relating to the child where consent of the department has been obtained at the court commencement or continuation of those proceedings. If proceedings are on foot in both jurisdictions the Family Court and the Federal Circuit Court will often adjourn the proceedings before that Court pending a final determination being made in the Children's Court.

Magellan project

The Magellan project was initiated by the Family Court to better deal with parenting disputes involving allegations of serious physical and sexual abuse, to reduce the distress of children by achieving quicker and more lasting resolution of disputes and to reduce the costs associated with these cases. Major features include the imposition of strict timelines for which, early 'front loading' of resources such as the appointment of a child representative, provision of information exchange from Child Protection, and close liaison on case management between external information providers and a small team of court mediators.

If Child Protection receives a report for a child who is on the Magellan list, the child protection practitioner will:

- Discuss the report with the child protection regional solicitor, court officer or CPLO to determine whether the department should intervene in the Family Court proceedings.
- Make a decision regarding the investigation of the report in accordance with normal practice and the protocol.
- If Child Protection undertakes an investigation, it will endeavour to provide feedback to the Family Court within five weeks of the report. Feedback to the Family Court is in the form of an expanded/augmented version of the standard letter, outlining the department's actions taken, views in relation of risk to the child and an explanation for the basis of this view.
- Child Protection will advise the Family Court if more time is required to complete the assessment. Liaison should occur with the child representative and the Magellan deputy registrar.

Refer to Advice number 1349, 'Magellan reports to Child Protection' – see Related links.

Child Protection response

Reports from the Family Court or Federal Circuit Court are treated like reports from other sources. Refer to Advice number 1154 'Receiving and processing reports' – see Related links. Where the report relates to a child who is on the Magellan list additional requirements apply (see below).

Where the Family Law Courts counselling service has been involved and/or the child is separately represented, Child Protection intake should contact the relevant person prior to classifying the report. If it is unclear from the report that the Family Law Courts counselling service has been involved this should be checked with the service.

Advice to the court

Following receipt of a report from the Family Court or the Federal Circuit Court a response to the court is required **prior to the next listed hearing date**.

Where the report is classified as a protective intervention report and insufficient time has been allowed by the court to complete an investigation, that is, less than three weeks, or the matter is complex and requires further assessment, a letter must be sent to the Family Court or Federal Circuit Court outlining the fact that the assessment is incomplete and indicating the date that information will be available.

It should be noted that unless the Department of Human Services is a party to the proceedings it cannot formally seek an adjournment of the hearing. The Family Court and Federal Circuit Court have no obligation to adjourn a matter due to Child Protection being unable to provide a response to a report.

Where an investigation will not occur the Family Court or Federal Circuit Court are to be advised of this in writing including the reasons for this decision. A proforma to be completed is contained in CRIS.

Possible responses by Child Protection following an investigation

Child Protection may respond to a report from the Family Court or Federal Circuit Court following an investigation in the following ways:

- Initiate a protection application.
- Inform the Family Court or Federal Circuit Court, that the Department of Human Services does not intend to intervene, but has information in which the court may be interested (the court may then wish to issue a subpoena under the Family Law Rules or Federal Circuit Court Rules in order that evidence may be provided to the court).
- Inform the Family Court or Federal Circuit Court that the Department of Human Services does not intend to take any further action.
- Inform the Family Court or Federal Circuit Court that the Department of Human Services seeks to appear in the proceedings as 'amicus curiae' ('friend of the court'). This means that the department is not a party to the proceedings. The purpose of this is to assist the court by advising of the department's involvement and views about the protective issues. The department will be legally represented, however cannot appeal a decision of the court.

Practitioners should discuss the decision to appear as 'friend of the court' or intervene in Family Court proceedings at the earliest possible time with their regional solicitor, court officer or Child Protection Litigation Office (CPLO) to determine the most appropriate course. Endorsement by a team manager is required for Child Protection to appear as a friend of the court. The authorisation of the child protection manager is required for Child Protection to seek leave to become a party to the proceedings.

