

Statement of Rachael Ward

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1. This statement by me accurately sets out the evidence I am prepared to give to the Inquiry into the Child Protection and Social Services System. This statement is true and correct to the best of my knowledge and belief.
2. This statement provides additional evidence about the intersections between child protection services provided by the New South Wales Government and family law proceedings governed by the Commonwealth.
3. I make this statement based on my own knowledge and relying on information supplied by others.
4. I make this statement on behalf of the New South Wales Department of Communities and Justice (the Department) and am authorised to do so.

Professional background

5. I am the I am the Director of Child Protection (Legal) in the Department and have held that position since 23 May 2022.
6. The Department is the lead agency in the Stronger Communities Cluster, which works with the community, our non-government partners and other agencies on improving outcomes for:
 - people experiencing or who have experienced domestic and family violence
 - people who have experienced sexual assault
 - young people and adults in contact with the justice system
 - people experiencing or at risk of homelessness and people in need of safe and affordable housing
 - vulnerable children and young people
 - people with disability
 - Aboriginal people, who are overrepresented across all our services
 - people from culturally and linguistically diverse (CALD) backgrounds.
7. I work with the Department to support the safety and wellbeing of vulnerable children, young people and families. My current role with requires me lead the Child Protection practice team within Legal responsible for a wide range of work relating to the care and protection of children including:
 - litigation, advocacy and advice in care and protection matters
 - statutory interpretation and advice

- litigation and advice in family law proceedings involving child protection issues, including responding to Family Court requests for intervention and information
- applications relating to medical treatment of children including treatment for childhood gender dysphoria
- District Court care appeals, Supreme Court and Court of Appeal applications and appeals
- advice and representations in NSW Civil and Administrative Tribunal (NCAT) proceedings including reviews of placement decisions and decisions to cancel or suspend a carer's authorisation
- legal advice on all aspects of adoption matters and proceedings, a wide range of legal issues relating to children and young persons in the parental responsibility of the Minister, including out-of-home care, medical treatment, contracts, education, crime, victims support, wills and estates and civil claims.

Federal family law jurisdiction

8. There are two federal courts which deal with the majority of family law matters - the Family Court of Australia and the Federal Circuit Court of Australia (formerly known as the Federal Magistrates Court of Australia).
9. The Federal Circuit and Family Court can make parenting orders about parenting arrangements for a child. These can deal with one or more of the following:
 - who the child will live with
 - how much time the child will spend with each parent and with other people, such as grandparents
 - the allocation of parental responsibility
 - how the child will communicate with a parent they do not live with, or other people
 - any other aspect of the care, welfare or development of the child.
10. Section 60CA of the Family Law Act 1975 (Cth) (the Family Law Act) provides that the court must regard the best interests of the child as the paramount consideration when making a parenting order. To determine what orders are in the child's best interests, the court must consider:
 - the benefit to the child of having a meaningful relationship with both parents
 - the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.
11. The court's consideration of the benefit of having a relationship with both parents can contribute to significant challenges where one parent is using violence. In applying these considerations, the court is to give greater weight to the need to protect the child from harm, over the benefit of having a relationship with both parents.

NSW child protection jurisdiction

12. The NSW child protection system is a specialised state-based system separate from the national family law system.
13. When responding to risk of significant harm reports, child protection practice delivered by the Department is governed by statutory responsibilities under the Children and Young Persons (Care and Protection) Act 1998 (NSW) (the Care Act).
14. The NSW Children's Court is guided by the principles of the best interests of the child and the least intrusive intervention possible to ensure the safety and wellbeing of the child.
15. There are several ways the Department can support the safety and welfare of children in NSW who are also the subject to family law parenting matters. The Department can:
 - provide detailed child protection information to the relevant family court
 - seek information from the court
 - petition to intervene as a party to a family law proceeding
 - take separate action within the child protection system following a family parenting determination.

Memorandum of understanding between the federal courts and the Department

16. The Department has a memorandum of understanding with the Family Court and Federal Circuit Court which acknowledges the overlap between the state and federal jurisdictions in matters involving children and young people.
17. The memorandum of understanding recognises:
 - the specialised and separate jurisdictions of the federal family law courts and the Children's Court
 - the Department's statutory responsibilities, which may involve the agency's involvement in both courts
 - recognises the harm to children in being the subject of multiple hearings in separate jurisdictions and seeks to minimise this
 - that parents have the right to have matters resolved expeditiously and efficiently where possible within a single jurisdiction
 - that neither the Children's Court nor the federal family courts should be used as a de facto court of appeal from the other.
18. The memorandum of understanding outlines the scope of a two-way information exchange. The Department may obtain oral or written information from the court about:
 - the stage reached in the family law proceedings
 - any future list dates
 - the identity and contact details of the independent children's lawyer

- whether an expert or family report has been ordered and prepared in the proceedings.

