ATTACHMENT "NR-3"

This is the attachment marked **"NR-3"** referred to in the witness statement Nicole Rich dated 6 August 2015.

Victoria Legal Aid

Families with complex needs

Submission to the Family Law Council's Terms of Reference

April 2015

Family, Youth and Children's Law Services – Victoria Legal Aid

Contents

About Victoria Legal Aid

Victoria Legal Aid (VLA) is an independent statutory authority set up to provide legal aid in the most effective, economic and efficient manner.

VLA is the biggest legal service in Victoria, providing legal information, education and advice for all Victorians.

We fund legal representation for people who meet eligibility criteria based on their financial situation, the nature and seriousness of their problem and their individual circumstances. We provide lawyers on duty in most courts and tribunals in Victoria.

Our clients are often people who are socially and economically isolated from society; people with a disability or mental illness, children, the elderly, people from culturally and linguistically diverse backgrounds and those who live in remote areas. VLA can help people with legal problems about criminal matters, family separation, child protection and family violence, immigration, social security, mental health, discrimination, guardianship and administration, tenancy and debt.

We provide:

- free legal information through our website, our Legal Help line, community legal education, publications and other resources
- legal advice through our Legal Help telephone line and free clinics on specific legal issues
- minor assistance to help clients negotiate, write letters, draft documents or prepare to represent themselves in court
- grants of legal aid to pay for legal representation by a lawyer in private practice, a community legal centre or a VLA staff lawyer
- a family mediation service for disadvantaged separated families
- funding to 40 community legal centres and support for the operation of the community legal sector.

VLA's Family Youth and Children's Law Program

VLA's Family, Youth and Children's Law Program aims to help people resolve family disputes and achieve safe, workable and enduring care arrangements for children. This also involves helping parents to build the capacity to resolve future disputes without legal assistance.

The Program's core function is to provide:

- duty lawyer, legal advice, representation and information services including in family law financial matters (formerly child support), parenting disputes and family violence matters
- lawyer–assisted and child-inclusive family dispute resolution to help settle disputes without going to court
- independent children's lawyers who promote the interests of children at risk and help judicial officers make good decisions
- duty lawyer, legal advice, representation and information services to children and parents in the Children's and Magistrates' Courts of Victoria, including in child protection and family violence matters and
- legal advice and education in the community.

Executive summary

VLA data shows that there is a small but significant number of clients with problems that cross over the family law, child protection and family violence jurisdictions. These clients may either be involved in concurrent court proceedings or sequential court proceedings in each jurisdiction.

Thus there is an imperative to consider how the jurisdictions interact and what design elements could be incorporated to maximise the effectiveness of the justice system as a whole for children in these families who present with complex issues.

Previous reviews and the complementary research have led to law reform and initiatives to improve the intersection between the family law, child protection and family violence jurisdictions. While there have been important developments that have improved the interface between the multiple jurisdictions, the legal system remains confusing for families with issues that cut across jurisdictions.

The establishment of a unified family law court that could deal with family law, family violence and child protection has previously been proposed to address the currently sub–optimal siloed legal system. VLA supports the principle of a unified court to comprehensively address the challenges experienced by families with complex needs.

Absent an ambitious reform agenda to deliver a unified court, VLA recommends a strategy to drive changes that improve the system for families with complex needs short of establishing a unified court.

This submission outlines recommendations structured around two main themes: the one court principle and information sharing.

Summary of recommendations

One court principle:

- clarify the threshold test for adjourning Family Law Court[1] proceedings due to Department of Health and Human Services (DHHS) involvement in the family
- DHHS appear at the Family Law Court return date to present to the court the findings of its investigation so that the Family Law Court can make orders that address protective concerns and there is reduced need to initiate a second round of court proceedings in the Children's Court to address protective concerns
- the Children's Court adopt a practice of making family law orders by consent where the DHHS plans to withdraw on the condition that family law orders are made
- in circumstances where DHHS seeks to withdraw from a family but the parents do not consent to family law orders, DHHS appear at the first Family Law Court date to assist the family in the transition to the Family Law Court jurisdiction
- better assist Magistrates to make decisions about suspending time provided by a family law order due to allegations of family violence by making available information on existing family law orders which can then inform analysis of the adequacy of the current care arrangement
- establish a process for the Magistrates' Court to notify the relevant Family Law Court when a decision is made to suspend time provided under existing Family Law Court orders via section 68R; with the notification prompting the Family Law Court to list the matter (if interim orders are in place) or prioritise an application from the parent who has had time suspended (under a final order) within 21 days.

Information sharing:

- the DHHS establish and communicate a consistent and structured approach for receiving and responding to Notices of Risk
- consider expansion of the Co-Located DHHS Liaison Officers program
- establish a database of orders that provides a single repository of family law, family violence and child protection orders that can be accessed by each of the relevant courts (the Family Law Courts, Magistrates' Courts and Children's Court) and by state child protection authorities
- clarify Family Law Court Rules to assist with streamlined sharing of expert reports prepared in Family Law Court proceedings with the Children's Court and child protection authorities
- amend the Victorian *Children, Youth and Families Act 2005* to enable the sharing of Court Clinic and Expert reports with the Family Law Courts
- improved information sharing arrangements between the Children's Court and Family Law Courts should exclude the sharing of DHHS reports such as investigation or disposition reports prepared by child protection case workers.

[1] When the term Family Law Court/s is used in this submission, it is referring to both the Federal Circuit Court and the Family Court of Australia together.

Training:

- provision of training to those working within one jurisdiction on the legislative framework of the other two jurisdictions, the factors considered when making orders in the other jurisdictions and the type of reports prepared and how they are appropriately used.

Introduction

Victoria Legal Aid (VLA) welcomes the Family Law Council's investigation into ways in which the family law system can better support families with complex needs.

VLA assists clients with parenting disputes, family violence and child protection matters. Our data shows that there is a small but significant number of clients with problems that cross over the family law, child protection and family violence jurisdictions. These clients may either be involved in concurrent court proceedings or sequential court proceedings in the separate jurisdictions.

The children at the centre of these parenting disputes and protection proceedings are particularly vulnerable. Thus there is an imperative to consider reform to ensure that the legal system includes design elements that maximise the effectiveness of the justice system in protecting these children.

Case study

After a history of family violence and allegations of sexual abuse of the children by the father, a mother relocated to regional Victoria with the children.

The father followed her there. Upon discovering this, the mother made a notification to the Department of Health and Human Services (DHHS)[2] but DHHS did not get involved.

The father committed further acts of family violence against the mother. The police applied for and obtained a family violence intervention order (FVIO) against the father.

Notwithstanding the history of family violence, the mother facilitated contact with the children as the children wanted to see their father. On one visit, the father failed to return the children to the mother's care. VLA assisted the mother to issue recovery proceedings in the Federal Circuit Court.

An interim arrangement was agreed to by consent that saw the children split between the mother and the father's care. VLA continued to assist the mother at mediation but the dispute could not be resolved and the matter was listed in the Federal Circuit Court. Subsequently concerns emerged about the behaviour of the children in the father's care, and further allegations emerged that the father was continuing to sexually abuse the children. DHHS initiated proceedings in the Children's Court while matters were still on foot in the Family Law Court.