In cases where Child Protection chooses not to intervene, there is no avenue for appeal if a decision is made contrary to Child Protection's view and it is agreed that Child Protection will not issue Children's Court proceedings unless new protective concerns arise.

Where immediate action is required to protect the child, Child Protection must determine if:

- A protection application will be issued.
- A party will make an urgent application to the Family Court or Federal Circuit Court, for example, to vary access arrangements from unsupervised to supervised access and so on. The party making the application may subpoena the child protection practitioner to support the application.

It may be appropriate for Child Protection to consult the CPLO on the grounds for a protection application prior to its initiation. A protection application should occur where the Child Protection believe that there are grounds for an application and the case is more appropriate to be managed through the Children's Court. A protection application should not generally be used as an avenue to resolve a dispute which can be appropriately resolved by the Family Court or Federal Circuit Court.

When a protection application is before the Children's Court, an order of the Family Court or Federal Circuit Court is suspended. The orders of the Family Court or Federal Circuit Court will remain in force unless varied or changed in the Family Court or Federal Circuit Court, or unless an order is made in the Children's Court.

Note: Orders of the Family Court are not affected by Child Protection receiving or investigating a report.

Intervening in Family Court or Federal Circuit Court proceedings

Following an investigation, if Child Protection determines that a child is in need of protection, a decision needs to be made about whether to seek to intervene in the proceedings or not. This should be guided by what is

required to protect the child, and consequently which jurisdiction, that is, the Family Court or Federal Circuit Court or the Children's Court will best ensure the safety of the child. There are many factors for consideration, including:

- How serious are the protective concerns?
- What is the likelihood of abuse occurring?
- Does the department have evidence that it wants to put to the court?
- Is there a child representative appointed who is adequately representing the child's best interest?

Direct intervention as a party to the proceedings should only occur where serious protective concerns are held which cannot be addressed by other means and only then after careful consideration and consultation with the CPLO or rural solicitor. In all cases where the department intervenes in the proceedings, legal representation must be arranged by CPLO or rural solicitor. In most cases it will not be necessary for the department to intervene and become a party to proceedings, but where there are protective concerns which may influence the outcome of the hearing, it may be appropriate to be subpoenaed by the party who the practitioner believes can adequately protect the child.

Compliance with Family Court and Federal Circuit Court orders

Parties to a Family Court or Federal Circuit Court order may sometimes allege that the other party is placing the child at 'unacceptable risk' and therefore believe that there are 'reasonable grounds' to not comply with the court order. In such situations a party may believe it necessary to either deny contact or refuse to return the child from contact as the case may be.

An order made by the Children's Court will take precedence over an order of the Family Court or Federal Circuit Court, to the extent that the orders are inconsistent. However, accepting a report or conducting an investigation does not and Child Protection have no legal authority to authorise or compel a person to fail to comply with an order made in the Family Court or the Federal Circuit Court.

The decision not to comply with a Family Court or Federal Circuit Court order is a decision made entirely by the party. Contravention of orders affecting children under the Family Law Act without reasonable excuse, can have serious consequences. Section 70NAE of the Family Law Act defines what is a reasonable excuse for the purposes of contravention. Practitioners should not provide legal advice to a person about their obligations under the Family Law Act or whether their situation falls within s 70NAE, however should encourage the party to seek independent legal advice.

Considerations for good practice

Note: Use the Practice Resources link on the toolbar to access further Practice Guidance and Research.

- Even if the Department of Human Services is served with documents with very short timelines, the department should make best endeavours to comply with the request return date.
- Child Protection should make a note on the client information system of the time and day that the report was received and the date of compliance.
- Always action court requests promptly as there is often only a short time allowed by the court to process them.