19. Reciprocally, the court can obtain oral or written information from the Department about a range of matters:

- risk of significant harm notifications in respect of a child
- the status of any investigations on any current reports and information on assessment of the risk involved
- any action that will be taken in relation to any current report
- the status of any care proceedings, including details of any orders made in the Children's Court, the next listing date, and contact details for the relevant departmental caseworker.

The Magellan Program

20. Family law court matters involving allegations of serious physical or sexual abuse of a child or young person can be assigned by the Family Court under a specialised case management system known as the Magellan Program.

21. These cases will often involve matters where recent allegations of risk of significant harm have been made to the Department's Helpline, which may or may not have been investigated.

22. The Magellan program involves:

- rigorous judicial management including the imposition of strict timeframes
- an early 'front loading' of resources such as the court ordered appointment of an independent children's lawyer for every child, funded by the Legal Aid Commission
- requesting information from the relevant state or territory welfare authority early in the trial process
- close liaison on case management between external information providers and a small team of judges, registrars and family consultants.

23. When the court places the matter on the Magellan list, the court will make an order for the Department to provide a Magellan report in relation to the Department's involvement with the family including notifications, investigations and assessments. The Department writes and submits the Magellan report to the court.

24. The court may also may a Magellan order for a child protection intervention. In its Magellan report, the Department will advise the court of its proposed action (intervention, non-intervention, care proceedings, etc.).

25. During family law proceedings, the court may feel it would be assisted by having the Department as a party to the proceedings. In these cases, the court may make an order requesting the Department to intervene in the proceedings. If risk of significant harm is suspected during family law proceedings, the Department must respond by assessing the safety of and potential risk to the child.

26. Where the Department becomes a party to proceedings, further involvement may include filing affidavits, attending a conciliation conference, providing witness evidence in response to subpoena, and liaison with court experts.

Interjurisdictional Family Violence Working Group and National Framework

27. The Commonwealth coordinates a Family Violence Working Group which aims to improve the interaction between the federal family law, and state and territory child protection and family violence systems.

28. The Family Violence Working Group is responsible for developing an interjurisdictional information-sharing regime so that family violence, child protection and family law orders, judgments, transcripts and other relevant documentation are accessible to each of the relevant state, territory and Commonwealth courts, and other agencies as necessary.

29. The Family Violence Working Group has introduced:

- a pilot program co-locating caseworkers and police in family law court registries to enhance the two-way sharing of information
- a National Strategic Framework for the Information Sharing between the Family Law and Family Violence and Child Protection Systems (the National Framework).

30. The National Framework aims to ensure a nationally consistent process for information sharing between the family law courts and these state and territory bodies to promote the safety and wellbeing of adults and children affected by family violence and child abuse, and support informed and appropriate decision making in circumstances where there is, or may be, a risk of family violence or child abuse.

31. It will become operational on 1 January 2023 and NSW agencies are working with the Commonwealth Attorney-General's Department, the family law courts and other jurisdictions to implement the National Framework.

Information sharing between jurisdictions

32. In June 2020, a Commonwealth-funded pilot enabled the Department to establish the Family Law Court Liaison Team to improve the identification of safety and risks for children and families involved with the family law courts.

33. Court registry staff send all requests for exchange of information to Family Law Court Liaison Team with Family Law Court Liaison Officers co-located within the relevant court registries in locations across Sydney, Parramatta, Wollongong and Newcastle.

34. This pilot aims to encourage the family courts to seek targeted child protection information earlier in the court process to better inform decisions made regarding children.

35. The Family Law Court Liaison Team manages the following information exchange processes with the family law courts.

Section 69ZW requests

36. Section 69ZW of the Family Law Act empowers the court to request the Department to provide it with documents or information, relating to child abuse or family violence, that is specified in the order including:
- any significant risk of harm notifications of suspected abuse of a child or of suspected family violence affecting the child
 - any assessments or investigations following a notification
 - any reports commissioned by the Department as part of an assessment or investigation following a notification.
37. The Department's response can be made within 2-4 weeks (if not urgent) or in time for an urgent hearing.
38. If additional information (not within the terms of s69ZW) will assist the court, the Department can also lawfully share this information with the court.

Section 248 requests

39. Section 248(1)(b) of the Care Act, requires the Department to proactively share information about child abuse claims with the court. This includes information about substantiated child abuse allegations.
40. Information can be shared in writing, by providing documents, or orally in urgent matters where the information will assist the court or the Department to make a decision relating to a child that is the subject of the court proceedings and a risk of significant harm report.

Person History Reports

41. Person History Reports of a child known to the Department can be urgently provided to a court under Section 248 of the Care Act to assist in urgent interim applications. It is common for a court registrar to make a request for a Person History Report when a party files an application that raises child abuse or family violence issues.
42. The Person History Report can be made available within hours of the request and will contain a child's primary assessed issues, issues substantiated or not substantiated. It does not contain the address of the child, reporter details, details of allegations, or records.

