Public hearing - Inquiry into child protection and the social services system

Supplementary questions for Legal Aid NSW

1. Can you estimate how many applications for legal aid would ask for legal advice or representation in family law matters that also involve risks of harm to children due to abusive parents?

   Legal Aid NSW does not collect data that would specifically answer the question posed. It is not clear how the terms 'risks of harm' or 'abusive parents' would be defined in this context. For the 2021/2022 financial year the following data has been obtained:

   - 28.9% of applications received for family law assistance are given a domestic violence flag within our internal systems due to allegations of domestic violence.

   - 44.3% of applications received for early resolution assistance.

   - 11.7% of applications received for family dispute resolution, early resolution assistance and family law answered 'yes' to the question 'Is there a family violence order in place for the protection of children relevant to the proceedings?'

   - 20.2% of applications received for family dispute resolution, early resolution assistance and family law answered 'yes' to the question 'Is there a family violence order in place for your protection?'

   - 37.8% of applications received for family dispute resolution, early resolution assistance and family law answered 'yes' to the question 'Do you fear for your safety?'

   - 6.7% of applications received for family dispute resolution, early resolution assistance and family law answered 'yes' to the question 'Do you fear for the safety of the children?'

   - 51.3% of applications received for family dispute resolution, early resolution assistance and family law answered 'yes' to the question 'Are there any current investigations about child abuse?'

   It is noted that these are questions answered by the applicant for aid and based on self reporting.

a. Does the Family Law Early Intervention Unit support many protective parents who raise risks of harm to children caused by an abusive parent?

The Early Intervention Unit, the Domestic Violence Unit, the Family Law Service for Aboriginal Communities as well as the Family Law Division of Legal Aid NSW more generally advises and represents many protective parents who raise concerns about their children's safety due to the behaviour of the other parent.

2. Do you think independent family consultants are effective in reporting child wellbeing concerns?

The functions of family consultants are set out in Section 11A *Family Law Act* 1975 and include assisting and advising people involved in proceedings, helping people resolve disputes and reporting to the Court pursuant to section 55A and s62G of the Act. Section11C sets out the admissibility of communications with family consultants. Section 67ZA sets out the obligations and expectations for family consultants where they have reasonable grounds for suspecting a child has been abused or is at risk of being abused and when they have reasonable grounds for suspecting that a child has been ill treated or is at risk of being ill treated or been exposed to or subjected to behaviour which psychologically harms the child. Subsection (4) also sets out when a family consultant is not required to report concerns of abuse or risk of abuse. It is not clear whether this question is directed to reporting child protection concerns to the Court or to a child welfare authority. In either case and without any clarifying information as to what information is specifically sought, Legal Aid NSW considers that independent family consultants discharge their obligations effectively where there are child wellbeing concerns.

Attached to this document are the Standard of Practice Guidelines for Family Consultants which may be of assistance to the Committee.

a. Are you aware of any oversight or accountability mechanisms that review family reports?

Family reports are able to be to be objected to by parties and ultimately it will be a matter for the Court to determine whether the report and their contents are admissible. For example, reports can be objected to on the basis that the report or parts of the report offend the opinion rule contained in section 76 of the *Evidence Act* 1995. Family reports are also able to be tested at a Final Hearing by way of cross examination. Parties can make submissions as to whether the recommendations of the family consultant should or should not be accepted. Ultimately it is a matter for the Court as to whether the recommendations of the family consultant are accepted. The case law[1] establishes that there is no magic in a family report, the judge is not bound to accept it and that it is one piece of evidence that the Court

[1] *Hall & Hall* (1979)

will consider. The reasoning of a judicial officer in choosing to accept or reject the report and recommendations of a family consultant will be contained in a written judgment and parties can consider appeals in appropriate circumstances. Questions as to other avenues for oversight or accountability of family reports are most appropriately answered by the Federal Circuit and Family Court given family consultants are employees of the Court.

3. Are there alternatives to judicial proceedings that could better manage cross-jurisdictional issues between the family law and child protection systems?

It is not clear how 'cross jurisdictional issues' are to be defined in this context. Both the child protection and family law systems place significant emphasis on alternative dispute resolution ('ADR') where it is appropriate for parties to participate[2]. Grants of Legal Aid are available for families who would like to participate in ADR when there are child welfare concerns or where DCJ have intervened in existing proceedings or are working with a family to prevent children from being assumed into care. There are also tools available to DCJ under the existing legislation which protect children but do not involve the commencing of proceedings. These include safety plans, family action plans, temporary care arrangements and parental responsibility contracts.

4. Would it be practical and appropriate for family law and child protection matters to be held in the same jurisdiction?

a. Would there be benefits to having state and territory children's courts exercising family law jurisdiction?

It would not be practical currently for family law and child protection matters to be held and dealt with in the same jurisdiction due to the different legislative schemas that exist in the state and federal jurisdictions. There would be considerable benefits to these matters (and also related proceedings like ADVO proceedings) being dealt with by one Court or within the same jurisdiction. One significant benefit for families would be that they would only need to be involved in one set of proceedings rather than them needing to be involved in numerous sets of proceedings sometimes at the same time or one after the other. This would be particularly beneficial where there are allegations of domestic and family violence as it would allow limit the amount of times a victim would need to tell their story and as such is likely to limit the possibility of re-traumatisation. The Australian Law Reform Commission report 'Family Law for the future- An inquiry into the Family Law System recommended:

> The Australian Government should consider options to establish state and territory family courts in all states and territories, to exercise jurisdiction concurrently under the *Family Law Act 1975* (Cth), as well as state and territory child protection and family violence jurisdiction, whilst also considering the most efficient manner to eventually abolish first instance federal family courts.

[2] For example, it is unlikely to be appropriate to participate in alternative dispute resolution where there are allegations of sexual abuse of a child or young person

This is a recommendation that is supported by Legal Aid NSW.

b. Would there be benefits to having child protection experts or authorities embedded within the Family Court?

In 2020 the Commonwealth Government commenced a trial of co-locating state and territory child protection and policing officials in Federal Circuit and Family Court Registries across Australia. These officers are able to produce information held by them about their interactions with a family to the Court at short notice. There are a number of mechanisms within the *Family Law Act* 1975 and *Children and Young Persons (Care and Protection) Act* 1998 that allow information to be provided to the Court to ensure judicial officers have relevant information about the safety risks within a particular family.

5. Are there any challenges or limitations with the use of professional evidence in the Family Court?

a. For example, are redactions made to children's psychological reports or evidence submitted by the NSW Department of Communities and Justice (DCJ) such that they are no longer useful in considering children's safety and wellbeing during family law proceedings?

It is the experience of Legal Aid NSW that material produced by the Department of Communities and Justice under subpoena or in response to a request under Section 69ZW of the *Family Law Act 1975* will often have portions redacted. It is important to note that often these redactions are made to comply with the requirements of Section 29 of the *Children and Young Persons (Care and Protection) Act* 1998 that relate to the protection of persons who make reports or provide certain information. Redactions that are made by DCJ beyond redactions permitted pursuant to Section 29 are able to be challenged. When material is produced under subpoena or pursuant to s69ZW and there is a proper basis to object/redact material, DCJ have the ability to object to the production of documents and their access. The parties to the proceedings also have this ability[3]. An objection to the production of documents should be made by DCJ prior to any redactions being made. It is the experience of Legal Aid NSW that this does not always occur. In the event that there was no proper basis upon which the material was redacted then the Court could order that the material be produced in an unredacted format. It is not the experience of Legal Aid NSW that redactions often render evidence produced by DCJ to be no longer useful in considering children's safety and wellbeing during family law proceedings.