Revised interim family law orders were made, that returned the children to the mother's care (with no contact for the father), and the matter was adjourned in the Family Law Court so that Children's Court's proceedings could run their course. The Children's Court permitted the younger children to continue living with the mother but the older children were placed on out of home care orders as they were exhibiting challenging behaviours. The father continued to seek access to the children living with the mother, with the mother attempting to act protectively.

Then there was a further family violence incidence, this time between the mother and her new partner. DHHS became involved again and the remaining children in the mother's care were removed.

[2] As VLA's practice experience is within Victoria, this submission will refer to the Department of Health and Human Services (DHHS) as the relevant child protection authority involved with families with complex needs.

The Federal Circuit Court is now considering final family law orders which will come into effect when DHHS involvement ceases. The mother would like the children to return to her care. She is no longer living with the new partner and she is undertaking counselling and following DHHS directions.

Improving the role of the legal system in protecting children in families with complex issues is not a new issue. The question of how to best support these families has been considered by research and practitioners working with the family law system for many years. Dating back to the mid–1990s, research has looked at how to improve the interface between family law, child protection and family violence legal systems. As noted by Chief Justice of the Family Court of Australia, Diana Bryant AO:

> 'The outcome of each discrete review and the intent of legislative responses have been very similar. All, quite properly, emphasise the importance of integration, of a whole of system approach, of a client focus, and of reducing the upset and trauma associated with relationship breakdown, particularly for children'.[3]

These reviews and the complementary research have led to law reform and initiatives to improve the intersection between the family law, child protection and family violence jurisdictions. While there have been important developments that have improved the interface between the multiple jurisdictions, VLA's experience suggests that more can be done to consistently support families with complex needs when there is a parenting dispute on foot and there has been a history of family violence or child protection involvement. In particular, procedures and structures should be built into the system so families are not relying on individuals within the respective jurisdictions who are committed to good communication and supporting a parent to navigate the system.

The legal system remains confusing for families with issues that cut across jurisdictions. There is different terminology and processes in each of the jurisdictions. There are outstanding barriers to information sharing resulting in children and parents telling their stories over again in different assessment processes. The risk of conflicting orders persists.[4]

In VLA's experience, this can lead to duplication and perceived delay in resolving care arrangements which creates anxiety and frustration for families. It can also lead to confusion for families because there may be a lack of clarity on who is making decisions about the care and safety of their children.

Case study

VLA is assisting a father seeking primary care of his child, with special needs, through family law proceedings. With the parenting dispute still on foot in the Federal Circuit Court, the DHHS became involved in the family. The child was removed from the mother's care due to the mother's drug use, which affected her ability to provide adequate care for the child. The family law trial date was vacated, and the Children's Court made an order placing the child in the father's care.

[3] The Hon. D. Bryant QC, 'Inaugural Family Law System Conference' (Speech delivered at the Family Law System Conference, Canberra, 19 February 2009).

[4] For further discussion on ongoing challenges see J. Jackson, 'Wisdom from the West' (Paper prepared for the Family Law Conference, Sydney, 10 October 2014) ; J. Jackson, 'Bridging the Gaps Between Family Law and Child Protection' (Research Report, The Winston Churchill Memorial Trust of Australia, 2011).

This smooth transition from the Federal Circuit Court to the Children's Court made it clear to the father which court was deciding the care arrangements for the child.

This, however, was not the same father's experience a few years prior. At that time, the child was in the mother's care and interim family law orders provided for the father to spend time with the child. The father had initiated family law proceedings and was awaiting a final hearing date. In the meantime, the DHHS initiated an investigation into the child's care arrangement with the mother following a notification.

At the same time, the mother also sought a family violence intervention order (FVIO) against the father at the Magistrates' Court. The FVIO suspended the family law orders that provided for contact between the child and the father.

In comparison to the approach taken in the subsequent proceedings, the father found this first experience confusing. Care arrangements for the child were being considered in three jurisdictions. While it was appropriate that the family law proceedings were not progressing while DHHS completed its investigation, this nevertheless caused frustration for the father as the DHHS ultimately did not proceed with a protective application. At the same time, the father's time with the child had been suspended by the FVIO despite the DHHS investigation not raising concerns requiring a protective application preventing the child from being in the father's care. The involvement of three jurisdictions created uncertainty for the father who was unclear about which court was making the decision about contact arrangements.

The new Terms of Reference to the Family Law Council are an important recognition of persisting challenges arising from the intersection of the three jurisdictions and an indication of a renewed interest in addressing the challenges experienced by families with complex needs in our legal system.

Previous research has recognised that a siloed legal system is sub-optimal and has recommended the establishment of a unified family law court that can deal with family law, family violence and child protection.[5] Research of overseas jurisdictions that provide a unified family court system highlight the benefits to families, including:

- one access point into the legal system
- clarity on which judicial officer is responsible for making decisions about the child
- reduced need for adjournments while one court waits for the other court to conclude proceedings
- a centralised intake and triage process that can identify risks at an early stage
- a single court holding all relevant information on the family so that the court can make decisions with the benefit of all the relevant background information
- co-location of appropriate support services at a single court, providing a single and clear access point
- reduced duplication of processes, resources, and information analysis and

[5] See for example, a more recent paper on this by Justice Benjamin, 'Public Law Issues in a Private Law System: Child Protection and Family Law' (Paper prepared for the Family Law Conference, Sydney, 10 October 2014), 10.

- a problem solving approach that holistically addresses all the issues experienced by the family.[6]

The research suggests that if policy makers were to re-imagine the legal system in Australia it would be in the best interest of families, and more resource efficient, to establish a unified court that is able to address family law, family violence and child protection matters.

VLA's practice experience suggest that most families do not experience legal problems that cut across the jurisdictions but a significant minority do, and these are often families with complex needs and vulnerable children. For this reason, VLA supports the principle of a unified court to comprehensively address the challenges experienced by families with complex needs. Recognising the constitutional challenges in establishing a unified court and the significant change that this would encompass, and absent a reform agenda to deliver a unified court, VLA recommends a strategy to drive changes that improve the system for families with complex needs short of establishing a unified court.[7] The recommendations made in this submission are structured around two main themes: the one court principle and information sharing.

[6] J. Jackson, 'Bridging the Gaps Between Family Law and Child Protection', above n 4, 7; J. Jackson, 'Wisdom from the West', above n 4, 6.

[7] The Productivity Commission has similarly recommended that an analysis of the costs and benefits of measures short of a unified system be examined as a priority. Productivity Commission, 'Access to Justice Arrangements' (Inquiry Report No 72, 5 September 2014), 869.

VLA's clients with complex needs

Victoria Legal Aid (VLA) analysed data relating to clients who had received family, youth and children's (FYC) law legal aid services over a five year period (2009–10 to 2013–14).[8] The specific FYC law services provided related to either a parenting dispute, family violence issue or a child protection issue.

Key findings

The data analysis shows:

- between 2009–2014, the majority of VLA clients who received help for their FYC law problem only received assistance for one type of FYC problem (i.e. either for a parenting dispute, family violence or child protection issue)
- however a smaller proportion of clients (12 percent or 11 969 people), received help for at least two types of problems, and an even smaller number (less than 1 percent or 915 people) saw us for all three problems (i.e. they had a parenting dispute, a child protection matter and a family violence matter)
- even though a small percentage of our total clients are presenting with the need for more than one type of FYC legal help (which we refer to here as complex issues or needs), this represents thousands of families. This indicates that there is a group of families with acute and complex FYC legal issues that need a number of services from VLA.

