



National Legal Aid Secretariat  
GPO Box 9898  
Hobart TAS 7001

Executive Officer: Louise Smith

t: 03 6236 3813  
f: 03 6236 3811  
m: 0419 350 065

e: [louise.smith@legalaid.tas.gov.au](mailto:louise.smith@legalaid.tas.gov.au)

Child Protection Discussion Paper  
Australian Department of Families, Housing, Community Services and  
Indigenous Affairs  
PO Box 7576  
Canberra Business Centre  
ACT, 2610

9th July 2008

By email to: [child.protection@fahcsia.gov.au](mailto:child.protection@fahcsia.gov.au)

**Re: National Legal Aid (NLA) submission  
Australia's children: safe and well"  
A national framework for protecting Australia's children  
A discussion paper for consultation, May 2008**

### **National Legal Aid (NLA)**

NLA represents the Directors of each of the 8 State and Territory Legal Aid Commissions. The Legal Aid Commissions (Commissions) are independent statutory authorities established under respective State or Territory enabling legislation. The Commissions are funded by Federal and State or Territory Governments to provide legal assistance to disadvantaged people, including in the areas of family law and child protection. The Commissions are the largest child protection and family law legal practices in the country.

This submission has been prepared by the NLA Family Law Working Group, which is comprised of a senior family law manager legal practitioner from each State and Territory, the Director of Legal Aid Western Australia, and the NLA Executive Officer. The primary writer of the submission is from Legal Aid Western Australia (LAWA) and hence there is an emphasis on West Australian experiences, but these experiences generally reflect common themes from around the country, and the submission is endorsed by all Commissions.

Legal Aid NSW (LANSW) has separately submitted its extensive response to the Special Commission of Inquiry into Child Protection Services in NSW<sup>1</sup> because of the relevance of the content to the subject of this discussion

---

<sup>1</sup> Submission and Supplementary Submission on behalf of Legal Aid NSW to the Special Commission of Inquiry into Child Protection Services in NSW.

paper. In addition the Northern Territory Legal Aid Commission (NTLAC) has made relevant submissions in its response to the Commonwealth NT intervention.

This submission includes some key points and examples. We would however welcome the opportunity nationally and/or in each State and Territory to elaborate and to provide any further information or examples.

### **(i) National Framework - NLA Overview**

The current systems and processes for managing child welfare concerns are so challenged that we respectfully suggest that the Commonwealth should give consideration to the introduction of national, or perhaps model, legislation in relation to the protection and care of children, notwithstanding the complexities involved. It is suggested that any consideration of national legislation should involve all significant stakeholders, including non-government organisations, providing services to children and their family members and particularly those involved in representing them. There is, however, a range of views as to the priority that should be given to this option as urgent and serious focus on prevention, early intervention, and collaboration between services combined with uniform state legislation might in itself make a significant change to the system.

As noted in the discussion paper, child protection in Australia is eight systems. Each State and Territory has different legislation with differing definitions for abuse and different terminology in relation to orders placing children in care, and a Department with different titles and structures responsible for the protection of children. In this submission we will refer to these Departments collectively as “welfare authorities” except where we are giving specific examples.

The Family Court of Australia, the Family Court of Western Australia (FCWA), and the Federal Magistrates Court, collectively referred to in this submission as the “family courts”, determine welfare issues for children of separated couples or between grandparents/extended families and parents (private law). Children’s Courts, which are different and separate to the family courts, determine welfare issues for children who may be in need of protection between states and families (public law).

NLA is concerned that the focus at the wider social and political level, which appears to be largely on the role of child welfare authorities in removing children from acute risk situations, needs to be extended to further developing and providing for a system that supports families to care for their children. It appears to us that this focus and other issues, including notably resourcing issues, means that not enough is being done to assess whether it is possible to develop and support a safety plan that will enable children to stay with their families or to reunify with them in the event that removal is necessary for their safety in the short term.

A pattern is developing nationwide of speeding up the removal of children from their families placing them in long term State or permanent care in an environment of poor and untimely support rather than assisting people to safely explore reunification options and to maintain and develop their relationships with each other.