Legal Aid NSW has not had the experience of children's psychological reports being redacted. However, it is also not clear what is meant by the term 'children's psychological reports' in this context. For example, this term could refer to reports prepared by a child's treating psychologist, it could potentially mean reports prepared by a single expert appointed

[3] See Rule 6.38 of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021

pursuant to Part 7.1 of the Federal Circuit and Family Court of Australia (Family Law) Rules 2021 or it could mean reports prepared by Family Consultants pursuant to Section 11F or Section 62G of the *Family Law Act* 1975.

b. Do expert witnesses in the Family Court generally support the claims of protective parents?

It is not possible to answer this question as Legal Aid NSW does not collect data of this nature. It is also not clear how the term 'protective parent' is defined in this context or how 'generally support' should be interpreted in this question.

6. What mechanisms exist for the sharing of information between Legal Aid NSW and DCJ, in relation to child protection issues that involve family law matters?

Legal Aid NSW and the Department of Communities and Justice executed an information sharing agreement on 1 February 2016. This memorandum was established to ensure that information is free flowing between the two organisations so that the best available evidence can be available when important decisions about them are being made. The agreement sets out the ways that both DCJ and Legal Aid can and should communicate during family law proceedings. The agreement also sets out what information should be shared and the way that information is to be requested and provided.

Legal Aid NSW can also issue subpoenas, seek orders for documents to be produced pursuant to s69ZW and pursuant to section 248 of the *Children and Young Persons (Care and Protection)* Act 1998.

Before proceedings are commenced, Legal Aid NSW is able to write to DCJ to request information about their involvement with a family and any child protection concerns.

a. What improvements could be made to facilitate the exchange of information between Legal Aid and DCJ?

Legal Aid NSW would welcome an opportunity to review the information sharing agreement with DCJ to see whether it remains fit for purpose. There are times where responses for requests for information are not responded to and times where there are limitations on the information that is provided because of the limitations imposed by the agreement. The addition of the co-located officers to the Federal Circuit and Family Court of Australia has been a welcome addition. Further resourcing of these officers and within DCJ more generally to ensure that all relevant documents requested or required pursuant to a subpoena are able to be efficiently produced for inspection at the earliest opportunity. Legal Aid NSW has observed that when documents are produced by DCJ that they can often be voluminous, repetitive and at times the documentation produce does not give the Court or Legal Aid NSW a clear picture as to DCJ's work with family and future plans with the family. Further resources would also potentially allow DCJ workers to spend more time properly redacting and collating material in an easy to read and useful way.

Attached to this document are the Federal Circuit Court and Family Courts' information sheets about the lighthouse project screening process and the role of family consultants in the Evatt list.

Legal Aid NSW would encourage the committee to make contact with the Federal Circuit and Family Court of Australia as they will be able to provide detailed information about their practices, procedure, the legislative schema.

AUSTRALIAN STANDARDS OF PRACTICE FOR FAMILY ASSESSMENTS AND REPORTING

FEBRUARY 2015

FAMILY COURT OF AUSTRALIA

FEDERAL CIRCUIT COURT OF AUSTRALIA

FAMILY COURT OF WESTERN AUSTRALIA

Foreword

The conduct of family assessments and the subsequent development of family reports play a critical role in the decision-making process of judicial officers when dealing with family law disputes that are before the courts.

We are very pleased to see the release of the *Australian Standards of Practice for Family Assessments and Reporting*, a publication developed by the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia.

Ensuring good practices in conducting and reporting in family assessments in family law matters is essential in helping to determine the 'best interests of the child'.

The overarching aim of this publication is to provide information to the decision-makers, agencies and legal professionals involved in the cases, as to what constitutes good practice in family assessments and reporting. This publication attempts to outline a minimum standard of practice when conducting family assessments and preparing reports.

This publication is a result of extensive work and consultation with many people and organisations and we would like to acknowledge Pam Hemphill, Principal Child Dispute Services (Family Court and Federal Circuit Court), and David Hugall, Regional Coordinator, Queensland (Family Court and Federal Circuit Court), for undertaking this task. Our thanks also go to Judge Baumann, family consultants and Regulation 7 family consultants, the Australian Psychological Society, the Australian Association of Social Workers, the Association of Family and Conciliation Courts (Australian Chapter), family report writers at various Legal Aid Commissions, the Family Court of Western Australia (Paul Kerin and Yvonne Patterson), the Family Law Section of the Law Council of Australia, National Legal Aid, Women's Legal Services Australia and a range of private psychologists for their input and comments.

On behalf of all three courts that deal with family law matters throughout Australia, we hope you find the document a practical and useful guide to responding to family assessments in children's matters.

Diana Bryant AO
Chief Justice
Family Court of Australia

John Pascoe AO CVO
Chief Judge
Federal Circuit Court
of Australia

Stephen Thackray
Chief Judge
Family Court of Western
Australia

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Introduction

These Standards aim to promote good practice in conducting and reporting in full family assessments by social workers and psychologists in family law matters, such as those completed under s62G of the Family Law Act and family reports commissioned privately. Their aim is to provide information to the judiciary, agencies, legal professionals and parties who utilise the services of family assessors to increase the understanding in the broader sector as to what constitutes good practice in family assessments and reporting. They attempt to inform what can be expected as a minimum standard of practice when conducting family assessments and preparing reports.

The Standards address some common issues and concerns about family assessments and the processes of assessments and reporting.

The Standards are only intended to apply to full family assessments and not to more brief or preliminary assessments conducted in such events as child inclusive conferences, child inclusive mediation or case assessment conferences.

The Standards should apply to completed assessments where the family assessor offers recommendations concerning the longer term parenting arrangements for children of separated parents or caregivers. They apply to any situation where the family assessor has prior knowledge that decisions about living arrangements, visiting arrangements or parenting decisions are involved in the matter. This can be whether the assessment is ordered by a court, arranged by the parties or their legal representatives, or by the independent children's lawyer.

The principles and practices in these Standards are not intended as a step-by-step guide to practice, nor to limit the discretion of social scientists conducting assessments in individual cases. It is recognised that the processes of each assessment must be tailored to the needs and circumstances of that matter, as well as guided by principles of best and ethical professional practice.

The Standards acknowledge and have drawn on the Association of Family and Conciliation Courts *Model Standards of Practice for Child Custody Evaluations* (2006), the Family Court of Australia and Federal Circuit Court of Australia Child Dispute Services *Professional Directions for Family Consultants,* and the Family Court of Australia and Federal Circuit Court of Australia *Family Violence Best Practice Principles – edition 3.1* (2013).

Definition and purpose of family assessments

A family assessment is a professional forensic assessment undertaken to assist a court and/or the parties decide on parenting arrangements for children of separated parents or caregivers. It is an independent, professional forensic appraisal of the family, done from a social science and non-partisan perspective.

A family assessment provides a comprehensive and impartial social science perspective, and has the functional value of contributing to informed and child-centred decisions.

The assessment provides information about the views and needs of children and their relationships with their parents and other significant adults, and of the attitudes and parental capacities of the adults with regard to the children's needs.

Family assessments should include assessment of any risk factors identified in a matter. Where there are concerns about family violence, a specialised family violence assessment should be included in the assessment and the report.