When examining the client group presenting with complex needs, we wanted to test two different potential pathways for accessing services.

First, we wanted to see whether family violence or child protection issues (which are addressed by Victorian state courts) occurred at the same time as parenting dispute matters (which are addressed in the federal family law courts):

- about 30 percent of clients who received assistance with a parenting dispute under a grant of aid in 2012–13 also received assistance with a child protection or family violence issue either one year before or one year after receiving assistance for the parenting dispute
- the most common 'cluster' for this type of client was the combination of a parenting dispute and a family violence matter. These clients received help for both a parenting dispute and a family violence matter within a two year period
- family violence and child protection matters were also sometimes linked. About one fifth of adult clients who received assistance with a child protection matter under a grant of aid in 2012–13 also experienced a parenting dispute or family violence issue in the year before and/or after the child protection issue.

[8] Legal aid services included legal advice, duty lawyering, minor work assistance (help with one-off tasks such as perusal of documents or writing a letter) and representation under a grant of aid, delivered by the VLA staff practice or legal aid funded private practitioners.

Second, we wanted to see over what time period clients were returning to VLA for help with FYC law legal issues. Of the clients who we assisted with a parenting dispute grant of aid in 2013–14:[9]

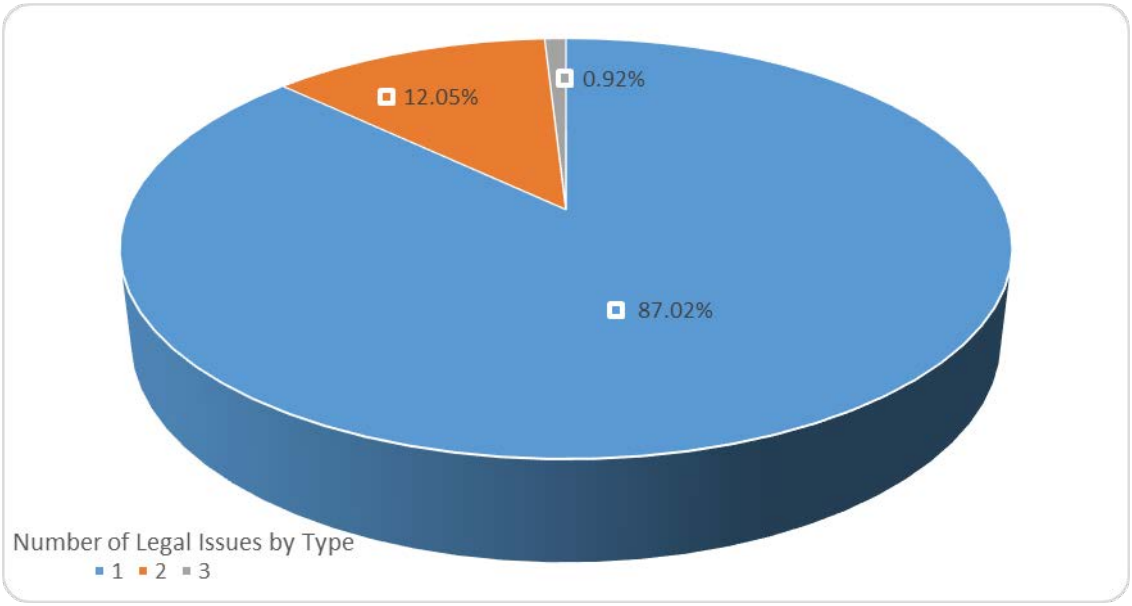
- almost 75 percent were not receiving assistance from VLA for the first time
- almost 45 percent had first sought assistance from VLA for a FYC law issue at some point in the five year period prior
- most multiple contacts with VLA for FYC law problems were within a two to three year time span and were for a parenting dispute. The second most common reason for first contacting VLA was a family violence issue. For those that first contacted VLA four to seven years ago, however, a higher percentage did so for a child protection issue
- 19 percent of clients first sought assistance for a family violence issue.

Data

During a five year period (2009–10 to 2013–14), VLA assisted 99 294 unique clients with parenting dispute, family violence and child protection issues.

Of these clients, approximately 87 percent (or 86 410 clients) received assistance for only one type (i.e. parenting dispute, family violence or child protection) of FYC law issue. Thus, the majority of these VLA clients over the five year period have only received assistance for one type of FYC law issue.

Graph 1: Unique FYC Law Clients Assisted in the Past Five Years by Number of Legal Issue Types (i.e. Parenting Dispute, Family Violence and / or Child Protection)



Of the remaining clients in the cohort from the five year period, we calculated what percentage received assistance for two types of FYC law issues (even if that second assistance had been delivered prior to the five year period). Approximately 12 percent (or 11 969 clients) have received

[9] The data period selected for each section of analysis enables the most up to date analysis of the issues.

assistance for two types of FYC law issues. Less than 1 percent (or 915) have received assistance for all three types of FYC law issues.

Of those clients who received assistance for two or three types of FYC law issues, one of which was parenting disputes, the most common second issue was family violence (76 percent) (see Table 1). This is compared to 16 percent of such clients whose second issue was child protection. Only 8 percent of clients who have received assistance for a parenting dispute issue have also received assistance for both family violence and child protection issues.

Table 1: Clients Assisted with a Parenting Dispute Issue and One or More Other FYC Law Issue

Sub-Program	Unique Client Count (No.)	Clients with Parenting Dispute Issue and One or More Other FYC Law Issue (%)
Family Violence	8,550	76
Child Protection	1,799	16
Child Protection + Family Violence	915	8
Total	11,264	100

A cluster of legal issues

We then wanted to see how many of our clients are experiencing family violence or child protection issues (which are addressed under Victorian legislation in state courts, most typically the Magistrates' and Children's Courts respectively) at the same time as they are receiving assistance for a parenting dispute matter (which are addressed under the *Family Law Act 1975* (Cth) in the Family Law Courts).

To undertake this analysis, we have taken as a starting point the clients who received a grant of aid for a parenting dispute matter in the 2012–13 financial year (1 604 clients).

We then checked whether they received assistance for a family violence or a child protection issue in the one year prior or the one year after receiving assistance for the parenting dispute issue.

Almost seventy percent of this group of clients (1 116 clients) received no assistance for a child protection or family violence issue in the year prior or the year after receiving assistance for a parenting dispute issue.

The remaining 30 percent of clients (488 clients) have had a family violence and / or child protection issue either in the one year prior or the one year after receiving assistance for a parenting dispute issue (see Table 2).

The most common cluster of legal issues was a parenting dispute with a family violence issue in the one year prior (173 clients). VLA's data system does not track whether children are listed as affected family members on family violence intervention orders. However, given the close proximity of the family violence issue to the parenting dispute issue, we would expect that many are linked to complex issues within the one family. This finding supports the view of family lawyers that the family

violence lists at state Magistrates' Courts are increasingly the first point of contact with the legal system for parents who also have a parenting dispute to resolve.

The second and third most common clusters were a parenting dispute with a family violence matter in the year after (123 clients) and family violence issues both before and after receiving assistance for the parenting dispute (53 clients).