### **Different issues in different locations**

Any national framework will need to take account of the different issues presenting in the different locations. Different issues can arise in the protection of children as a result of

- the size of the State
- diversity of population,
- geographical isolation, and
- remoteness of many people and communities.

#### **Example 1, NT**

The Commonwealth Emergency Response in the Northern Territory (NTER) has highlighted many issues concerning the alarming state of facilities and services in remote and regional Northern Territory (NT).

The NT has many people who have relocated for work on a temporary basis and those who relocate to start “anew” (part of Australian folk lore).

Generally, whilst indigenous families are strong many non indigenous people have no family support. The costs of living are high and the weather can take its toll.

In the experience of the NTLAC, families have come to the NT, had children taken into care, and then the family has moved on leaving the child in the NT in care. The NTLAC has experience of cases where there have been children of one family in care in 3 different States/Territories, eg QLD, SA and the NT.

Many indigenous families have strong family and cultural ties across the borders to Queensland, Western Australia, and South Australia. Child protection cases in the Northern Territory can have children, parents, and significant people for the children located in each of those States. In such cases at least two different systems and welfare authorities are often involved.

There is also a movement of people from remote communities into regional towns who can have difficulties accessing services due to cultural, language and literacy levels. Poor literacy can make it very challenging for people to access services and it appears to cause them a great deal of frustration and alienation. The delivery of services to these people is also then more complex.

The Commissions agree with other providers that many issues including poverty, health, housing, education, training, and social isolation are entangled with child protection and that addressing related issues is part of the challenge in ensuring that Australia's children are safe and well.

NLA believes that improvements through any number of projects and pilot programs in the child protection system will have limited impact unless they are part of a holistic approach drawing on the strengths of communities in an inclusive way as part of a collaborative approach to addressing the extensive problems that have been identified.

## **(ii) NLA Recommendations**

### **Recommendation 1**

That a comprehensive review be held of the division of responsibility for child protection between the Commonwealth and the States/Territories as a matter of urgency and that such a review make recommendations in regards to coordination, sharing of resources and areas for cooperation between the Commonwealth and the State and Territories that will enhance children's welfare and well-being throughout Australia. The review should include reference to the matters set out at 2.2 and should include input of NLA and other organisations working with and representing parents and children.

### **Recommendation 2**

That there be reviews of current

- (i) state child welfare legislation to consider whether it would be in the best interests of children to develop a unified family law/child protection court to manage all cases involving the welfare of children throughout Australia.
- (ii) state and federal legislation to consider whether it would be in the best interests of children to develop unified laws relating to children, young people and families involving the welfare of children throughout Australia.

### **Recommendation 3**

That there should be

- (i) protocols in place to facilitate timely information sharing between Family Courts and Children's Courts in relation to families with child welfare issues moving between them.
- (ii) cross-jurisdictional participation by family law and child protection judicial officers in judicial education programs relating to child welfare matters.

### **Recommendation 4**

That the Commonwealth and State and Territory Governments collaborate to provide the necessary funding and infrastructure to resource, expand and increase the number of Child Contact Services to enable these services to provide independent contact supervision services for children in the child protection system.

### **Recommendation 5**

That the Commonwealth and State and Territory Governments collaborate to provide increased funding for rehabilitation services, parenting programmes and infant home visiting services especially in regional and remote areas.

**Recommendation 6**

That the Commonwealth and State and Territory Governments make a long-term commitment to funding of schemes (subject to evaluation) designed to redress the problems in service provision.

**Recommendation 7**

That the role of the Family Relationship Centres should be expanded/restructured to provide support services for families with child welfare issues whether or not the parents in these families have separated.

**Recommendation 8**

That

- (i) Governments ensure processes are streamlined between states and government departments to enable timely assessment of relative carers;
- (ii) Foster carers be adequately trained, resourced and remunerated; and
- (iii) Governments review services currently available to young people to ensure their needs are met.

**Recommendation 9**

That continued efforts need to be made to obtain input from local indigenous communities into the design and delivery of programmes being implemented in their communities and to ensure the employment of local Indigenous staff where possible.

**Recommendation 10**

That positive incentives and specialized training be provided to attract social workers, residential hostel staff, psychologists, psychiatrists and other mental health workers to work in the protection area in regional locations, especially those with expertise in working with children and young people.