Principles for family assessors

PRELIMINARY ISSUES AND ARRANGING THE ASSESSMENT

1. **Prior to the commencement of the assessment, the role of the family assessor and the purpose and scope of the assessment must be clarified for the family assessor, the parties, the children and the legal representatives.**

   a. If the family assessment has been ordered by a court then the court order, the Court's policies and professional directions can describe the scope and purpose of the assessment, and should be applied. Private family assessors being briefed for a report should seek and be provided with all necessary information by the parties or their legal representatives, or through the independent children's lawyer where one has been appointed.

   b. The parties who are required to participate in the assessment must be advised of the legal basis, or arrangement for, the report to be completed.

   c. For any family assessment, the parties need to be informed as to who needs to participate in the assessment, what documents or written information they are required to provide, and what will happen with the assessment when it is completed.

   d. Parties should be advised that all documents provided to the assessor must be available to all parties and their legal representatives.

   e. If they cannot be advised of things such as the scope and purpose of the report and who needs to participate before the assessment commences, they need to be advised prior to the assessment being completed, with reasonable opportunity being allowed for them to participate and provide information to the family assessor.

   f. Assessments arranged by one party or those that include only one side of a dispute should not be undertaken as they are incomplete assessments. If all parties intend to participate in an assessment, but one does not, then the assessment should be noted as limited, and not a full assessment from which opinions or recommendations for children's arrangements can be made.

   g. If one party does not attend, but one does with the children, it may still be possible to undertake a limited assessment and comment only on the parental capacity of the parent who attends, the children's views and their relationship with the party who attended.

2. **Family assessors must be qualified social science professionals and function as independent and impartial assessors.**

   a. The qualifications held by the family assessor must be either those accepted by the Family Court of Australia, Federal Circuit Court of Australia or the Family Court of Western Australia, or sufficient to be able to establish their expertise as a forensic assessor of parents, children, family relationships, parental capacity and factors impacting on the welfare and parenting of children.

   b. As an expert witness, family assessors should have appropriate training, qualifications and experience to assess the impact and effects (both short and long term) of family violence or abuse, or exposure to family violence or abuse, mental health problems and drug or alcohol misuse on the children and any party to the proceedings.

   c. Generally family assessors should have qualifications such that they are eligible for membership or are members of the Australian Association of Social Workers or are registered as a psychologist with the Australian Health Practitioners Regulation Authority, meet the mandated or recommended requirements of those bodies in relation to ongoing professional development, and have professional clinical experience working with children and families.

   d. Regardless of how the arrangements for their services are made and how the family assessor is to be remunerated, the family assessor should always function as an impartial assessor.

   e. Family assessors should provide particulars of their qualifications and experience as a social scientist and family assessor as part of their report.

3. **Family assessors should avoid multiple relationships with any or all participants in matters, or relationships that create conflicts of interests or the perception of a conflict of interest. They should disclose any and all previous or current professional or social relationships with any parties or family members subject of an assessment. They should also disclose any non-professional or social relationship with legal representatives or judicial officers involved in a matter where there may be a conflict of interest.**

   a. Where the family assessor has knowledge of prior incompatible relationships, or where there may be a conflict of interest with parties, family members, legal representatives or judicial officers, they should decline to undertake the assessment. If not known prior to commencement of an assessment, pre-existing or previous incompatible relationships must be fully disclosed as soon as they become known.

   b. Incompatible relationships include personal, social, therapeutic or financial relationships or connections. Family assessors must also avoid commencing any such relationships in relation to any party or person involved in a matter after commencing their professional forensic involvement in the matter.

4. **Family assessors should take steps to ensure that the parties, family members who are not party to the legal dispute, and non-family members who are involved in the assessment or who are contacted to obtain information, know and understand the potential uses of the information that they are providing.**

   a. Individuals, including other professionals from whom information is sought, should be informed of the manner in which information provided by them will be utilised. They should also be informed that information provided by them is not privileged and can be or will be provided to a court.

   b. It should be clarified with parties and family members participating in the assessment at the outset that any information obtained during the evaluation can be reported to the Court, and that requests from parties or family members for statements to be kept confidential cannot be honoured.

   c. It is also important to point out that the purpose of the assessment is not to provide a verbatim record of interviews. Rather, the assessment is an evaluative assessment that is based on, and supported by, what the assessor hears, observes and deduces from interviews, observations and other sources.

5. **Other than where permission to obtain collateral information is given by court order, by the independent children's lawyer, legal representatives or interagency protocol, the permission of parties must be obtained to receive information from a third party or collateral source.**

   a. All sources of collateral information should be disclosed by the family assessor, whether the information was obtained by interview or from documents or recordings.

   b. Assessors must be aware of the right of parties to challenge the validity of collateral information, and that the views, opinions or determinations of other professionals or agencies should not be interpreted as true, factual or valid, unless determined by a court with appropriate jurisdiction.

6. **Family assessors must take reasonable steps to ensure that the process of participating in the assessment does not expose any family members, children or other persons to a risk of harm due to family violence.**

   a. Family assessors should obtain sufficient information about a case from documents and preliminary enquiries with the parties, or their representatives, so as to be aware of possible risks of family violence while the parties are attending interviews or observations, travelling to or from these appointments, or following the release of the assessment.

   b. Family assessors must seek information about existing or past family violence intervention orders and any safety concerns that the parties have, prior to making arrangements for the parties and children to attend the assessments.

   c. Family assessors should use the information to offer arrangements so that parties can attend without the risk of threats, harassment, intimidation or physical violence. Where necessary, they should negotiate a safety plan with parties who have concerns about family violence.

   d. Safety plans for parties' participation should be made without prejudging the parties' expressed concerns about violence. Making arrangements based on parties' expressed concerns is not in itself a presumption about the validity of those concerns. Formulation of any opinions as to the actual risks to parties should only be made after all the necessary information has been gathered.

   e. Family assessors must have detailed knowledge and understanding of the nature, dynamics, cycle, impact and relevance of family violence and conduct assessments, as per the Family Court of Australia and Federal Circuit Court of Australia *Family Violence Best Practice Principles – edition 3.1* (2013) and the *Family Violence Policy* of the Family Court of Western Australia.

7. **Family assessors should ensure that parties are not restricted from full participation in assessments due to financial or educational disadvantage, and/or due to having a disability.**

   a. Arrangements for the assessment process should, as far as is practical, allow low income parties, those living in remote areas or those with a disability to participate in the assessment process in person.

   b. Parties who have difficulty with literacy should have information provided to them about the appointments and the process by a means other than just in writing.

COMMUNICATION WITH THE PARTIES AND THEIR REPRESENTATIVES

8. **Family assessors should not have substantive ex-parte communications about a case with the Court or with the solicitors representing the parties.**

   a. From the time that family assessors accept a brief or agree to undertake an assessment, and including after the evaluations have been completed and their assessments have been submitted, family assessors should take all reasonable steps to minimise ex-parte communication with the Court and with solicitors representing the parties.

   b. Where ex-parte communication occurs, all reasonable steps should be taken to limit discussions to administrative or procedural matters such as obtaining dates and times and supplying the assessor with filed documentation only. They should avoid discussing substantive issues, and refrain from accepting or imparting significant information with only one party.

   c. Family assessors must respect court Rules, court orders and the courts' *Guidelines for Independent Children's Lawyers* (2013) with respect to ex-parte communication with independent children's lawyers, and may communicate with the independent children's lawyer in relation to:

      - a preliminary overview of the dynamics of the separated family and the way this is impacting on the child
      - other agencies involved with the family
      - recommendations for case management
      - whether the child should be involved in further counselling and/or whether therapy is indicated
      - whether there are any urgent issues, and
      - details of any child abuse notifications made.

9. **The assessor must not engage in conversation or communication with parties after a report is completed, other than to communicate with unrepresented parties about basic details with regards to availability for cross examination or further assessment.**

   a. Any arrangement for the assessor to give verbal feedback to parties and/ or to their legal representatives after completion of the assessment should be only by court order or by agreement of all parties, and if done, should be done with all parties. There should be no ex-parte arrangements for feedback or discussion about the assessment with the family assessor.

   b. Where ex-parte communications with a party or legal representative do happen, they should be disclosed to the other parties.

   c. After an assessment has been completed and sent to a court or the parties, family assessors should not conduct any further interviews with parties at the request of unrepresented litigants, legal representatives or independent children's lawyers, unless specifically directed to do so by a judicial officer.

   d. Where further assessment is sought, a new court order needs to be sighted, or new contracting and briefing arrangements agreed to by the parties must be entered into before the assessment commences.

   e. Prior to being cross-examined in a trial, family assessors should refrain from reading new documents or material provided to them by a party unless ordered or directed by the judicial officer in the matter, or at the request of the independent children's lawyer, or by agreement of all of the parties.

