FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

Customer Service
Federal Circuit and Family Court of Australia
GPO Box 9991 in your capital city

Telephone: 1300 352 000 – family law matters
Telephone: 1300 720 980 – general federal law matters
Email: customer.service@fcfcoa.gov.au

2 September 2022

[redacted]
Committee Manager
Committee on Children and Young People
Parliament of New South Wales
by email: childrenyoungpeople@parliament.nsw.gov.au

Dear [redacted]

Inquiry into the NSW child protection and social services system

This response is provided on behalf of the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2) ("the Courts") in regard to the request for the Courts to provide written responses to the questions from the Inquiry into child protection and social services system by the NSW Committee on Children and Young People.

As a result of the separation of powers under the Constitution, by which the judiciary is independent from other branches of government, any questions about legislative reform or policy related matters will be matters for the Australian Government and not the Courts. However, insofar as the Courts are able to provide comments to the questions posed, the Courts' responses are set out below.

1. **Can you outline any recent legislative or policy reforms that are underway at a national level, in order to improve alignment between the family law and state child protection systems?**

   As noted above, legislative and policy reform is a matter for Government. The Courts are responsible for their own operations, administration, case management and practices and procedures, and speak below to reform initiatives relating to their operations.

The *Family Law Act 1975* (Cth) ("the Act") provides that courts exercising jurisdiction under the Act must regard the best interests of a child as the paramount consideration in making a parenting order. The Act also guides the Courts in how to determine what is in a child's best interests and sets out a number of considerations to be taken into account. The Courts have implemented a number of initiatives to assist in managing cases in a way that promotes a child's best interests. This includes initiatives such as:

- Court Children's Services – the Court Children's Service section of the Courts is staffed by highly trained psychologists and social workers (Court Child Experts "CCEs") who have specialist expertise in the needs of children in families that are separated. The role of the service is to assist parents, registrars and judges make decisions about arrangements that are in the best interests of the children. Pursuant to ss 11F and 62G of the Act, CCEs undertake a critically important role in assessing the needs of children and providing independent evidence for the purposes of Court hearings. In the course of preparing reports, CCEs will inspect the material filed in the proceedings together with material provided by child welfare agencies or police pursuant to a subpoena or order made under s 69ZW of the Act. In addition to CCEs, the Courts engage family consultants under Regulation 7 of the *Family Law Regulations 1984* (Cth) to prepare some reports. Reports prepared by these highly trained and experienced professionals (CCEs and Regulations 7 Family Consultants) are of significant importance in providing independent evidence for the purposes of Court hearings to assist the Courts assessing the needs of the children.
- The Lighthouse Project - The Lighthouse Project plays a central role in Lighthouse Project registries in regard to the Court's response to cases which may involve family violence and other family safety risks, by shaping the allocation of resources and urgency given to such cases. It aims to improve the safety of litigants and children who may have experienced family violence or abuse. The Lighthouse Project is an innovative approach taken by the Court to screen for and manage risk, with a primary focus on improving outcomes for families involved in the family law system. Information on this Project is available on the Court website: www.fcfcoa.gov.au/fl/fv/lighthouse.
- The Magellan Program (further detail in question 2).
- In October 2020, a harmonised Notice of Child Abuse, Family Violence and Risk was introduced in both Courts. While ensuring the Courts' mandatory obligation to report allegations of child abuse, family violence or risks of child abuse or family violence is fulfilled pursuant to ss 67Z–67ZBB of the Act, this form also assists in ensuring that the Courts are made aware of any risks alleged to be present in each case as early as possible. Identifying risk early is important in allowing families and their children to receive appropriate and targeted intervention in the family law system to the greatest extent possible.

- In addition to the notification of child abuse or risk of child abuse under s 67Z, the Courts may also obtain information from child welfare agencies under s 69ZW of the Act, as well as through co-located child protection officials.
- The Co-location Initiative, which forms part of the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* ("Framework"), provides for the co-location of child protection and police officials within registries of the Courts throughout Australia, including in the Newcastle, Parramatta, Sydney and Wollongong registries. Additional information about the Framework and the Co-location Initiative is set out below and can also be found on the Attorney-General's website.
- The Courts are focused on providing greater access to justice for family law litigants who identify as Aboriginal or Torres Strait Islander. Additional Indigenous Family Liaison Officers undertake a key role in building relationships between the Courts, local communities and support services.

2. How often is the Magellan program evaluated?

a. What issues has the Court identified that could be improved in the Magellan program?

Magellan cases are cases which involve serious allegations of physical abuse and/or sexual abuse of a child and undergo special case management in the Federal Circuit and Family Court of Australia (Division 1). When a Magellan case is identified, it is managed by a team consisting of a judge, a judicial registrar and a CCE. Magellan case management relies on collaborative and highly coordinated processes and procedures. A crucial aspect is strong interagency coordination, in particular with State and Territory child protection agencies. This ensures that problems are dealt with efficiently and that high-quality information is shared. An Independent Children's Lawyer ("ICL") is appointed in every Magellan case.

