1.You mentioned the domestic violence safety assessment tool and that it's currently under review. Is there any capacity for that to be used in family law decisions at all? Is it currently or could it possibly be used?

There are tools measuring risk tools used in the family court jurisdiction that are part of Project Lighthouse; a project is set up to better manage domestic and family violence in family law matters. There are identifiable challenges in this jurisdiction where the risk results cannot be put before a judge due to restrictions in the legislation yet determinations of risk forms part of the legislations that determines the best interests of a child.[1]

There are various risk models available including the MARAM framework in Victoria, the Safe and Together Model and the DVSAT tool which is under review in NSW. These models are not used in the court systems as part of the court process in the NSW or federal jurisdiction.

In April 2022 the family court updated its information regarding Project Lighthouse.[2] The court states it encourages applicants and respondents to complete a Doors[3] model risk assessment tool to identify risk factors. It enables parties to receive safety planning related to the court process and service referrals specific to their needs. Further, it assists the family court to identify the most appropriate case management pathway. The risk assessment never happens formally again. It is then up to Child Impact Reports - a short report that focuses on the children, Family Report - under the Act to assess the family dynamic or Expert Report. Even then the risk assessments do not follow any particular formal process or methodology. In the experience of some DVNSW members, even assessments of high risk do not lead to significantly different outcomes. It is an area which requires reform.

If there is an ADVO in place then it is the responsibility of the victim to protect themselves and inform the court. This process also requires reform as regional courts do not all have safe rooms for family law matters as Dr Wangmann determined in the 2020 ANROWS review " No Straight Line."[4]

How does the client receive the risk screen?

The invitation to complete the risk screen questionnaire is sent via email, directly from the Court to the client. The Lighthouse Project encourages clients to consider creating an email address for the sole purpose of risk screening.

Clients can visit one of the pilot registries in person and complete the screen through an iPad that is made available for this purpose if they need support. A member of the Lighthouse triage team can assist, and clients are encouraged to call the National Enquiry Centre on 1300 152 000 to book time with a team member, or if they need help from an interpreter.

[1] Family Law Act 1975, s 60CC(2)(b)
[2] https://www.fcfcoa.gov.au/lhp/update-april-2022
[3] https://www.fcfcoa.gov.au/fl/fv/lighthouse
[4] https://20ian81kynqg38bl3l3eh8bf-wpengine.netdna-ssl.com/wp-content/uploads/2020/12/MJ.18.01-Wangmann-RR-SelfRepresentation.pdf

The risk screening process is confidential. Part IIA of the Family Law Act 1975 prevents the disclosure and admission into evidence, of information that is in connection with a family safety risk screening process carried out by the Federal Circuit and Family Court of Australia. Part IIA provides that:

a) a party cannot be asked to disclose whether or not they undertook risk screening the risk screen responses, classification and referrals as a result of the screening process cannot be used as evidence in a proceeding and legal representatives are not required to disclose their client's risk screening status and

b) information shared or provided by a party to a family counsellor in the course of conducting risk screening cannot be disclosed, or used as evidence

Information about the Lighthouse Project, including the Lighthouse Project Family Law Practice Direction, is available on the Federal Circuit and Family Court of Australia's website.

2. What's your understanding of what that MOU has in it and what should be considered in a review if the Attorney General makes the representations that you are suggesting or that's being suggested in the submission?

Content of the MOU

The MOU as stated by the DCJ representative before this committee on 12 August 2022, was designed in 2005/6. The MOU describes regular review of the document and protocols to be developed by a working party that were to define the protocols to be applied.[5] These protocols appear not to be published, there is no date specified for review. The purpose of the document is stated to identify where the family law jurisdiction and the state align and how they can work together, '*to ensure that a child or young person's need for protection are met.*'[6]

The document states that it guides issues of safety and wellbeing of those children and young people arising in the proceedings for children under 18 years. It states clearly that DoCS (later FaCS, now DCJ) is a mandated agency given powers to investigate under section 23 of the Care and Protection Act 1998.

At 3.2.1 the MOU states that the jurisdiction is limited, that it must make an order for a child in care of a person under a welfare law. This is where NSW child protection needs to work harder and remove matters from the jurisdiction where there is risk determined.

At 3.2.2; the MOU notes the federal jurisdiction is open to allow the welfare officer to intervene and put the person under care as it applies to a state welfare law.

Section 4 is important and applies section 34-36 of the Care and Protection Act. A protective parent must not be disadvantaged by compliance and should not loose their child to the state due to intervention for doing what has been requested at a Federal level. At Section 7 the MOU promotes information sharing. At 8.4 the MOU covers mandatory reporting, noting that family court staff should report where abuse is suspected.

[5] MOU 1.1.2
[6] MOU 1.1.1

In section 9, cross jurisdictional conflict is addressed. Of note:

9.1.2 In dealing with these issues, it is necessary to recognise:

> *(iii) that multiple hearings over prolonged periods of time in separate jurisdictions can be harmful to the child or young person and should where possible be minimised;*
>
> *(iv) those parents have a right to have their disputes resolved expeditiously, efficiently and where possible within a single jurisdiction;*

Areas of review

Due to the age of the document and significant legislative and practice reforms during this time, the MOU requires revisiting. Many of the sections do not require revision.

Under the Family Law Act 1975 s69ZK(1) and 69ZK(1)(a) and 69ZK(1)(b) the court cannot make an order for a child who is under the care of a state child protection agency. DVNSW believe that the MOU should consider that all children assessed as being at ROSH level and all sexual abuse matters should not be exposed to an adversarial family law system and should be suspended at state level until the state agency determines that it is safe to do so- not the other way around, as the federal jurisdiction does not have investigative powers.

DoCS has changed it's name and the document requires updating to reflect this.

The MOU notes the commonalities between the Family Law Act 1975 and the Care and Protection Act and at 2.1.2 to 2.1.6 states clearly the need for contact with significant persons in 2.1.2. Yet in practice DVNSW members see decisions made in family court that would not be applied under state processes which break the attachment of the primary bond of a child to their protective parent– often the mother.

The MOU should be reviewed to ensure that protective parents are not punished for following state requirements addressing risk of harm to children.

The MOU states under 8.4 that court staff should be mandatory reporters, however there is inconsistency in practice, of note amongst Independent Children's Lawyers and Judges. Furthermore, there is inconsistent practice regarding working with children checks, which could be considered as part of a review.

The time frame under state care before family law can recommence needs to be carefully considered.

In part 8 of the MOU it notes that the federal system can ask for intervention under s 91B for the state to intervene. A review should consider whether the federal system needs to amend federal legislation to transfer the matter to the state to be case managed.

Section 9.1 could be amended to refer welfare matters where there is a ROSH matter directly to child protection and remove the matter from the family law jurisdiction until the state body has deemed it safe.

The MOU does not include the Child Safe[7] legislative provisions which were created as a result of a recommendation from the Royal Commission into Institutional Child Sexual Abuse. A review could consider whether these practices should be included in redrafting.

At 9.2.3 the MOU could be clearer that DCJ should assume jurisdiction and protect a child deemed at risk, to prevent a lack of clarity between the jurisdictions.

The Magellan Maunal

Further to the MOU between DCJ and the Family Court, the NSW Attorney General should advocate for the Magellan Manual to be publicly reviewed. The process as it stands is not working and has been identified as a problem since 2005 by Darryl Higgins.[8]

[7] https://ocg.nsw.gov.au/child-safe-scheme

[8] https://catalogue.nla.gov.au/Record/4270633