CONDUCTING ASSESSMENTS

10. Family assessors should strive to be accurate, objective, fair and independent in gathering their data. They must be able to explain decisions concerning their methodology and treat all participants with respect.

a. In gathering data, family assessors should be committed to accuracy, objectivity, fairness, and independence. They should treat all participants impartially, weigh all data, opinions, and alternative views thoroughly and impartially, and be prepared to articulate the bases for decisions made by them concerning their methodology.

b. They must conduct interviews and spend sufficient time, in the opinion of the assessor, in interviews and observations with the significant people to ensure they have enough information about the parties and their circumstances to formulate valid and unbiased views. If, in the view of the assessor, there is insufficient time to assess one or more parties, this should be identified in the report as a limitation of the assessment.

c. While it can be important for observations of children with each party to be of similar length, it is not always necessary for family assessors to spend exactly equal amounts of time interviewing the different parties or others, or to have identical numbers of interviews with each, as long as sufficient time is taken for adequate assessment of all relevant family members and relationships.

d. Gross discrepancies in the time allocated for assessment of different parties, or differences with the number of interviews or contacts with each party, should only occur where there are clear and stated reasons to do so.

11. **Family assessors should use evidenced-based methods and methods accepted by the broader professional community for the collection of data, and methods broadly professionally accepted as suitable in forensic assessments.**

    a. Family assessors should strive to use multiple data gathering methods in order to increase accuracy and objectivity. The means of gathering data should be varied to suit the needs of the case, and should be in accordance with accepted and reliable techniques.

    b. Family assessors should have regard to the needs or circumstances of each case or family, and make decisions concerning the selection of data gathering methods with regards to the circumstances of the case and evaluation required.

    c. A valid assessment entails exploration which is broad enough to cover all significant aspects of the child's life in relation to the dispute, including the child as an individual, the child in their family setting, and the child in their broader social environment.

    d. The aim is to be both comprehensive enough and achieve economy, by finding a balance between the investment of time required to provide a valid assessment and the over-or under-utilisation of the assessor's time, and unnecessary and possibly harmful over imposition on a family of unnecessary and unwarranted assessment beyond what is needed to assist the Court and/or the parties.

12. **Psychometric tools can provide useful data and while test results can be useful indicators, psychometric instruments should only be used for the purposes and populations for which they have published validity and reliability. They should only be used in conjunction with other data collection methods such as interviews, observations and collateral information.**

    a. Psychometric tests should only be used when:

        - the tester has the necessary training and qualifications in the use of that instrument
        - the use of the instrument is justified by the nature of the issues in dispute, and are the reasons for its use articulated in the report, and
        - other means of assessment of the issues, such as interviews and observations, are also used.

    b. When interpreting test results, comment must be made as to whether or not, and the extent to which, other forms of assessment support the findings or results of the formal instrument.

13. **During the assessment process, the family assessor conducting a family assessment should not offer advice or undertake therapeutic interventions with anyone involved.**

    a. The aim is to complete a forensic assessment, not to intervene, mediate the dispute or provide counselling for any parties or family members.

    b. Therapeutic intervention should not be confused with the assessment and reporting process. The assessment process may have an overall therapeutic effect for families and children, but this is a possible consequence rather than the aim of the process. It is recognised that forensic assessment reports can be used later in a mediation or settlement process, but this is not the primary aim or purpose and should only be done after the assessment is completed.

    c. Counselling or mediation techniques and interventions, such as those based on interpretation, reframing or feedback, should not be used in forensic assessments as to do so will interfere with the process of assessment.

    d. The forensic assessment process may also have negative impacts on individuals and on relationships within the family. While the process of the assessments should be arranged to minimise negative impacts, sometimes they are an inevitable consequence of information being sought from family members about contentious or sensitive issues.

    e. Although therapeutic interventions and the offering of advice are deemed inappropriate under most circumstances, it is recognised that it may, occasionally, be necessary for an family assessor to intervene or to offer advice when there is credible evidence of substantial risk of imminent and significant physical or emotional harm to a party, a child, or others involved in the evaluative process.

    f. Where therapeutic intervention has been employed or advice has been offered, the family assessor should include in their report a description of the intervention or advice and the bases upon which the intervention or advice was deemed necessary.

    g. The term 'advice', as used herein, is not intended to include offering information concerning appropriate resources or offering a referral to an appropriate resource in the final written assessment.

14. **Family assessors should conduct at least one in-person interview with each parent and other adults who perform a caretaking/parenting role with the children.**

    a. Wherever possible, adults should be interviewed separately, at least once, to ensure they have an opportunity to express their own views.

b. The completeness and validity of the assessments of adults and their relationship with others are reduced if they are only interviewed jointly with other adults. For one party to be interviewed only with their current partner present is not a complete assessment of each individual or of the relationship between the two individuals.

c. A family assessor should provide opinion or evidence about the personality characteristics of a particular individual only when the family assessor has conducted a direct interview or observation of that individual and has obtained sufficient information or data to form an adequate foundation for the information provided and/or opinions offered.

d. Telephone or video interviews can be used as a supplementary means of interview with adults.

e. Where there is no alternative but to interview an adult by telephone, this must be noted as a significant limitation of the assessment, and the reasons for undertaking a phone interview articulated.

f. While interviewing adults jointly with others with whom they have relationships, or with whom they will need to interact for the purposes of being involved with the children, can enhance the assessment of adult or co-parenting relationships, joint interviews with adults must only be conducted with the permission of the parties and if doing so is not contrary to any existing protection orders and would not place any person at risk of family violence, intimidation or harassment.

15. **Family assessors should ensure that any allegation that they are likely to consider in formulating their opinion is brought to the attention of the party against whom the allegation is directed, so that the party is afforded an opportunity to respond.**

    a. Where circumstances warrant a departure from the foregoing standard, such as the need to protect a child or other family members from potential risk of harm, the reasons thereof should be articulated in the assessment.

CHILDREN IN FAMILY ASSESSMENTS

16. **Children must be advised of the purpose of the interviews and informed of what will happen with the information they provide to the assessor.**

    a. Children can be provided, via their parents or caregivers, with age appropriate brochures or information booklets prior to the day of interviews.

    b. Family assessors should meet with children on the day of interviews to explain, in age appropriate language and manner, the purpose and process of the assessment and what will happen with the information they provide.

    c. If ordered by the Court, the family assessor can explain the orders made by a court to children and the reasons for the orders or parenting arrangements decided upon.

17. **Children must be informed that they do not have to provide information, answer questions or express views about which parent they may wish to live with or spend time with, or about any aspect of their parenting arrangements.**

    a. Interviews with children should commence by informing children that what they tell the family assessor is not confidential.

    b. Children must be made aware that they do not have to express their views about the possible parenting arrangements, and must not be pressured into expressing a view.

18. **Family assessors should individually assess each child who is the subject of the evaluation.**

    a. Family assessors should individually assess each child about whom there are disputes. They must identify and assess issues for each child, taking into account their age and level of understanding, and any special developmental needs.

    b. In addition to any joint interviews or observations conducted, individual interviews with children who are old enough must be conducted. These should be done separately to any person who may influence or react to a child's views or their expression of their views, and must be conducted in an environment of privacy and safety.

c. Children should be interviewed and/or observed in person. Electronic means do not provide the full range of information about children's reactions and behaviours, nor the means for the assessor to fully engage with children. There are also risks with a lack of control by the assessor over the interview context and the safety and security the child has in the interview unless the assessor is present with the child.