**Recommendation 11**

That Governments provide funding for the ongoing training, including interdisciplinary training, of all professionals who work in the field of Child Protection, including those who provide support, contact, legal and medical services to facilitate their ability to constructively work with families to keep children safe.

**Recommendation 12**

That as part of a national framework consideration should be given to all States and Territories adopting child protection conferencing processes with parents and children able to be legally represented as part of best practice.

**Recommendation 13**

There needs to be improved streamlined processes to facilitate the capacity for extended family members to take on the care of children in circumstances where the welfare authority considers that a protection and care application will be necessary if the extended family do not obtain family court orders in relation to the care of the child.

Legislative change may also be needed to assist carers to have parental responsibility for a child in some circumstances to avoid the child feeling different to other children.

**Recommendation 14**

That a streamlined process be developed by Commonwealth, and State and Territory Governments to enable timely police checks.

**Recommendation 15**

That the Commonwealth Government consider the establishment of a National Child Protection Register to facilitate safety and support of children in their own homes.

**THE SIX SPECIFIC ACTION AREAS IN THE DISCUSSION PAPER**

**1. STRONGER PREVENTION FOCUS**

**1.1 Prevention and intervention**

To adequately respond to this topic we consider it necessary to define prevention as including early intervention strategies for the families of children where there are concerns for their welfare and statutory action is being contemplated or has commenced.

A stronger prevention focus needs to be based on more collaborative working relationships with parents and their children rather than reactionary risk minimisation strategies.

The “At Risk Newborns” Project (Department for Child Protection WA December 2007) highlighted a significant increase in the last 5 years in the number of children who, before reaching the age of 6 months, have been the subject of Protection and Care/wardship orders and have been in out of home care. The research identified that a lack of resources to support parents to address parenting issues and to enable intensive assessment and supervision was a consistent issue for these babies.

**1.2 Child Contact Centres**

Both the family courts and the Children’s Courts accept that in the majority of cases where there are concerns about the welfare of children in their family that, as a minimum, some supervised contact is appropriate. The discrepancy between what is ordered in the family courts and Children’s Courts is considerable.

Child Contact Centres currently funded by the Commonwealth to provide therapeutic contact (including supervised contact) services for separating families in the family court context should be resourced, expanded and increased in number, so that they can also provide similar contact services to

families in the care system. The current number of Child Contact Centres and the supervision that is available is insufficient to meet demand even in relation to Family Court ordered contact. At the same time welfare authorities in all States and Territories are unable to provide adequate services of this kind to support bonding and reunification processes for both new born and older children.

LAWA's experience is that most babies who have been taken into care, wherever they are born in Western Australia, do not receive more than two to three contact visits each week of not more than one to two hours duration with their parents. The contact generally, at least initially, occurs in a Department of Child Protection (DCP) Office, supervised by a DCP caseworker or by a contracted contact supervisor and often does not involve parenting programmes of any kind. The situation is usually not better for older children and, if the contact supervisor is sick or takes leave, contact will often not take place at all.

Interim applications to the Children's Court by parents for more extensive contact, based on research which supports the need for this for the development of healthy attachments and the social and emotional development of the child, fail through lack of resources to meet the demands for contact.

In NSW, LANSW is aware of a number of cases where the NSW Children's Court has been unable to order contact simply because although the court has determined that supervised contact is in the best interests of the child, the Department of Community Services (DoCS) has refused to consent to provide that supervision and the court has therefore been unable to make the order. These children have been deprived of contact at a frequency that has been determined to be in their best interests. This occurs on a regular basis, particularly when the court is considering interim contact orders in ongoing proceedings: the court might consider that frequent contact is required pending the conclusion of the proceedings (for example because the child is a very young baby and the outcome of the proceedings unclear, such that the child must be allowed to breastfeed and/or to establish and maintain a relationship with a mother), yet because of the child's young age supervision is also required. DoCS often does not agree to provide supervision at the frequency proposed by the court simply due the cost to DoCS of doing so.