Table 2: Number of Clients with a child protection or family violence issue in the one year prior and / or in the one year after receiving grant assistance for a parenting dispute in 2012-13

Legal Issue One Year Prior to Receiving Grant of Assistance for a Parenting Dispute	**Legal issue One Year After Receiving Grant of Assistance for a Parenting Dispute**	**Number of clients**
Family Violence		173
	Family Violence	123
Family Violence	Family Violence	53
Child Protection		48
	Child Protection	46
Child Protection	Child Protection	12
Child Protection	Family Violence	10
	Child Protection and Family Violence	7
Family Violence	Child Protection and Family Violence	5
Child Protection and Family Violence	Family Violence	4
Family Violence	Child Protection	3
Child Protection and Family Violence		2
Child Protection	Child Protection and Family Violence	2
		488

Clients experiencing a parenting dispute and a child protection issue in the year prior and / or in the year after receiving assistance for the parenting dispute issue account for 22 percent of the clients with a cluster of legal issues.

Similar to family violence, VLA's data system does not track whether the children at the centre of these parenting disputes are the same as those involved in the child protection issue. However, given the proximity of the two activities, we would expect that these are commonly linked.

We ran the same analysis above using a child protection issue as the starting point. In 2012–13, 2 982 adult clients received a grant of assistance for a child protection issue. Of these clients, 620 (approximately 20 percent) also experienced a parenting dispute or family violence issue one year prior and / or one year after receiving assistance for the child protection issue.

The most common combination was a family violence issue in the one year prior to receiving assistance for the child protection issue (168 clients). Equal second most common was a parenting dispute issue in the one year prior or a family violence issue in the year following assistance for a child protection issue (120 clients each).

This analysis indicates that there a group of VLA clients who present with particularly complex needs that need assistance with multiple legal issues within a two year time period.

Long term clients

Finally, we wanted to see over what time period clients were returning to VLA for assistance with FYC law legal issues. We took as a starting point, that VLA assisted 1 405 clients with a parenting disputes grant in 2013–14.

For approximately 25 percent of these clients (356 clients), this was the first interaction with VLA for an FYC law issue (a parenting dispute, family violence or child protection issue). See Table 3.

Table 3: Number of Years between VLA Assistance for a Parenting Dispute Grant of Assistance and First Contact with VLA

First contact with VLA for clients who had a parenting dispute grant in 2013-14	No. of Clients	% of Clients
Parenting dispute grant of assistance in 2013-14	356	25.3
Up to 5 years prior to assistance in 2013-14	626	44.6
5 to 10 years prior to assistance in 2013-14	237	16.9
Over 10 years prior to assistance in 2013-14	186	13.2
	1405	**100.0**

Almost 75 percent of clients who received a grant of assistance for a parenting dispute in 2013–14 were not accessing FYC law assistance from VLA for the first time. VLA assisted 13 percent of the cohort with a FYC law issue for the first time over ten years ago. For 17 percent of the cohort, they first came into contact with VLA for a FYC law issue between five and ten years before the assistance in 2013–14.

Seventy-five percent of these clients, when they first contacted VLA, were seeking assistance with a parenting dispute. Nineteen percent first sought assistance for a family violence issue.

For the clients who had received assistance for the first time in the five year period prior to 2013–14, most had contacted VLA within the three years prior and their first contact was most commonly about a parenting dispute issue. This is not surprising, as the client may have received a legal advice or a duty lawyer service for the parenting dispute, for example, before a grant of aid was approved in 2013–14.

The data also indicates a slightly higher percentage of clients first contacting VLA for a child protection issue if their first contact with VLA was in the four to seven year period prior to the parenting dispute grant of assistance in 2013–14. This may be worthy of further investigation in order to determine if there is a link between child protection involvement and the need for further family law proceedings to determine living arrangements for children in the longer term.

Conclusion

The majority of VLA clients who are receiving help for a FYC law problem are only receiving assistance for one type of FYC law problem – either a parenting dispute, family violence or child protection issue.

However, there are a small proportion of clients (who represent thousands of families) who are receiving assistance for at least two types of problems. These clients are most likely to have a parenting dispute and a family violence issue. Child protection and family violence is also linked.

VLA is assisting some clients multiple times mostly within a five year period. This indicates there are families with acute and complex FYC legal issues who receive an intensive service delivery by VLA.

For these families with complex issues, the most common pathway is a family violence matter followed by a parenting dispute.

This suggests there is an imperative to consider how the legal system incorporates design elements that maximise the effectiveness of the justice system for children in these families presenting with complex issues. This is particularly so given parenting disputes, family violence intervention order matters and child protection issues are currently addressed through three separate legal jurisdictions.

Thus the data supports the renewed focus through the Terms of Reference on addressing the persistent challenges arising from the intersection of the three jurisdictions.

One court principle

The Family Law Council, in previous reports, has recommended the adoption of a 'one court principle'. The principle requires that:

> 'At the earliest possible point in managing a case, the decision should be taken whether a matter proceeds under state or territory child welfare law or under the *Family Law Act*. Once that decision has been taken, in all but the most exceptional circumstances, the matter should proceed in the chosen court system'.[10]

VLA supports the 'one court principle'. Our practice experience, however, recognises that systems need to be in place not only to identify the appropriate forum as early as possible but also procedures for when protective concerns arise or proceedings are initiated in another jurisdiction once proceedings are already on foot in another.

Applying the one court principle in the Family Law Court – when child protective concerns arise during Family Law Court proceedings

Scope of section 69ZK of the Family Law Act

Under section 69ZK, the Family Law Courts must not make an order in relation to a child who is under the care of a person under a child welfare law (albeit with some exceptions). The precondition that a child be 'under a child welfare law' is ill defined. This leads to a great degree of variance in how 'under a child welfare law' can be interpreted. For some practitioners, it is interpreted as the DHHS making inquiries or investigating a notification. For others it means that proceedings are on foot or orders have been made in the Children's Court.[11]

This can lead to inconsistent practice by family law practitioners when determining whether to progress Family Law Court proceedings once DHHS becomes involved. It can also cause confusion for parents who are unclear about when and why Family Law Court proceedings must adjourn due to DHHS involvement, particularly if parents are self-represented in the Family Law Court proceedings.

There would be benefit in clarifying the threshold test for adjourning Family Law Court proceedings due to DHHS involvement in the family.

Proceedings adjourned for DHHS to investigate

Despite the different approaches that can be taken to section 69ZK, it is quite common for proceedings in the Family Law Courts to be adjourned to enable the DHHS to investigate a protective concern arising from a Notice of Risk. Until the next return date, at which DHHS can provide the findings of its investigation to the Family Law Court, it is appropriate that the Family Law Court take a cautious approach to the interim care arrangements for the child.

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[10] Family Law Council, 'Family Law and Child Protection' (Research Report, Family Law Council, September 2002) 13.

[11] In Victoria, child protection issues are addressed in the specialist Family Division of the Children's Court of Victoria. The Court has jurisdiction to hear a range of applications and make a variety of orders in relation to the protection and care of any person under the age of 17 years.

Our experience, though, is that multiple adjournments are often required because DHHS investigations are not conducted within the period of the adjournment. We recognise this is due, in part, to the resource constrained environment in which the DHHS is operating. Nevertheless, delay causes frustration for parents and multiple adjournments result in unnecessary costs for the court and VLA (where one or both of the parents is legally aided).