19. Family assessors should be trained and skilled in forensic interview strategies with children and should follow generally recognised procedures when conducting interviews and observations with children.

a. Children who are the focus of parenting disputes should be interviewed if they have reasonable receptive and expressive language skills. Younger children can be assessed by observations.

b. When structuring interviews, family assessors should consider a range of approaches and base their interview strategies on published research addressing the effects upon children's responses of various forms of questioning. Family assessors should have knowledge of and should consider the factors that have been found to affect children's capacities as informants.

20. Family assessors should seek to ascertain the views of children and assess their maturity, understanding and ability to form and express their own views in relation to the pertinent issues and options.

a. The family assessor should specify the weight given to the child's stated perceptions and/or sentiments and should assess the extent that the child is of sufficient developmental maturity to independently express informed views.

b. In reporting these views to the adults or a court, the family assessor must be cognisant of any risks to the children in doing so, and take steps to minimise these risks by recommending some variation or limiting the process by which parties are informed, and the extent to which they are informed of the children's views.

c. Family assessors should consider the stated views and concerns of each child as these relate to the possible or proposed parenting arrangements. They should describe the manner in which information concerning a child's stated perceptions and/or sentiments was obtained.

d. Family assessors should assess and describe sibling relationships. If a parenting proposal under consideration involves the placement of siblings in different residences, the advantages and disadvantages of such a plan should be clearly articulated.

21. Family assessors should assess the relationships between each child and all adults who may perform a caretaking role with the child.

a. Multiple forms of information gathering should be used when assessing relationships, such as interviews, observations, documents, and corroborative information. Adults and children's self-reports about relationships should not be solely relied upon. Where possible and appropriate, joint adult-child interviews, observations and third party evidence should be included in the assessment of such relationships.

b. Each parent/child combination should be assessed by observation of the interactions between the adult/children by the assessor, unless there is a risk to the child's physical or psychological safety or wellbeing in doing so.

c. When observations are conducted, any limitations due to the timing, context or process of the observations must be identified, and the impact on the assessments derived from the data obtained must be acknowledged.

d. Where observation is not possible, it must be reported as a limitation of the assessment, and the reasons for not conducting an observation articulated. The absence of observed parent/child interactions limits the assessment of the nature of the relationship, and of the capacity of the parent to relate to and manage the child. Where there are no such observations, valid recommendations on parenting arrangements may not be possible.

e. Where possible, the observation of adult/child interactions should be conducted after individual interviews with the adults, in order to obtain contextual information about the adult and the child before the observation, and to inform the decision to conduct the observation.

f. Adults observed with children should also be given, in individual interview, the opportunity to comment on or explain any issues arising from the observations.

22. Observations structured or arranged by the assessor must be with the explicit knowledge of the adults involved. Assessors should inform the adults of the purpose for which arranged or structured observation sessions are conducted.

a. Parties should be observed by persons other than the family assessor only with their full knowledge and permission.

b. Children should be informed about observations according to their age and ability to understand. Permissions required with regard to children should be obtained from the adult/parent who is to be observed with the children.

c. Unscheduled or unplanned observations, such as incidental interactions between family members in waiting rooms or other public areas, can be used to inform the assessment even though the parties have not been advised before the observation. Assessors should, however, inform the adults of their observations and allow them to comment on what was observed.

d. Assessors must not observe parties or family members covertly and where incidental observation occurs, the assessor must, where practically possible, make it known to the family members that the family assessor is present or can hear/see them.

FORMULATING ASSESSMENTS/OPINIONS AND REPORTING

23. Family assessors should refrain from forming opinions or hypotheses about the parties, the children, relationships or the suitability of any parenting arrangements prior to assessing the family. It is essential that the assessor remain open and receptive to the parties' perceptions, and to the issues that are important for the parties.

a. Preliminary information can be obtained by reading available documents in order to ascertain the composition and characteristics of the family system, the parties' issues, and to make arrangements for the assessment process.

b. Based on the information available prior to the interviews and observations, the assessor can have hypotheses as to what may be the potential issues in a matter and whether there are safety issues for either party in attending the assessment. These hypotheses must be tentative and subject to variation on full assessment.

c. It is important to record what material has been read and when it was read, as this needs to be noted in the completed assessment.

24. **Family assessors should refrain from making recommendations or expressing opinions prior to completing their assessment.**

   a. Family assessors should refrain from offering recommendations, expressing any preliminary hypotheses pertaining to parenting arrangements or related issues, and should refrain from negotiating settlements with the parties and/or their solicitors prior to gathering all the necessary information.

   b. While it is appropriate and necessary to ask the parents their views about potential or proposed parenting arrangements, the family assessor must not present these options as their own or as favoured options, prior to completing their assessment.

   c. While approaches such as reality testing or making a proposal to seek a possible settlement are used in mediation, they are usually not appropriate during a forensic assessment process. To do so could involve the family assessor creating the perception that they favour one proposal, prior to completion of their assessment. Eliciting parties' views about proposals must be done in a neutral way.

   d. It is acceptable to make recommendations for further assessment prior to completing a full assessment.

   e. It is not appropriate to formulate an initial or early view or opinion on the issues in dispute, or on the parenting arrangements, and then present this to the parties during the process of an incomplete assessment.

25. **Family assessors should refrain from reading the evaluations of other similar professionals who have assessed the same family in a family assessment prior to formulating their own evaluation.**

   a. While appropriate to read assessments by different professions, such as psychiatric or medical assessments, reading the evaluations of other family assessors before gathering enough information to formulate their own assessment can lead to the perception of influence by the previous assessment, and may compromise the independence of the assessment.

   b. As part of the preparation for an assessment, it is important to be aware of what prior assessments have been undertaken. There are circumstances where it is necessary to read another assessor's evaluations prior to meeting the parties, and where so, the reasons for this should be clearly delineated in the report.

   c. Once an assessor has gathered enough information and formulated their own view, it is recommended that they read previous relevant assessments by others so as to be more informed and to be able to comment on them, and any similarity or variation between them and the assessor's views, if needed.

26. Family assessors must make reasonable efforts to obtain sufficient information from the parties, documents or collateral sources to assess the level and nature of risks to the welfare of the children, and to provide assessments of risk.

a. These risks include, but are not limited to, concerns about or allegations of family violence, child abuse or neglect, mental illness, or drug or alcohol misuse.

b. These risk assessments must be conditional on different possible determinations by a court on any significant disputed or non-agreed facts.

c. When making recommendations, the assessor must consider and recommend according to any assessed risk of future harm. Recommendations must also be conditional upon different possible findings of a court of any significant disputed facts that would impact on future risk.