The apparent inability of welfare authorities to resource and support parents to develop parenting skills incorporating supervised therapeutic contact, intensive assessment and associated reunification processes is concerning. In the context of statutory action this has the potential to destine these children to long periods in the care of the welfare authorities and the associated life experience of their parents, many of whom were also in the care of welfare authorities as children.

The provision of local services that can provide supervision of the time that parents spend with children in care or the subject of protection and care proceedings and Family Court proceedings where the need for such

supervision has been identified needs to be prioritised. The lack of resources to support parents to develop parenting skills incorporating supervised therapeutic contact, intensive assessment and associated reunification processes is a serious problem for affected families.

For families who have had children taken into care, punitive action such as threats to suspend supervised contact for a parent who attends contact regularly for failure to meet requirements such as urine screens, is not in the best interests children. Such decisions do not facilitate the opportunity for the child to maintain a relationship with their parent, which is important, even where reunification is not going to be possible.

#### **Example 2, Kimberley region, WA**

Resources in the Kimberley regions (North Eastern and Western regions of WA) for arranging contact with children if they are not placed with extended family are extremely limited. In Broome, children can be placed at Katherine House but there are not enough protection workers to enable sufficient contact time with parents. In other parts of the Kimberley DCP relies on women's refuges or safe houses which makes it extremely difficult for contact for either one or both of the parents and often contact cannot be supervised at all.

When a child is placed with extended family members there will often be personal conflicts between members of the family. Without sufficient child protection worker supervision or facilities for contact it is difficult for contact to proceed and sometimes it does not happen at all. Placement based on cultural reasons is acknowledged as an appropriate aim but consideration needs to be taken to account of the logistical practicalities of remoteness in the Kimberley. Children with parents in Broome have been placed with extended family in Balgo. The distance between the two locations makes contact virtually impossible, except by telephone.

Where children are placed with extended family there is generally not enough support for them. Placing children with extended family can lead to difficulties particularly with over crowding in the carer's family.

#### **Recommendation 4**

That the Commonwealth, and State and Territory governments collaborate to provide the necessary funding and infrastructure to resource, expand and increase the number of Child Contact Services to enable these services to provide independent contact supervision services for children in the child protection system.

### **1.3 Income Management Strategies**

Income management strategies which involve welfare authorities, while potentially serving a useful function, may be counterproductive to a collaborative approach between families and child protection workers to minimising harm. Careful management will be required if such strategies are not to become counter-productive.

#### **1.4 Resources for Perpetrators of Family Violence**

As well as resources for women and children to better protect them against violence, there needs to be increased access to resources in metropolitan, regional and remote areas for perpetrators to maximise any opportunity to break the cycle of violence at an early stage.

#### **1.5 Residential and Home Mentoring Programmes**

Many more residential and in home mentoring programmes are required. There needs to be a review of current residential programmes in all areas (eg mental health, drug and alcohol and prisons) to facilitate the opportunity for parents and their children to be placed together, where that would be in the best interests of the child.

#### **1.6 Resources for Rehabilitation Programs**

More resources are urgently required to provide treatment for substance abuse, parenting programmes, counselling for family violence, anger management and, mental health issues. Increased services should include extending the infant health nurse scheme and home visiting services for babies and infants, especially in regional and remote areas along with other in-home parenting supports<sup>2</sup>. Lack of resources especially in regional and remote areas for rehabilitation, for both criminal and protection and care matters, often creates a revolving door of offending and/or involvement with welfare authorities. The lack of resources impinges greatly on the well being of children and young people in these situations. Initiatives such as alcohol bans and an increased police presence in remote communities has had limited effect when the services required to address the concerns are inadequate to meet demand.

#### **Example 3, Victoria**

A mother with young children failed to adequately treat a skin condition requiring the hospitalisation of the children. Expensive litigation occurred, testing the opinion of a series of health and medical experts around the level of risk and whether or not the children should be returned to the mother's care. Had a visiting nursing service been available to assist the family in the home, helping dress, medicate and monitor the children, the situation might not have reached the point of disruption of the child-parent relationship or statutory intervention.

#### **Recommendation 5**

That the Commonwealth and State and Territory Governments collaborate to provide increased funding for rehabilitation services, parenting programmes and infant home visiting services especially in regional and remote areas.