An external evaluation of the Magellan program was conducted by the Australian Institute of Family Studies ("AIFS") in 2007. The AIFS report[1] found that Magellan matters were resolved more quickly and involved fewer court events, and that the program was a successful case-management model for responding to allegations of child abuse in parenting matters.

The Magellan program has been subject to regular internal consideration as part of a number of judicial committees, including the Family Violence Committee.

[1] Dr Daryl Higgins, Australian Institute of Family Studies, *Cooperation and coordination: An evaluation of the Family Court of Australia's Magellan case-management model* (Report, 2007).

3. **What training is provided to the people who work in the family law system – such as lawyers, judges and magistrates – to ensure they can achieve outcomes that are in the best interests of children in matters that involve allegations of child abuse or family violence?**

    a. **What training is provided to Independent Children's Lawyers in relation to representing children?**

Judges of both Courts undertake an induction program upon appointment. Judges are provided with regular ongoing education and professional development arranged through the Judicial Education Committee, who coordinate and promote professional development activities. Judges also have access to a range of educative internal Court resources, external resources such as the National Domestic and Family Violence Bench Book, and training through external organisations such as the National Judicial College of Australia.

Similarly, all staff of the Courts engaged in the family law jurisdiction undertake training as part of induction and are required to complete ongoing training, including specific learning modules on family violence. In addition to internally-developed educational resources, all registrars and CCEs are required to complete a comprehensive training package developed and delivered by the Safe & Together Institute, a renowned international training organisation. The Safe & Together training was designed specifically for our domestic context and represents current best practice in responding to domestic and family violence.

The Courts are not responsible for providing training to lawyers and other professionals working within the family law system. More particularly, the Courts do not manage ICLs. This is a matter for Government and the relevant legal aid commissions. However, the Courts note that judges and court staff regularly engage in educative forums with the government and with numerous external groups such as local family law pathways networks, legal aid, bar associations and law societies, local practitioners and practitioners' associations, community legal centres, family relationship centres, community organisations and support groups.

Furthermore, judges and other staff of the Courts (including registrars and CCEs) participate in legal Continuing Professional Development ("CPD") programs for professionals by way of presentations and training at a range of conferences and events such as the Family Law Conference and the ICLs Conference. Most recently, numerous judges from the Courts presented education sessions to lawyers at the 19th National Family Law Conference held in Adelaide 14–17 August 2022.

4. **What steps are Independent Children's Lawyers (ICL) required to take in cases where there are allegations of child abuse or family violence?**

    a. **What processes exist for managing complaints and grievances relating to the actions of ICLs?**

The Courts do not manage ICLs. This is a matter for Government and the relevant legal aid commissions.

5. **What oversight or accountability mechanisms exist to review the fairness and accuracy of family consultant reports?**

The answer to this question is limited to CCEs (employees of the Courts and formerly known as family consultants) and family consultants appointed by the Courts under Regulation 7 of the *Family Law Regulations 1984* (Cth). The Courts noted that there are other report writers who often write reports used by parties in family law matters, including private report writers, and these report writers are not employed or engaged by the Courts.

All CCEs employed by the Court (who hold a statutory appointment as a family consultant), and family consultants appointed by the Courts under Regulation 7 of the *Family Law Regulations 1984* (Cth), are required to be a registered psychologist or a social worker eligible for membership with the Association of Social Workers, and must have five years of relevant experience.

The Courts have a range of oversight and accountability measures, including a formal professional supervision framework, a range of clinical governance documents, a family report quality assurance checklist and the provision of regular training including in relation to family violence. The Courts also have a detailed complaint logging and management system.

In addition, the Court process allows litigants to test relevant reports through cross-examination where parties have the opportunity to contest the content of the report, the process undertaken and the credibility of the report writer. The report forms one piece of evidence in the midst of a variety of other evidence, which will be presented to the Court. It is ultimately up to the presiding Judge to determine what evidence he or she accepts and, specifically, whether or not to accept the evidence of the report writer. The family courts are no different to any other Australian Court in that hearings are conducted in open Court, evidence is scrutinised, and witnesses are liable for cross-examination.

In late 2021, the Attorney-General's Department commenced consultation on 'Improving the competency and accountability of family report writers', in response to recommendations made in a number of family law reports and inquiries. It is a matter for the Australian Government to provide information relating to any developments on the oversight and accountability of family report writers more broadly.

6. **How can information sharing between the NSW child protection system and the family law system be improved?**
    a. **What current mechanisms exist for data sharing across jurisdictions?**
    b. **Is this an area that requires reform?**

This is a legislative or policy-related matter for Government. However, the Courts assist below by commenting on what arrangements currently exist, and otherwise note that the Courts are always working cooperatively to facilitate, and where relevant implement, any positive reforms in this important area.