27. Where family violence is identified as an issue in a matter, the assessor must conduct an expert family violence assessment as part of their report. They should use commonly accepted interpretive frameworks for family violence.

a. When assessing risk of harm from family violence, the family assessor must consider the Family Court of Australia and Federal Circuit Court of Australia *Family Violence Best Practice Principles – edition 3.1* (2013), or the *Family Violence Policy* of the Family Court of Western Australia. In doing so they should:

- address the issue of family violence or abuse or the risk of family violence or abuse
- assess the harm the children have suffered or are at risk of suffering if the orders sought are or are not made
- consider whether or not there would be benefits, and if so, the nature of those benefits, if the child spent time with the person against whom the allegations are made
- assess whether the physical and emotional safety of the child and the person alleging the family violence or abuse can be secured before, during and after any contact the child has with the parent or other person against whom the allegations are made
- ascertain the views of the child or children in light of the allegations of family violence or abuse or the risk of family violence or abuse when it is safe to do so, and
- be informed whether the whereabouts of the party making the allegations has been suppressed and that those whereabouts not be revealed in the assessment and reporting process.

b. Where family violence or abuse is established, the family assessor should report on:

- the impact of the family violence or abuse on the children and a parent/adult who may be a victim
- any steps taken by a parent or adult to act protectively or protect the children and minimise the risk of further family violence or abuse
- whether the person acknowledges that family violence or abuse has occurred
- whether the person accepts some or all responsibility for the family violence or abuse
- whether, and the extent to which, the person accepts that the family violence or abuse was inappropriate
- whether the person has participated or is participating in any program, course or other activity to address the factors contributing towards his or her violent or abusive behaviour
- whether there is a need for the child and the other parent or carer to receive counselling or other form of treatment as a result of the family violence or abuse
- whether the person has expressed regret and shown some understanding of the impact of their behaviour on the other parent in the past and currently, and
- whether there are any indications that a person who has behaved violently or abusively and who is seeking to spend time with the child can reliably sustain that arrangement and how it will occur so that the child feels safe.

28. Family assessors should only express opinions in areas where they are competent to do so, based on adequate knowledge, skill, experience and qualifications.

a. Opinions of family assessors should be based on the information and data obtained. They should differentiate between information gathered, inferences made and opinions expressed.

b. They should not provide raw data, whether empirical, descriptive or quotes, without adequate interpretation of the meaning of that data.

c. They should explain, or make explicit, the relationship between the data and the opinions offered.

d. They should focus on reporting their findings and assessments, and refrain from presenting large volumes of unnecessary raw data in their assessments.

Direct quotes and verbatim reporting of interviews should be used only where needed to support or explain the opinions or findings of the assessor.

29. **Family assessors must identify the limitations in or of the data obtained and any implications this has for their assessment and opinions. Where the available information is not sufficient to responsibly form opinions on the parenting arrangements for children, they should decline to offer an opinion.**

30. **Family assessors should avoid offering opinions to a court on matters that do not directly follow from the court order or the brief for the assessment, or are not otherwise relevant to the purpose of the evaluation from a legal or social science perspective.**

    a. Family assessors should recognise that information not bearing directly upon the issues in a matter may cause harm to parties or family members if disclosed, and may have a prejudicial or confounding effect on the decision making process of parties or courts. For this reason, assessors should avoid including information that is not relevant to the issues in dispute, but should be responsive to lawful requests or requirements to disclose all information.

    b. Where matters are not included in the brief for the assessment or court order, but are seen by the assessor as relevant to the decision making from a social science perspective, these matters should be included in the assessment and commented on in the assessment.

    c. Where an issue has no relevance to the decision making in relation to the children, or the issues in dispute, such non-consequential issues should not be commented on, other than to identify that they are assessed to be non-consequential.

    d. Recommendations or advice to parties to change or improve their lives or parenting though treatment, education or personal change, can be made but should also be clearly differentiated from recommendations made to a court about the decision a court can make with regards to parenting arrangements.

31. **Family assessors should endeavour to provide assessments that assist the decision making of the parties and/or the Court, based on the family and the situation as they are currently assessed. They should avoid making recommendations that unnecessarily delay or prolong decision making or assessment processes.**

    a. While there may be some circumstances where further information is needed before an assessment can be made, unless specifically requested to do so by the court order or the brief for the assessment, assessors should refrain from limiting recommendations to the short term arrangements with reassessment at a later date.

b. Where the parties are seeking resolution or determination of their matter, the family assessments should seek to assist in the early resolution or determination of the matters. Extending the process of assessing or determining a matter adds to the cost and potential distress of families and children. Family assessors should avoid recommending a delay in the determination process based on possible future changes unless requested to do so in the court order, or brief for the report, or if warranted for clearly articulated and valid reasons.

c. While parties or family members may be able to change their individual or family situation by participating in treatment or education programs, assessment should not be unduly delayed or prolonged for them to do so. It is generally not the role of forensic assessors to be a treatment case manager overseeing the outcomes of ongoing treatments or interventions.

32. When presenting their findings or assessments in writing or in oral evidence, family assessors should strive to be accurate, objective and professional in their manner and language.

a. They should present information in ways that are concise, easily understood by the Court, legal representatives, and as much as possible, by the parties.

b. Family assessors should, where possible, use plain language and try to ensure that the parties understand the assessments made of them and their children. This can be particularly important where parties are unrepresented.

c. Reports should be framed in terms of the interests of the child being the paramount consideration. To this end, evaluations should clearly identify risk, or potential risk, to the child of all proposals or options, and recommendations should be framed in terms of risk minimisation.

d. Reports should focus on parenting strengths as well as areas of concern. Concerns should be reported in a manner that is neutral and impartial, to enhance the parent's capacity to receive the information with minimal defensiveness.

e. Recommendations for parties to attend any treatment or programs are most helpful when they promote specific strategies for positive change that can be applied pragmatically, and recommendations should clearly articulate the purpose of the recommended service.

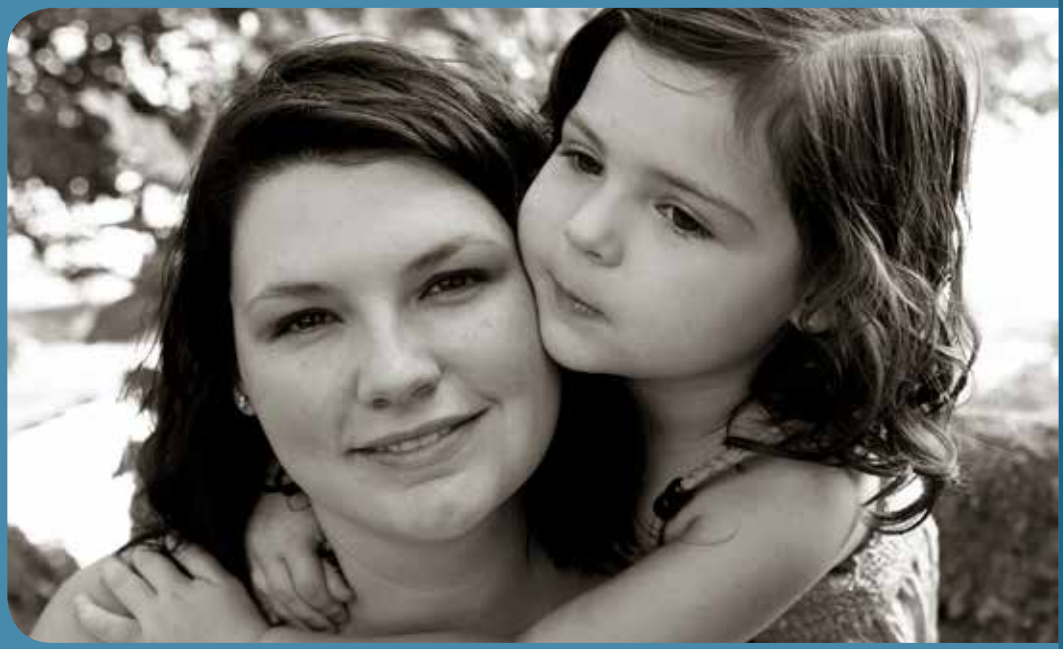
33. As experts, family assessors are expected to have a broad knowledge of the relevant published peer reviewed research relating to issues for families and children in family law matters. They are also expected to have an understanding of the diversity of this research and the views and findings expressed in it, how it relates to the cases they assess, and the limitations of research in this area.

a. Assessments of families and children must be evidence-based on the broad body of research that underpins social science knowledge about children and families, specifically about separated families. While it is neither possible, nor appropriate, to provide references in every report for all of the research that underpins the knowledge that a family assessor brings to an assessment, where there are specific issues in dispute and recent and relevant peer reviewed and published research on those issues, the family assessor may choose to provide the full references to cite this research in their report.

b. Where research is cited in a report, it is appropriate for the family assessor to be aware of and to cite not only the research that supports their assessment, but also any recent and relevant research that does not support the relied upon research or their assessment. It is not appropriate to select and cite only one or two references that support the assessment and make no reference to research that may not support the assessment.

c. Where there are published research papers that provide an overview or meta-analysis of all of the relevant research in relation to an issue, it may be appropriate to cite such published papers.

d. Where research is referred to or cited in a report, it is important that the family assessor explain the relevance of this research and how it is to be interpreted and applied to the specific case assessed, and the limitations of doing so.