If the investigation identifies protective concerns that require the care or contact arrangements for the child to be altered, we are of the view that, in most cases, separate proceedings need not be initiated in the Children's Court. Rather, the Family Law Court (assisted by the findings of the investigation) could remain the appropriate forum for making or varying the care arrangements under family law orders so that the protective concerns are addressed. This would be more consistent with the one court principle. It would reduce confusion for parents about who is making decisions about the care of their children.

This recommendation is also in line with research by Fehlberg and Kelly that found in cases where there is an overlap between family law and child protection, the Family Law Courts were the preferred jurisdiction for resolving the matter. One reason for this was the view that family law orders were more stable and final.[12]

While there are benefits in remaining within the Family Law Court once proceedings are on foot, the research also shows that child protection authorities do initiate child protection proceedings in the Children's Court following the making of final family law orders in the Family Law Courts. A protection application is made because the child protection authority lack confidence that the arrangements made by the Family Law Court address the protective concerns identified.[13]

The risk of this is reduced in Victoria through the protocol agreed to by the DHHS and the Family Law Courts. Despite this, VLA is aware of instances where DHHS has initiated proceedings shortly after final orders have been made in the Family Law Courts. The risk of this could be further reduced through changes to DHHS practice.

It is VLA's experience that DHHS rarely appears at the return Family Law Court date to present to the court the findings of its investigation.[14] However, the making of a subsequent protection application could be avoided by DHHS appearing in the Family Law Court matter where the investigation raises protective concerns and the DHHS has a view on the orders that would appropriately address the identified protective concerns. By appearing and providing its view on the orders and the steps that need to be taken to address the protective concerns, information is provided to the Family Law Court to assist with decision-making.

This addresses one of the recognised limitations of the Family Law Courts – their lack of investigative powers.[15] As discussed later in this submission, though, there would be benefit in also

[12] Fehlberg and Kelly cited in Family Law Council, 'Family Law and Child Protection', above n 10, 37.

[13] Family Law Council, 'Family Law and Child Protection', above n 10, 13 and 37.

[14] This reflection was also made in Judge Benjamin, 'Public Law Issues in a Private Law System: Child Protection and Family Law', above n 5, 3.

[15] T. Hands and V. Williams, 'Report on the Intersection of the Family law and Child Protection Jurisdictions in Western Australia' (Report Prepared for the Family Court of Western Australia, July 2012), 64.

providing training to judicial officers on the nature of reports prepared by DHHS and how they are used in judicial decision making in the Children's Court so there is appreciation of the benefits of the information provided but also acknowledgement of its limitations. This will assist judicial officers in giving appropriate weight to the investigation findings when making orders.

It also reduces the need for a second round of court proceedings because, in DHHS' view, the family law orders do not adequately address the protective concerns identified. This is of benefit to the family and the child as their dispute is contained within one court; enabled by greater coordination and information sharing.

Case study

A mother sought assistance from the VLA duty lawyer service at the Federal Circuit Court. The mother had recently been released from a short period in prison. While in prison, one of her children had been placed in the temporary care of the child's father. On the mother's release, the father sought to retain the child in his care.

The father contacted the DHHS expressing concerns that the child was exhibiting inappropriate sexual behaviour, in his view, a result of witnessing the behaviour of the child's older sibling. He asserted that it would thus be unsafe for the child to return to the mother's care where the child would live not only with the mother but the sibling. In the period before the first return date, the eldest child had made disclosures to the police regarding the father sexually abusing her when she was the same age as the child currently at the centre of the family law dispute. The father was subsequently charged by the police.

In the period while the police were investigating the allegations but had yet to charge the father, the DHHS recommended to the Federal Circuit Court that the child reside with the paternal grandparents and any time spent between the child and her father be supervised.

The mother had already subpoenaed the DHHS records in an effort to demonstrate that she posed no risk to the child. Of relevance was the lack of concern on the DHHS' part with the return of her other children into her care on her release from prison. While this enabled the duty lawyer to produce these documents to the court and make submissions that the mother posed no danger to the child, the DHHS had yet to complete its investigations. The matter was adjourned.

The court agreed that the father have supervised time only with the child. However, the court was not yet willing to return the child to the mother as the court sought to respond to the DHHS concerns about the impact of the teenager's behaviour on the child. The other children remained in the mother's care. The court ordered that the child have regular time spent with the mother on an unsupervised basis.

During the adjournment, the DHHS' view shifted when the father was charged by police and they indicated to the Federal Circuit Court that they no longer believed the mother and child should reside separately. VLA made an urgent application to the court for a change in residency of the child to the mother.

Recommendations

- clarify the threshold test for adjourning Family Law Court proceedings due to DHHS involvement in the family
- DHHS appear at the Family Law Court return date to present to the court the findings of its investigation so that the Family Law Court can make orders that address protective concerns and there is reduced need to initiate a second round of court proceedings in the Children's Court to address protective concerns.

Applying the one court principle in the Children's Court – when DHHS is ready to withdraw from a family

When DHHS is satisfied that protective concerns have been addressed and the current care arrangement (brought about by Children's Court orders) is tenable over the long run, the DHHS will regularly advise parents of its intention to withdraw from the family if the parents (or carers) seek family law orders to maintain the safe care arrangement.

The distinction between the two jurisdictions – while clear to those working within the child protection and family law systems – is not evident to many parents. It can be confusing, then, for parents to initiate an application in a different court. With parents finding it difficult to navigate a new and different system, it is not uncommon for Children's Court proceedings to be adjourned multiple times before a parent makes such an application in the Family Law Court. This has cost implications and results in unnecessary DHHS involvement in the family for an extended period of time despite protective concerns having been addressed.[16]

Rather than relying on parents to navigate the transition to, and engage in a legal proceeding in, a new and different court system unassisted, we recommend the Children's Court adopt a practice of making family law orders by consent where DHHS plans to withdraw on the condition that family law orders are made. The Family Law Council has made a similar recommendation previously.[17]

In VLA's view, no legislative amendments are required for this practice to come into effect as the *Family Law Act* already allows for it. Under section 69J, courts of summary jurisdiction (of which the Victorian Children's Court is one) are vested with federal jurisdiction to make family law orders.

To assist in the take up of this practice, we recommend training for relevant judicial officers, court staff, the DHHS workers and lawyers (DHHS lawyers, VLA in-house lawyers, and practitioners

[16] Further, while VLA grant guidelines are focused on assisting vulnerable clients, the Commonwealth family law guidelines also require there to be a substantial issue in dispute for a parent to be eligible for assistance. Thus a grant of legal aid is not necessarily available to assist families in filing in a family law court where a child protection order is in place and the DHHS has recommended that family law orders be made on lapsing of the child protection order.

[17] Family Law Council, 'Family Law and Child Protection', above n 10, 12.

undertaking legally aided or privately funded case work) on family law orders and when it is appropriate for the Children's Court to make such an order.

We recommend that parents not consent to the making of family law orders by the Children's Court without receiving legal advice. To assist parents in accessing this advice, we recommend that the DHHS adopt a regular practice of recommending parents (or carers) seek legal advice before consenting. In parallel, as noted above, we recommend training to build the family law knowledge of lawyers working in the child protection jurisdiction so that a parent's current lawyer can easily provide this advice.

In circumstances where the parents (or carers) do not consent to family law orders, an application will still need to be made in a Family Law Court. We recommend that the DHHS appear at the first court date to assist the family in the transition to the Family Law Courts. The role of the DHHS would be to provide a history of child protection involvement up until the application in the Family Law Court and DHHS' preparedness to withdraw if safe care arrangements endure.