A range of mechanisms for information sharing between family law and child protection jurisdictions exist at both State and federal level. As noted above, s 67Z of the Act requires the Courts to notify the relevant child welfare authority of child abuse or risk of child abuse when a relevant notice is filed with the Courts. Section 69ZW of the Act provides that the Courts may make an order requiring a child welfare authority to provide information relating to child abuse or family violence. The *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) provide that a child welfare officer of a State or Territory may inspect and copy a document forming part of the court record if the proceedings affect, or may affect, the welfare of a child (r 15.13). State legislation may also be relied on to exchange information in certain circumstances.

The *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* ("the Framework") was endorsed by Attorneys-General on 12 November 2021. The Framework provides a high level commitment to a nationally consistent process for information sharing between the Courts and State and Territory courts, child protection, police, firearms and justice agencies, to support the safety of vulnerable families and children across all jurisdictions. The Co-location Initiative forms part of the National Strategic Framework and is a key mechanism for information sharing between jurisdictions. In NSW, both child protection authorities and police participate in the Co-location Initiative and NSW officials have been co-located in each of the Courts registries in Newcastle, Parramatta, Sydney and Wollongong. More information about the Framework can be found on the Attorney-General's website.

Work is ongoing in relation to implementation of the Framework.

7. **Is it practical and appropriate for family law and child protection matters to be held in the same jurisdiction?**
    a. **Would there be benefits to having child protection experts or authorities embedded within the Family Court?**
    b. **Would there be benefits to having state and territory children's courts exercising family law jurisdiction?**

This is a legislative or policy-related matter for Government. However, the Courts assist below by noting the following.

The Australian Law Reform Commission report, *Family Law for the Future: An Inquiry into the Family Law System* ("ALRC Report 135") considered closing the jurisdictional gap in Chapter 4. A response by the Australian Government to that report was published on 21 March 2021.

The ALRC Report 135 also considered the development and implementation of a national information sharing framework. As noted in the response to Questions 1 and 6, the Co-location Initiative, which forms part of the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems*, provides for the co-location of child protection and police officials within registries of the Courts throughout Australia. Currently there are child protection officials in the Newcastle, Parramatta, Sydney and Wollongong registries and police officials in the Parramatta and Sydney registries. Co-located State and Territory child protection and police officials perform a range of important functions which enhance information sharing and collaboration between the federal family law and State and Territory child protection and family violence systems.

8. **Are you aware of the proportion of cases in the Family Court, annually, in which a child has named a parent or carer as an abuser, and that parent or carer is then allowed to have custody or unsupervised contact with the child?**
    a. **If so, is there a threshold at which you would be concerned? E.g. 5% of cases annually**
    b. **If so, are there any circumstances in which you would not be concerned about reaching such a threshold? E.g. if you there were cases in which a parent had coached a child to provide misleading evidence**
    c. **If not, what processes does the Court need to introduce in order to capture such data?**

The Courts do not maintain data in relation to individual files to this level of detail. Significant and extensive changes to the case management system as well as additional resourcing would be required to enable the Courts to capture granular data to this level. As this is a complex consideration given the circumstances of every case are unique and there would need to be a detailed statistical analysis accompanying any data capture, the Courts are not in a position to provide a more fulsome response in the time provided.

The Courts collect data in relation to responses to the Notice of Child Abuse, Family Violence and Risk following the implementation of a harmonised form on 31 October 2020. The notice allows for data capture on 10 key questions relating to the alleged presence of certain risk factors in parenting proceedings across both Courts, including allegations by parties relating to:

- Child abuse/risk of child abuse
- family violence experienced by a party or a child, or a risk of family violence being experienced by a party or a child
- drug, alcohol or substance misuse by a parent/party that has caused harm to a child or poses a risk of harm
- mental health issues of a party/parent that have caused harm to a child or pose a risk of harm
- risk of abduction of a child, and
- threats of harm to a party or a child.

Under s 67ZBB of the *Family Law Act 1975 (Cth)*, the Court is required to take prompt action in relation to allegations of child abuse or family violence. Considerations must be made to determine what interim or procedural orders (if any) should be made to protect the child or any parties to the proceedings, and obtain evidence about the allegation as expeditiously as possible.

The 2020-21 Annual Reports of the Courts provide data that was obtained from the Notices from 1 November 2020 to 30 June 2021. See, for instance, p38 of the 2020-21 Annual Report of the Federal Circuit Court of Australia.

The Annual Reports are available from the Courts' website: www.fcfcoa.gov.au/annual-reports.

If you have any queries or I can be of any further assistance please let me know.

Yours sincerely

[redacted]

Virginia Wilson
Deputy Principal Registrar
Federal Circuit and Family Court of Australia