CULTURAL ISSUES

34. Family assessors must ensure that all parties and relevant persons who need to be included in the assessment are able to do so without restriction due to language, culture or disability.

a. Specific provisions may need to be made for Aboriginal or Torres Strait Islander persons to ensure they are able to fully participate in the assessment process.

b. Arrangement should be made to ensure that any party who wishes to or needs to have an interpreter is able to do so and that the interpreter is suitable and appropriately qualified for the purpose.

c. The arrangements for the assessment should be, as far as is practicable, sensitive to the cultural needs of families.

d. Family assessors should make enquires with Indigenous parties as to whether the engagement of an Indigenous consultant or advisor is needed to assist the family members in the process, and to advise the assessor about culturally appropriate interview practices.

e. Consideration should be given to the impact of requiring Indigenous families or parties who were refugees from authoritarian regimes to attend interviews in a court building, and the possible benefits of other locations for interviews, should be considered.

f. The use of any interpreters or cultural advisors, and their role in the assessment process, must be included in the assessor's report.

35. As a minimum standard, a family assessment in which one or more party identifies as Aboriginal or Torres Strait Islander should contain the following:

- a description of the Indigenous background of the party (including whether one or both of the party's parents are Indigenous, as well as any tribal affiliations, if known)
- an indication of whether the child has current and active involvement with any extended Indigenous family
- a description of the party's connection, if any, to their local Indigenous community e.g. relationships with key local figures, use of Indigenous agencies and services, participation in local cultural events, etc.
- a description of both parties' views of the significance of the child's Aboriginality and the extent to which this is an issue that the Court needs to consider in determining the matter
- an assessment of the extent to which the child identifies (or is identified) as an Aboriginal or Torres Strait Islander

- an assessment of the capacity of both parents to provide the support and opportunity for the child to explore the full extent of their Indigenous heritage, consistent with the child's age, developmental level and wishes
- an assessment of the capacity of both parents to foster a positive sense of Indigenous cultural identity, and
- an assessment of the likely impact on the child of being raised in a non-Indigenous family in circumstances where the Court is asked to make an order that the child lives with a non-Indigenous parent.

36. A family assessment in which one or more party identifies significant cultural issues should contain the following:

- a description of the cultural background of the parties
- an indication of whether the child has current and active involvement with the cultural backgrounds
- a description of the party's active connection, if any, to that community or extended family
- a description of both parties' views of the significance of the child's culture and the extent to which this is an issue that the Court needs to consider in determining the matter
- an assessment of the extent to which the child identifies with the parents' culture
- an assessment of the capacity of both parents to provide the support and opportunity for the child to explore the full extent of their cultural heritage, consistent with the child's age, developmental level and wishes, and
- an assessment of the capacity of both parents to foster a positive sense of that cultural identity.

HOME VISITS

37. Home visits should only be used as part of an assessment where the home visits are clinically warranted for the purposes of the assessment.

They should also only be considered where there are no risks with regards to the safety of the assessor, where the assessor will have sufficient control over the assessment process, where there is the ability to equally assess the home environments of all parties, and where resources permit.

a. Home visits can be used in circumstances where there are specific issues that can only be assessed in the home environment or are necessary to enable a party or significant family member's full participation. Such circumstances include where a party has a disability or illness such that attendance at court or office premises would be difficult, where there are large family groups, or where one or more party is Indigenous.

b. Home visits involve a range of risks and limitations and can add significant additional costs of time and resources. While home visits can provide a setting for observations in many homes, it can be difficult for there to be the level of privacy required for individual interviews, with both adults and children. It may not be possible to conduct interviews with sufficient privacy in a home visit.

c. In the unusual circumstances that require a home visit to one household or party and not the other, the family assessor must be able to clearly describe and explain the reasons for this, and the implications for assessment.

d. Unless the family assessor has particular training and expertise necessary to assess the physical facilities, condition or amenity of homes or premises to which home visits are made, they should refrain from expressing opinions about such matters. Family assessors should be careful to avoid applying their own personal or cultural values to the physical attributes of the homes of the parties.

NOTIFICATION OF RISK OF HARM

38. Where a family assessor has reasonable grounds for suspecting that a child has been, or is at risk of being, ill-treated, abused, seriously neglected or exposed to psychologically harmful behaviour, formal notification to the appropriate child protection authority should be made.

a. Family assessors must comply with any legislative requirements for mandatory reporting of abuse of children at risk of abuse or neglect.

b. Where the child protection authority has previously been provided with all of the information which the assessor has about alleged abuse or neglect, it is not necessary for the family assessor to provide them with the same information again. The family assessor should, however, notify the child protection agency in relation to any information not included in any prior notification. If it is unclear if the child protection agency has all the information, a further notification is recommended to ensure the child protection agency has all the necessary information.

c. Where a notification is made to a child protection authority, the family assessor should inform the Court and/or parties of this in their report. Where the family assessor considers there is a danger that informing the parties of the notification may jeopardise an investigation by the child protection agency, or place a child or family member at risk of harm, this should be commented on in their report, so that those receiving the report can take this into account when deciding to release it or to give it to the parties.

RECORDING AND STORING INFORMATION

39. Interviews, observations or phone calls in family assessments must not be recorded electronically, or any photographs or video recordings made, without the approval of the family assessor and the party involved.

a. The purpose of the recordings, their potential use and the storage and disposal thereof must be explained to parties.

b. Where an assessment is being conducted by court order the Rules and policies of that court with regards to the recording of the assessments process must be observed.

40. Family assessors need to make contemporaneous written notes of all interviews and observations, and keep a record of communications with parties and their representatives.

a. While recording events should take place during or shortly after each interview or observation, it is sometimes not good practice to be taking detailed or extensive notes during interviews with children, as they require a more informal interactional style to feel engaged or comfortable in the interview process. Notes of interviews with children will thus sometimes be written immediately after the interview.

41. Family assessors must establish a system of keeping all records pertaining to their assessments in a safe and secure place, keep the records private, and retain them at least until the expiry of any appeal period or after the finalisation of any court matter.

a. Family assessors must also be able to produce their records as required or ordered by a court. Where the report was ordered by a court, the notes should only be released by court order.

b. If required to produce notes or records, the assessor should be aware of any information in their notes that may place a party at risk, for example personal contact details of parties or others, and remove these from the records before releasing them. If so, the report writer must inform the Court and the parties they have deleted these details and why this was done.

FEBRUARY 2015

Family DOORS Triage – Family Counsellors

THE LIGHTHOUSE PROJECT

The Lighthouse Project is an innovative approach taken by the Federal Circuit and Family Court of Australia to screen for risk, with a primary focus on improving outcomes for families. This project is being piloted in the **Adelaide**, **Brisbane** and **Parramatta** Federal Circuit and Family Court registries for **parenting only** applications.

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 resources and safe and suitable case management, and
- referral of high-risk cases to a dedicated court list, known as the Evatt List.