Recommendations

- the Children's Court adopt a practice of making family law orders by consent where the DHHS plans to withdrawn on the condition that family law orders are made
- in circumstances where DHHS seeks to withdraw from a family but the parents do not consent to family law orders, DHHS appear at the first Family Law Court date to assist the family in the transition to the Family Law Court jurisdiction
- to assist in the take up of these practices, we recommend training for relevant judicial officers, court staff, the DHHS workers and lawyers (DHHS lawyers, VLA in-house lawyers, and private practitioners) on the family law jurisdiction, family law orders and when it is appropriate for the Children's Court to make such orders.

Applying the one court principle when a parent makes an application for a Family Violence Intervention Order (FVIO)

FVIOs are an important tool for keeping children and parents safe from family violence. When making a FVIO, the Magistrates' Court of Victoria can include terms, if safe to do so, that allow for respondents to spend time with children who may be protected by the order as affected family members. The exceptions that can be included on a FVIO, for example, may permit arrangements (in writing or another form stated) for the child to live with, spend time with or communicate with the respondent. As such, a FVIO can sit alongside – and not contradict – a family law order.

In the alternative, the state Magistrates' Courts are permitted under section 68R of the *Family Law Act* to vary or suspend an existing family law order without the consent of the parties. This is an appropriate, and necessary, provision that can provide safety for children in response to family violence.

Case study

An interim family law order provided for the children to live with the mother and spend time with the father. There was a pending Federal Circuit Court hearing to determine the father's application that the children live with him.

The mother then fled from interstate to Victoria after the equivalent of a FVIO was obtained by the police against the father of the children. The children were protected by the order, as there were significant concerns of violence towards the mother and the children arising from threats to kill. The father was facing criminal charges arising from the family violence incidents.

Now in Victoria, the mother sought a FVIO. The interim family law orders permitted the father contact with the children. VLA assisted the mother, arguing that it was necessary to suspend the father's time with the children, provided under the family law order, in recognition of the seriousness of the threat to kill. The Magistrate made a FVIO which suspended the time under the family law order.

There are concerns that section 68R can be misused to circumvent family law orders. The risk is low, in part because Victoria Police makes a large number of the applications for FVIOs in Victoria. In 2013–14, police made 66 percent of FVIO applications.[18] However steps, discussed below, can be taken to minimise the ability to forum-shop so that the best interests of the child remain paramount.

Case study

Interim family law orders were in place in the lead up to the school holidays with care arrangements to be shared over the holiday period. Early in the holidays the mother made an application for a FVIO and sought the suspension of time under the family law orders. The allegations made in the application were not new and had already been heard by the Federal Circuit Court. Yet the Magistrate's Court made an order suspending time. As a result the children stayed in the mother's care.

The father issued a Recovery Order in the Federal Circuit Court and sought an order from the court setting aside the suspended time. The Family Law Court agreed and ordered that the children be returned to his care.

Final family law orders have now been made with the children living with the father. The mother continues to apply for FVIOs including the children as affected family members in an effort to stop the father's time with the children.

It is essential that the ability to suspend time is available to Magistrates as a means of keeping children safe. However, it is also important to ensure that the Magistrates' Court does not unwittingly alter appropriate family law orders. If allegations of family violence are not new, it is appropriate for the Magistrate to recommend that the parent address the issue in the relevant Family Law Court by seeking an amendment to the existing family law orders, as it may be the case that the Family Law Court has already tested the allegations of family violence. This would mean it was unnecessary for the Magistrates' Court also to consider the allegation, unless a new allegation is made.

At present, however, knowing when to refer the matter back to the Family Law Court is reliant on the information provided by an applicant or on the sitting Magistrate deciding to inquire further.[19] The

[18] Magistrates' Court of Victoria, 'Annual Report 2013-14' (18 September 2014), 91.

[19] The Family Law Council has noted that there is an information gap and Magistrates may not know of the extent of the proceedings in the Family Law Court. See Family Law Council, 'Improving Responses to Family Violence in the Family Law System: An advice on the intersection of family violence and family law issues' (Family Violence Committee of the Family Law Council, December 2009) 56.

proposal further below in this submission to establish a single database of orders would enable the Magistrate to check the care arrangements provided under any family law order. It is understandable that, if in doubt, a Magistrate will likely preference the making of an FVIO. A database of orders would assist Magistrates in having the confidence needed to not suspend time if the care arrangements provided by the family law order address the allegations being made in the FVIO application.

Like in the Children's Court, there would be benefit in providing training on the family law system to judicial officers and lawyers working in the family violence jurisdiction. In particular training could assist with the reading of family law orders (accessible through the database) and understanding the consideration given to family violence by the Family Law Court when making family law orders.

Case study

The child was in the care of their father pursuant to family law orders. The mother sought a FVIO against the father and proposed to include the child as an affected family member. The Magistrate refused to name the child on the FVIO and indicated to the applicant that the Federal Circuit Court was the appropriate forum for determining contact arrangements.

Subsequently, the mother made repeated reports to DHHS and then refused to return the child to the father in accordance with the family law orders. Only one of the seven child protection notifications progressed to an investigation. Upon investigating, the DHHS determined that no risk could be substantiated and that the Federal Circuit Court was the proper jurisdiction to decide the child's time spent with the father.

Under section 68T of the *Family Law Act,* the suspension or variation to time made under section 68R ends at the end of the interim order period or twenty-one days after the interim order was made, whichever takes effect earlier. This incorrectly assumes that a twenty-one day period is sufficient for the Family Law Court to consider the allegation and vary the family law order if required.

Furthermore, at present it cannot be assumed that the suspension of time under a FVIO places the Family Law Court on notice that an application to vary the parenting order be listed within twenty-one days. With already busy lists, the Family Law Courts may not regard this matter as urgent when compared to, for example, a Recovery Order Application. Furthermore, in regional areas, waiting times are significant and this may prevent a matter from returning to court within twenty-one days. If the matter does not return to the Family Law Court within the twenty-one days, there is confusion and uncertainty about care arrangements for children.

Case study

The eldest of three children lived with the father. The mother, who had the two other children in her care, was seeking to have the third child returned to her care. A Family Report indicated that there was an insecure attachment between that child and the mother and it would be detrimental to the child's emotional development to return the child to the mother's care.

However, on two occasions the child ran away to the mother's house. On the first occasion, the mother returned the child to the father's care. On the second occasion, the mother refused to return the child. The mother sought a FVIO, which was granted *ex parte*. The FVIO included all three children as affected family members. The order also suspended the time provided under the family law orders so the eldest child could not be returned to the father and the time arrangements for the two younger children were also suspended. The suspension stood for 21 days.

The father contested the FVIO.

The father also applied for a Recovery Order in the Federal Circuit Court. He was not able to get the matter listed within twenty-one days. After the interim FVIO suspending the family law orders expired, the mother still refused to return the children pursuant to the family law orders.

The matter did not return to the Federal Circuit Court for a further four weeks. Once back in court, the judge found that there was no risk to any of the children when in the father's care.

We recommend that a process is established requiring the Magistrates' Court to notify the relevant Family Law Court when a decision is made to suspended time under section 68R; with the notification then prompting the Family Law Court to list the matter (if interim orders are in place) or prioritise an application from the parent who has had time suspended (under a final order) within 21 days.