<sup>2</sup> For example, the Victorian maternal and child health nurse scheme works successfully but its capacity to home visit is seriously under resourced.

### **1.7 Access to parenting programmes**

Easily accessible and low, or no, cost parenting programmes can be a key component in the prevention of abuse. For example, the Positive Parenting Program is offered to parents in WA by the Department of Health and the Department of Education and Training (DEAT) and is recognised as a successful program. However, due to limited resources, it is only available in some areas and only for 3 - 5-year olds. The funding for the DEAT programs was initially provided by private businesses but the program is yet to secure ongoing state funding. The availability of similar programmes for other age groups would also be beneficial.

Due to lack of resources, there is often a delay from a few weeks to several months waiting time for a place in Ngala, a residential parent and baby unit in Perth. This can happen even in situations where the family has been involved with DCP pre-birth.

### **1.8 Long Term Funding for Programs**

The programs referred to in the Minister for Families, Housing, Community Services and Indigenous Affairs Media Release “\$16 million to support local communities” on 6 June 2008 go part of the way to addressing some of the shortfalls in service provision.

There needs to be a commitment to the long-term funding and evaluation of these sorts of projects rather than just pilots. Funding should not be geared around a three-year election cycle. To encourage the commitment of the communities involved, they need to be confident that the money will not just disappear.

#### **Recommendation 6**

That Commonwealth and State and Territory Governments make a long-term commitment to funding of schemes (subject to evaluation) designed to redress the problems in service provision.

### **1.9 Multi-Service & Family Relationship Centres**

We support the Prime Minister’s multi-service centres (“one-stop shops”) concept in relation to the provision of support services for families. The role of the Family Relationship Centres established as part of the recent family law reforms could be expanded/restructured to provide these and other family support services.

#### **Recommendation 7**

That the role of the Family Relationship Centres should be expanded/restructured to provide support services for families with child welfare issues whether or not the parents in these families have separated.

### **1.10 Regional Services**

Offenders in regional and remote areas should have access to a similar range of pre- and post-sentence programmes as offenders in metropolitan areas to reduce the likelihood of a revolving door on offending which impacts on the children in these communities eg through exposure to family violence.

Access to family violence counsellors is virtually non-existent in many remote and regional Indigenous communities making it difficult to address protective concerns as well as assisting with rehabilitation in criminal matters. In addition to resources for women and children to better protect them against violence, there needs to be increased access to resources in metropolitan, regional and remote areas for perpetrators to try to maximise their opportunity to break the cycle of violence at an early stage.

Programmes, especially for drug and alcohol rehabilitation, should be regionally available. One possible method of delivery is through programme facilitators travelling on a regular circuit to deliver custodial and non-custodial programmes, or as otherwise determined in consultation with local communities.

#### **Example 4, Port Hedland, WA**

There are no alcohol and drug rehabilitation facilities in and around Port Hedland (North West of Western Australia). This means those who need the services have to go to Perth (approximately 1600kms) or Broome (approximately 600kms). This can be especially detrimental to the well being of children when physical contact with a parent is impossible for several months during the rehabilitation process.

The creation of meaningful job opportunities in consultation with local communities to address real needs would assist in the rehabilitation process, lessen the likelihood of re-offending and in this way lessen the likelihood of abuse of children.

More recreational facilities for children and young people are needed in remote and regional Indigenous communities to help lessen the cycle of offending.

It is considered that having a psychologist as part of a regional services team is very important as often there is a need for offenders or those parents involved with welfare authorities to address issues such as stress, grief and emotional problems which manifest themselves through substance abuse and family violence. Again this often impacts greatly on the well being of children.

Regular access to a psychiatrist and mental health workers is essential for protection and care matters where parents and/or children need assistance.

The problem is more acute for children and young people. There is a lack of professional assistance available, there are very few mental health professionals whose expertise is in dealing with children, and few mental

health agencies willing to take children on in regional and remote areas. The delay is particularly detrimental for children in protection and care matters. In situations where mental health treatment is required the waiting list to access services in regional and remote areas is seriously impacting on the ability of people to access these services. In circumstances where such treatment is a prerequisite for the reunification of families, this can have very serious and detrimental consequences.