Sharing information with independent children's lawyers

43. In family law proceedings where issues are raised about the safety, welfare and wellbeing of a child or children, the court can appoint an independent children's lawyer (via Legal Aid) to represent the best interests of the child.
44. The Department and Legal Aid NSW have an information sharing agreement where the Department can provide an independent children's lawyer with the information about any child abuse concerns for a child, including:
- records for the child

- whether DCJ is conducting an investigation or assessment and when this is likely to be concluded
 - advice about whether any care proceedings are anticipated
 - advice about whether the Department is likely to intervene in the family law proceedings
 - whether the departmental caseworker is available to provide an affidavit for the independent children's lawyer in regard to current or prior casework with a family.
45. Reciprocally, the independent children's lawyer can provide the Department with information in relation to the family law proceedings, including:
- details of any allegations of abuse that have been made
 - any orders seeking the Department to intervene
 - any urgent interim hearing where the Department may be required or where departmental records might be subpoenaed
 - any expert reports or assessments that raise significant concerns for the child
 - when the matter is listed for final orders and the outcome of any hearing.

Updates following the making of family court orders

46. Under section 68Q of the Family Law Act, the Department will receive notification of when the family law court makes an order that is inconsistent with a pre-existing family violence order.
47. If the update relates to a family with an open allocated case within the Department, then the allocated caseworker will be also notified.

Lighthouse Project

48. In late 2020, the Commonwealth funded the Lighthouse Project, a family safety screen and specialised case management pilot, commenced at Parramatta court registry.
49. The Lighthouse Project involves early risk screening through:
- a secure online platform
 - early identification and management of safety concerns
 - assessment and triage of cases by a specialised team who will provide support and link the party with resources
 - safe, and suitable case management
 - referring high risk cases to the Evatt List.
50. The Evatt List is a specialist court list where a qualified team of judges, judicial registrars, court child experts, court staff are allocated to manage parenting-only cases (where filed in Adelaide, Brisbane or Parramatta) that are considered to be high risk, through more intensive case management and resources to safeguard against family violence and other associated risks.

51. On 30 March 2022, the Commonwealth announced an expansion of the Lighthouse Project to 15 family law registries.
52. The aim of the pilot is to identify early issues of family violence in the context of family law proceedings, to facilitate a better, safer and fairer outcome while mitigating further risk, reducing trauma, and supporting recovery of victim-survivors.

Substantial guidance is provided for child protection practitioners

53. The practice of the Department's child protection staff is guided by the NSW Practice Framework which features a best-practice approach for responding to domestic violence known as "dignity-driven practice".
54. This approach supports practitioners to more thoroughly explore the protective factors that a victim of violence uses to keep themselves and their children safe, while simultaneously not placing the burden of responsibility for creating safety solely on them.
55. This approach supports improved practice with people who use violence by holding the person responsible for their actions by illuminating the choices made in the moment to use violence, supporting a shift away from violence being seen as an anger management issue and placed more firmly as a gendered use of coercion and control.
56. The Department is implementing dignity-driven practice through the Practice Framework implementation and caseworker development programs. Both programs provide specific training modules about domestic violence, including working with children who experience it, parents who use violence and non-offending parents that respond to it.
57. There is also substantial practice guidance for caseworkers, including where matters intersect with family law. A domestic violence practice kit and child sexual abuse practice kit offers evidence and practical advice to all departmental child protection practitioners about how to talk to families about domestic violence and implement plans that reduce risk.
58. Improvements to casework practice will have an impact on family court proceedings, as the court will have access to a range of departmental records such as casework assessments, case plans and interview transcripts that document:
 - the unique experience of the person using violence, the victim-survivor and child that either caused or resisted violence
 - evidence of types of violence, coercive control and escalating patterns of violence
 - the impact that domestic violence has had on the parents and children.

Review of structured decision-making

59. The Department relies on the structured decision-making case management approach to assess the safety and risk of domestic and family violence.
60. Structured decision-making provides transparent, structured, evidence-based guidance, to support assessment and decision making. It also supports child protection staff to develop meaningful safety plans that keep children with the non-offending parent.

61. The Department is now undertaking a quality service review to consider how best to capture and assess concerns about domestic violence in the existing decision-making tools, such as the:

- Mandatory Reporter Guide (MRG)
- Screening and Response Priority Tool (SCRPT)
- Safety Assessment
- Risk Assessment
- Risk Re-assessment.

62. The review will ensure that the structured decision-making approach more closely aligns to the NSW Practice Framework, in particular the approaches that strengthen practice in working with children at risk because of domestic violence (including dignity-driven practice).

63. Following the review, a new Family Strength and Needs Assessment tool will be introduced which will support a quality assessment of domestic violence for the person using violence, the victim-survivor, and their children.