Recommendations

- better assist Magistrates to make decisions about suspending time provided by a family law order due to allegations of family violence by making available information on existing family law orders which can then inform analysis of the adequacy of the current care arrangement
- establish a process for the Magistrates' Court to notify the relevant Family Law Court when a decision is made to suspend time provided under existing Family Law Court orders via section 68R; with the notification prompting the Family Law Court to list the matter (if interim orders are in place) or prioritise an application from the parent who has had time suspended (under a final order) within 21 days.
- to assist with the above, we recommend training on the family law system to judicial officers and lawyers working in the state family violence jurisdiction.

Information sharing

Information sharing assists courts to make orders informed by all the relevant and available information. It also reduces the duplication of expert reports, which has resource implications for the courts but also leads to ongoing intervention into the family and risks unnecessary trauma arising from parents or children re-telling their story.

There are provisions within existing legislation and steps have already been taken to improve information sharing between the family law and child protection jurisdictions in Victoria. From VLA's perspective, developments have been helpful in improving information sharing but further steps could be taken to assist families with complex issues that are in more than one jurisdiction concurrently or sequentially.

Current Measures

Notice of Risk

As noted earlier in this submission, a limitation for the Family Law Courts is their lack of investigative powers. Thus decision making by the Family Law Courts is generally only informed by the information provided to the court by the parties in the proceedings.[20] The Notice of Risk, provided by sections 67Z and 67ZA of the *Family Law Act*, is one tool to engage the DHHS in Family Law Court proceedings. It does so by notifying the DHHS of a protective concern that has been disclosed during the proceedings. The Notice of Risk process is also a tool for sharing information on protective concerns with the DHHS. This is a notification that the DHHS would not otherwise have had, and can inform decision-making on whether to investigate and become involved in a family.

There is lack of clarity, however, on the process followed by the DHHS once a Notice of Risk is submitted. It is unclear whether there is a central system for receiving notices or a consistent practice at the DHHS' various offices for determining whether to investigate a notification or the timeframe for responding to the Family Law Court. Without clear communication by the DHHS back to the court, in VLA's practice experience it may be unclear whether this means the DHHS has assessed the notification and determined there to be no risk or the DHHS is still investigating. This means the effectiveness of the Notice of Risk in facilitating information exchange and the provision of information to the Family Law Court, so that it can make orders in the best interests of the child, is weakened. There would be benefit in establishing a consistent and structured approach, for example, it could be a requirement that the DHHS provide a response to the Family Law Courts following a Notice of Risk by a specific date post notification.

Co-Located DHHS Liaison Officers

The Co-Located DHHS Liaison Officers at the Melbourne and Dandenong registries of the Family Law Courts in Victoria assist with the sharing of information between the Family Law Courts and child protection authorities. The liaison officers are also available to provide information to lawyers as to when the DHHS has some involvement with a particular family or child. In one instance, for

[20] In some cases the Family Law Courts will appoint an Independent Children's Lawyer (ICL) who arranges for the necessary evidence, including expert evidence, to be obtained and put before the court.

example, a VLA duty lawyer did not proceed with a Recovery Order application after seeking information from the liaison officer on the DHHS' involvement in the family.

This process for accessing information can reduce the initiation of an additional legal process in a child's life unnecessarily and inappropriately (as family law proceedings must wait until Children's Court proceedings conclude). It also assists in reducing the caseload of the Family Law Courts.

The liaison officers also assist with the provision of information on previous DHHS and Children's Court involvement in the family. This increases the information available to the Family Law Courts, which can inform evidence based decision-making.

Case study

Three children under the age of 16 were at the centre of a parenting dispute in the Federal Circuit Court. Both parents made allegations of family violence, including violence towards the children. The children were confused about their father's medical condition, which had resulted in erratic behaviour. As a result, the mother claimed that the children were scared of their father and did not want to spend time with him.

DHHS records showed notifications were made some months after court proceedings began. The notifications made allegations of inappropriate physical disciplining of the children by the mother.

DHHS became involved again before the Federal Circuit Court proceedings could conclude due to a notification raising serious allegations regarding the behaviour of the mother's new partner. DHHS investigated these allegations and ultimately made a protection application in the Children's Court.

The Federal Circuit Court was advised of the proceedings in the Children's Court and made final orders for the children to live with the father with time as agreed from time to time with the mother.

A year later, after DHHS involvement in the family ceased, the mother made a new application in the Federal Circuit Court for time with the children.

Throughout, the Co-Located DHS Liaison Officer provided assistance with the transition from the Federal Circuit Court to the Children's Court and back to the Federal Circuit Court. The Officer assisted in providing access to Children's Court documents so that the complex issues could be better understood when considered by the Federal Circuit Court. This has included the cultural background of the family, the family violence matters, and the wishes of the children.

There are limitations to the model, however. Currently, resources do not permit liaison officers to be co-located at the registry each day that the Court sits. Furthermore, family law matters are heard in regional areas without access to this information point.

An important limitation in the current approach is reliance on lawyers or the court seeking information from the Co-Located DHHS Liaison Officer rather than points in a legal proceeding – such as DHHS involvement in the family or a new court application – triggering the sharing of information.

Recommendations

- the DHHS establish and communicate a consistent and structured approach for receiving and responding to Notices of Risk
- consider expansion of the Co-Located DHHS Liaison Officers program.

Additional Measures

Previous amendments to the *Family Law Act have* recognised the importance of making information on existing or prior Children's Court orders, current Children's Court proceedings and FVIOs available to the Family Law Courts. The provision of such information to the court is relevant for two reasons. The first reason is a practical one. If Children's Court orders are in place, the Family Law Courts cannot make an order under the *Family Law Act*.[21] Second, and of particular importance to this inquiry, is the availability of this information to assist the Family Law Court in its deliberations on what care arrangement is in the best interests of the child.[22] The making of a FVIO or DHHS involvement in the family are indicators of dynamics within the family that are relevant to the making of an appropriate family law order.

The Family Law Council has previously recommended legislative amendments to place a positive obligation on parties to inform the Family Law Courts of any relevant orders made in child protection or family violence jurisdictions.[23] Amendments to the *Family Law Act* introduced in 2011 adopted this recommendation. Section 60CI now places the onus on parties in Family Law Court proceedings to disclose this information to the court.[24]

While the amendments reflect an important objective – placing all information in front of the court to assist with evidence-based decision-making – it does so by placing the onus on the parties to proceedings rather than building information sharing arrangements into the system. This may not occur, though.[25] This risks information deficits persisting and the Family Law Courts making orders that do not take into account violence or abuse identified in the other jurisdictions.

While this may be less of an issue when parties are legally represented, SRLs in the jurisdiction may not turn their mind to the disclosure of this information.[26] It can be an issue even when the party is legally represented. Duty lawyers at the Family Law Courts, for example, find that information about DHHS involvement may not be disclosed,[27] even when inquiries with the client are made. A failure to

[21] *Family Law Act 1975* (Cth), s69ZK.

[22] Family Law Council, 'Improving Responses to Family Violence in the Family Law System: An advice on the intersection of family violence and family law issues', above n 1913, 57.

[23] Ibid.

[24] *Family Law Act 1975* (Cth), s60CI.

[25] Family Law Council, 'Improving Responses to Family Violence in the Family Law System: An advice on the intersection of family violence and family law issues', above n 19, 55.