Separation and litigation are processes that cause increased stress for families. The Court is committed to assisting and supporting parties, their children and families through the court proceedings.

APPOINTMENT WITH A FAMILY COUNSELLOR

The Court employs Court Child Experts who undertake a variety of roles to assist children and families engaged in Family Law Proceedings. One of these roles is a Family Counsellor. Family Counsellors help parties affected by separation deal with personal or interpersonal issues, and issues relating to the care of the children.

After filing an initial application or response to an application for a **parenting only** matter, a party will be invited to complete the Family DOORS Triage screening tool. If the responses to this tool identify significant safety concerns or risk factors, the party is invited to attend an appointment with a Family Counsellor.

The purpose of the appointment is to strengthen the safety and wellbeing of the party, the child/ren and/or family members, through:

- exploring the safety and wellbeing concerns
- offering support and guidance to address the concerns or needs, including identifying appropriate support services that might provide immediate and/or ongoing support, and
- developing a safety and wellbeing plan with the party.

Attendance at this appointment is voluntary as this is not a court-ordered appointment, however parties are strongly encouraged to attend as it can provide support and assistance for the needs/concerns the party has identified.

In the majority of circumstances, the appointment will be via telephone or videoconference. If a face-to-face appointment is preferred or an interpreter is required, please call the Court on **1300 352 000**. For face-to-face appointments, the Court can also assist with developing a safety plan for when the party attends the registry.

If you need to change your appointment with the Family Counsellor, you should call the Court on **1300 352 000**.

Children are not required to attend the appointment. Where possible, parties will need to make alternative childcare arrangements for the duration of the appointment. Given the sensitive nature of the information likely to be discussed, it is inappropriate for children to be present for this appointment.

CONFIDENTIALITY AND USE OF INFORMATION

All information gathered by the Family Counsellor in the course of the Family DOORS Triage process is confidential and inadmissible to the Court proceedings (sections 10U and 10V, *Family Law Act 1975*).

This means that the information **cannot be used as evidence** and a party cannot be cross-examined (except in limited circumstances) on the information they have provided to the Family Counsellor.

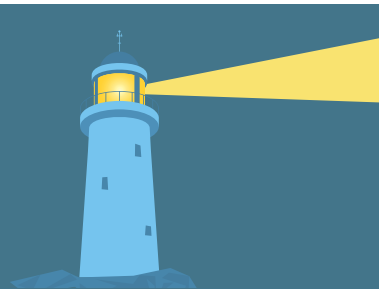
DOES THE FAMILY COUNSELLOR HAVE TO DISCLOSE ANYTHING?

Yes, family counsellors must notify a child welfare authority if:

- they reasonably suspect that a child has been, or is at risk of being, abused, and/or
- they reasonably suspect that a child is being ill-treated, or is at risk of being ill-treated, or
- a child has been exposed or subjected, or is at risk of being exposed or subjected, to psychological harm.

MORE INFORMATION

Further information about the **Lighthouse Project** can be found on the Court's website:
www.fcfcoa.gov.au/lighthouse



INFORMATION SHEET FOR PARTIES

Family DOORS Triage risk screening and case management

The Lighthouse Project pilot involves:

- early, confidential risk screening through a secure online platform
- early identification and management of safety concerns, and
- triage and assessment of cases by a highly specialised team that will direct appropriate resources and provide safe and suitable case management.

What is meant by 'risk screening'?

- Risk screening refers to the process taken to identify the likelihood of harm or exposure to a type of harm (child abuse and neglect, family violence, mental health issues and drug or alcohol misuse) experienced by a party or child in family law proceedings. This process involves completing an online risk screening questionnaire called the Family DOORS Triage.
- The Family DOORS Triage questionnaire can be completed safely and securely on your computer, mobile or tablet. Although we ask that you complete the questionnaire, it is voluntary for you to do so. The questionnaire will take approximately 10 to 15 minutes to complete.
- By risk screening when you file your documents at the commencement of your case, the Court will be able to decide on the most appropriate case management pathway for your family and identify any extra help that might assist in managing serious concerns for you or your children.

What happens to my risk screen?

- A Court Child Expert acting as a Family Counsellor will view the answers to your completed risk screen, to assist with triaging your case according to risk. The other parent/party in your case will not be provided with your answers. The Judge/Senior Judicial Registrar or other judicial officer presiding over your case will not be able to see your answers.
- Your answers are **confidential and cannot be used as evidence in your case or used against you by the other party** under the *Family Law Act 1975*.

How will this affect my case?

- If you are filing or responding to a family law parenting only matter at the Adelaide, Brisbane or Parramatta registries, you will be asked to complete the Family DOORS Triage online risk screening questionnaire.
- The questionnaire will enable the Court to identify any risks you or your child/ren may be experiencing. After the questionnaire is completed, the Court will be able to arrange cases into an appropriate case management pathway, according to the risk level identified. These pathways are discussed over the page.
- If the questionnaire is not completed by either party, your case will be placed in the amber case management pathway by default.

How does the triage process work?

- The three possible pathways for cases are green, amber and red.
- The answers provided in your questionnaire will guide the Court as to which pathway your case will go in.
- A dedicated team within the Court will offer tailored support to you based on the level of risk detected.
- The dedicated team within the Court consists of Family Counsellors, Evatt List Judicial Registrars, DOORS Triage Case Coordinators and Legal Case Managers.

What does the risk category mean for my case?

- **Red cases** will receive early attention through a face-to-face, video or telephone appointment with a Family Counsellor, who will conduct a follow-up risk assessment, develop a safety and wellbeing plan for you and offer referrals to support services. The Family Counsellor may also make referrals for the need of safety plans during your physical attendance at court events. Your matter will also be referred to a Evatt List Judicial Registrar for consideration for the Evatt List.
- **Amber cases** will be offered online safety planning and service referrals as part of the Family DOORS Triage risk screening process. Depending on the level of risk identified, these cases may be encouraged to attend court-ordered family dispute resolution where it is safe to do so.
- **Green cases** will be encouraged to attend family dispute resolution to assist parties to resolve their cases as soon as possible. These cases may also be offered online safety planning and service referrals as part of the Family DOORS Triage risk screening process.

Need more information?

See the following resources on the Court's website:

- **The Lighthouse Project:** **www.fcfcoa.gov.au/lighthouse**
- **Safety plans:** *Do you have fears for your safety when attending court?*
- **Family dispute resolution:** *Dispute Resolution in Family Law Proceedings*
- **The Evatt List:** *Guide for parties in the Evatt List*

What is the Evatt List?

- The Evatt List is a specialist list in the Court, which involves active case management and early information gathering to safeguard against family violence and other high risks.
- Your case may be allocated to the Evatt List if:
  - your case is filed in the Adelaide, Brisbane or Parramatta registries
  - your court documents seek parenting orders only
  - either parent in your case has completed the Family DOORS Triage risk screening questionnaire
  - either parent in your case has participated in a session with a Family Counsellor, and
  - the Evatt List Judicial Registrar has reviewed the case and determined it is appropriate for the Evatt List.
- If you are allocated to the Evatt List, a formal Court Order will be made notifying you before the first Court date. If you do not receive a formal Court Order, your Court date originally allocated and case pathway will remain the same unless otherwise advised by the Court.

All Court orders are accessible at – **www.comcourts.gov.au**

How will my case be affected if I am in the Evatt List?

- As the Evatt List is for cases with the highest risks identified, it is resource intensive and involves gathering information from child welfare authorities, state courts, police and other relevant bodies.
- If your case is allocated to the Evatt List, you will receive more active case management from a dedicated team involving Judges, Senior Judicial Registrars, Evatt List Judicial Registrars, Court Child Experts, and court staff, and the number of Court events will be reduced.