Contact for further procedural advice

- Supervisor
- Team Manager
- Regional solicitor /Court Officer
- Child Protection Litigation Office

Related content and external links

Note: Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

Protocol between the Department of Human Services, the Family Court of Australia and the Federal Magistrates Court [PDF, 397.4 KB]

1349 - Magellan reports to Child Protection

1345 - Family Court protocols and memorandum of understanding with Child Protection

1329 - The structure of the court system

1377 - Responding to subpoenas for Child Protection files and documents

1348 - External court orders affecting case practice

1344 - Family Court and Federal Circuit Court

External Links:

Court Kit

Checklist of required standards

For this Advice, there are no required practice standards.


 human
services

Magellan reports to Child Protection

Date of Advice: **15 April 2013**

Advice no: **1349**

This advice is endorsed by the: Assistant Director, Child Protection, Statutory and Forensic Services Design Branch.

This Advice is current **only** if the date of Advice in this document matches the date of Advice in the online version. Check the date of Advice on line before relying on this printed copy.

Introduction and purpose

This Advice provides child protection practitioners and managers with a description of the Family Court Magellan case management system and the process to be taken when child protection practitioners receive a report regarding a child who is on the Magellan list.

Legislation

For this Advice, there is no specific reference to legislation.

Standards and procedures

What is Magellan?

Magellan is primarily a case management system in the Family Court of Australia, which is designed to ensure that cases involving allegations of sexual abuse or serious physical abuse of a child are managed consistently by one judge, and that all relevant information is provided to the court in a timely manner.

Magellan comprises cases in the Family Court of Australia that involve allegations of serious physical or sexual abuse of a child who is the subject of proceedings in the Court. A team of judges, registrars and mediators handle the cases from start to finish. Use of the same team throughout a proceeding supports continuity of case management, minimises case drift, and develops expertise in the details and dynamics of each case.

In most cases, the Magellan system aims to progress matters through the Family Court within six months. There is an Independent Children's Lawyer appointed for every child in a case. An early and detailed report is prepared by either a Family Court consultant or external expert in all appropriate cases, analysing the family dynamics and the needs of the children.

Early information is sought from the Department of Human Services, Child Protection, in relation to whether it intends to intervene in the case, whether it has previously investigated these or other allegations, the conclusion and reasons for the conclusion of the investigation, and any recommendations or other relevant information. (National Magellan Blueprint 2006: Draft National Magellan Project Family Court of Australia.)

What to do when a Magellan report is received

On receipt of a report about a child who is the subject of a proceeding in the Magellan list, Child Protection must make a decision regarding the classification of the report in accordance with normal practice, and the protocol between the Department of Human Services, the Family Court of Australia, and the Federal Magistrates Court 2011.

If the report is classified as a protective intervention report and Child Protection undertakes an investigation, Child Protection will endeavour to provide written information to the Family Court within five weeks of the report. Such written information will be provided in a report attached to a letter, outlining the actions taken by the department including the names of those interviewed for the report, views regarding the risk to the child and an explanation of these views, based on a consideration of the child's best interests.

Child Protection will advise the Family Court if more time is required to complete the investigation. Child Protection should liaise with the Independent Children's Lawyer and the Magellan registrar when seeking an adjournment.

Standard

If Child Protection receives a report for a child who is the subject of a proceeding in the Magellan list, the practitioner must consult with the Child Protection Litigation Office to determine whether the department will intervene in the Family Court proceedings.

Considerations for good practice

For this Advice, there are no specific considerations for good practice.

Contact for further procedural advice

- Child Protection Litigation Office
- Regional solicitor
- Supervisor
- Team Manager
- Legal Services Branch

Related content and external links

Note: Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

1070 - Child Protection Litigation Office (CPLO)

1141 - Family Court or Federal Circuit Court -reports and requests

1154 - Receiving and processing report

Investigation and assessment phase

Protocol between the Department of Human Services, the Family Court of Australia and the Federal Magistrates Court [PDF, 397.4 KB]

External Links:

National Magellan Blueprint 2006: Draft National Magellan Project Family Court of Australia

Checklist of required standards

Note: A checklist of the required standards follows. It can be utilised as a reference point for practitioners and supervisors or printed and utilised in supervision to assist in ensuring required tasks are undertaken.

No.	Standard	Completion due
	If Child Protection receives a report for a child who is subject of a proceeding in the Magellan list, the practitioner must consult with the Child Protection Litigation Office to determine whether the department will intervene in the Family Court proceeding.	