[26] Ibid.

[27] Ibid.

disclose may arise from a parent's lack of understanding that the jurisdictions are different; and even if there is knowledge of the separate jurisdictions, an inadvertent assumption may be made that information is shared between the courts. New information may also arise, for example, when a teacher or maternal health nurse makes a notification to the DHHS while Family Law Court proceedings are already on foot.

Furthermore, obtaining this information may be particularly difficult when assisting vulnerable clients – such as those with disability, an acquired brain injury, literacy issues or English as a second language – as they may not be able to clearly detail the extent of DHHS, Children's Court or Magistrates' Court involvement to date.

Database on Existing or Prior Court Orders

To improve evidence based decision making, VLA's practice experience suggests that processes should be built into the system so that information sharing is triggered at certain points, rather than relying on the Family Law Courts to have some knowledge of a protective concern (current of historical) to prompt a Form 4 Notice, a subpoena for child protection documents, a section 69ZW report or an information request to the Co-Located DHHS Liaison.

We recommend, therefore, the establishment of a database of orders.[28] The database would include family law, family violence and child protection orders. It would be accessible by court staff at all relevant courts (Family Law Courts, Magistrates' Courts and Children's Courts) and child protection agencies. We would suggest that a record in the database (as opposed to the underlying order itself) could not be used as evidence in court proceedings. Rather, it would be a tool for alerting the respective jurisdictions to current and previous litigation and orders.[29]

The Family Law Courts would be able to access the database to check if there has been previous child protection involvement with a family. If so, this could assist the court in identifying the need to subpoena child protection documents, independent of information being disclosed by parties which indicates there may be benefit in making such an order.

The database would also be useful to the child protection jurisdiction. For example, when the DHHS becomes involved in a family (independent of a Notice of Risk notification), the DHHS could adopt a procedure requiring the database to be checked to see if any Family Law Court proceedings are on foot.[30] If so, we would recommend that an additional procedure be adopted requiring DHHS to advise the Family Law Court that it is now involved in the family. This would assist the Family Law Court in determining whether to adjourn the family law proceedings.

This reduces the risk of parallel proceedings continuing in the Family Law Court because the Family Law Court is unaware of an application in the Children's Court. It would also prompt DHHS to

[28] The Family Law Council has previously recommended a national register for family violence intervention orders; Family Law Council, 'Improving Responses to Family Violence in the Family Law System: An advice on the intersection of family violence and family law issues', above n 19, 58. The recommendation in this submission goes further by recommending a database not only for family violence intervention orders but family law and child protection orders as well.

[29] Ibid.

[30] T. Hands and V. Williams, 'Report on the Intersection of the Family law and Child Protection Jurisdictions in Western Australia', above n 15, 100.

consider whether the matter could continue in the Family Law Court, and the Family Law Court address the protective concerns through family law orders, consistent with the one court principle.

Such a database would also be of benefit to the Magistrates' Court when considering FVIO applications which also seek a suspension of time under a family law order (as discussed in the previous section). The database could also be used as the architecture to achieve a national scheme for FVIOs (as proposed in the National Action Plan to Reduce Violence against Women). VLA supports the development of a national scheme.

If the recommendation to establish a database was adopted, it importantly would help to place the obligation on the system to share information on a family's involvement in one of the other jurisdictions. Shifting the obligation is important given the recognition that families with complex needs are often the most vulnerable, and thus the onus should be on the system to maximise the comprehensiveness and timeliness of information sharing to assist courts to make decisions in the best interests of the children involved with all the available information.

Sharing of Reports

If an issue needs to be considered by another court, there would be benefit in courts exchanging information. This supports decision-making informed by the available information, reduces the duplication of reports (which carries resource implications) and reduces the risk of exposing children to system abuse (as the child is re-interviewed by practitioners preparing separate reports for each court).

- Materials prepared in Family Law Court Proceedings

Section 121 of the *Family Law Act* prohibits the publication or dissemination of court proceedings to the public or a section of the public. Professor Chisholm, in his review of information sharing procedures, was of the view that this does not prevent the sharing of Family Law Court documents with child protection authorities. However he noted that the current practice, by Independent Children's Lawyers for example, is to obtain leave of the Family Law Court before providing documents to child protection authorities.[31]

There would be benefit in Family Law Court rules clarifying when expert reports can be shared with the Children's Court and child protection authorities.[32]

- Materials prepared by the Children's Court

Expert reports prepared in the course of Children's Court proceedings could assist decision-making in subsequent Family Law Court proceedings if a streamlined procedure was established for the sharing of such materials.[33] In Victoria this would include, for example, Children's Court Clinic

[31] R. Chisholm, 'Information-Sharing and Confidentiality: Issues in Family Law and Child Protection Law' (A paper prepared for the conference Seen and Heard: Children and the Courts - National Judicial College of Australia and the ANU College of Law Conference, 7-8 February 2015, Canberra), 17.

[32] Ibid, 22.

[33] Ibid, 21.

Reports which play an important role in ensuring the voice of children and young people are heard in proceedings. The sharing of these reports would enable the child's voice to be heard in the Family Law Court proceedings without requiring the child to re-tell their story.

Currently in Victoria, only parties to the proceeding are allowed access to the reports[34] and distribution of a report to an individual, or his or her lawyer, who is not a party to the proceeding will attract a penalty under the *Children, Youth and Families Act 2005* (Vic). Thus, to enable the sharing of Clinic and Expert Reports, amendments to legislation would be required.

However, we would caution against the inclusion of information sharing provisions allowing for the sharing of DHHS reports such as investigation or disposition reports prepared by child protection case workers and recorded on DHHS' central information system. The sharing of DHHS reports is not an appropriate method for providing information to the Family Law Courts, as DHHS reports regularly include untested or unproven allegations and may be the subject of evidence contests in the Children's Court before final decisions on fact findings are made in a matter before the court. The provision of this information would be inconsistent with the objective of sharing information to assist with evidence-based decision-making.

- Training

If steps are taken to improve the sharing of reports between the Family Law and Children's Courts, we would strongly recommend the provision of training to those working within the jurisdictions on the types of reports prepared in each jurisdiction and how they are used within the home jurisdiction to inform decision-making about unacceptable risk and best interests. This knowledge about context is essential to informing the appropriate use of reports in decision-making. To ensure the benefit of the database of orders it is also essential for training to provide information on the types of orders made in the respective jurisdictions and the basis for such orders.

[34] *Children Youth and Families Act 2005* (Vic), s556.

Recommendations

- establish a database of orders that provides a single repository of family law, family violence and child protection orders that can be accessed by each of the relevant courts (the Family Law Courts, Magistrates' Courts and Children's Court) and by state child protection authorities
- clarify Family Law Court Rules to assist with streamlined sharing of expert reports prepared in Family Law Court proceedings with the Children's Court and child protection authorities
- amend the Victorian *Children, Youth and Families Act 2005* to enable the sharing of Court Clinic and Expert reports with the Family Law Courts
- improved information sharing arrangements between the Children's Court and Family Law Courts should exclude the sharing of DHHS reports such as investigation or disposition reports prepared by child protection case workers
- training should be provided to those working across the three jurisdictions on the types of reports prepared in each jurisdiction and how they are used within the home jurisdiction to inform decision-making about unacceptable risk and best interests.