### **1.11 Hair Strand Testing for Alcohol & Drugs**

The Discussion Paper suggests targeted action on parenting and alcohol misuse. Targeted action is also required in relation to drug misuse. In many cases there are allegations of drug and alcohol misuse but lack of clarity about the drugs used and the level of drug and alcohol consumption.

### **1.12 Reports of Child Welfare Concerns by family members**

Parents and extended family members also report that they have contacted welfare authorities with a welfare concern about a child and have been told that although there are some concerns they are insufficient for statutory action, that there is no further role for welfare authorities and no supports or interventions have been offered. There are also cases where a non-residence parent has not returned children after a visit because of risk concerns and called welfare authorities for help. In these circumstances welfare authorities respond by saying that as the child has been removed from the risk situation they are no longer at risk and no welfare authority action is required. In many of these cases welfare authorities tell the parent to file a Form 4 (Notice of Abuse or Family Violence or Risk of Abuse and Family Violence) in the Family Court. In these cases welfare authorities are missing the opportunity to work proactively with families to resolve problems.

## **2. BETTER COLLABORATION BETWEEN SERVICES**

### **2.1 Collaboration between services**

Evidence from child death reviews from around the world tells us that the problems in child protection cases often come from the relationships (or lack of) between the professionals involved in the case.

When professionals, government and non-government, are able to work together their different skills and the information that they can contribute from their work with the family can enhance the assessment process and facilitate the development of an appropriate safety plan for the children. Lack of clarity about objectives, leadership and roles will create impediments in the assessment process. These matters will be exacerbated by other organisational factors such as different threshold requirements for provision of services, different geographical boundaries for services, which family member or members are considered to be “the client” (eg a mental health service

treating the mother might prioritise her needs rather than child safety) and differing philosophies in respect of the approach to service provision.

## **2.2 Commonwealth and State and Territory Collaboration**

Commonwealth and State and Territory Governments need to collaborate to share resources including use of the Commonwealth funded infrastructure, such as Family Relationship Centres and Child Contact Centres, by those involved with welfare authorities.

Improved information sharing protocols and collaboration between national and State government agencies dealing with families that are involved with the client base of welfare authorities– FAHCSIA, Health, Housing, Education is needed. This need for improved information sharing processes and collaboration is also necessary with non-government agencies that are providing services to these families.

### **Example 5, NSW and WA**

The child and mother left WA for NSW where the mother made allegations to the Department of Community Services (“DOCS”) of abuse by the child’s father. The father started Family Court proceedings in WA and the mother and child returned. The Family Court sought information from DOCS in NSW concerning the allegations. DOCS refused to provide the information. DCP in WA could not obtain the information from DOCS either as the case was closed in NSW.

### **Example 6, NSW and WA**

A mother and children were half way through DOCS assessments in NSW but left quickly for WA before any substantiation of abuse could be made. DOCS in NSW found the mother and alerted DCP in WA but due to different emphasis, the family were not followed up. The children may have suffered a form of emotional abuse and this has now come to light through Family Court proceedings brought by the father who is still in NSW.

A serious focus on prevention, early intervention and collaboration is required as a matter of urgency in relation to:

- information sharing and the management of families moving between States and territories, eg protocols and Memoranda of Understanding;
- approach to data collection-service users;
- synchronizing the geographical boundaries for State, Territory and Commonwealth services;
- developing uniform definitions of child abuse (physical, sexual, emotional, psychological) and neglect;

- development of uniform terminology for children in care and the possible orders to be made to accompany children in care – such as ‘supervision orders’ and ‘enduring parental responsibility orders’ as well as common terms for the relevant departments responsible for the protection of children;
- implementing a national framework for risk assessment;
- mandating, where appropriate, government departments to attend and provide information to child protection agencies including family courts;
- legislation which enables the automatic recognition of orders made in separate states or which facilitates and simplifies the procedures for transfer of orders between States and territories;
- protocols to facilitate timely access to federal and interstate police records for the purpose of assessing placement options for children reducing the number of placements, enabling children to be placed in a kinship setting within the shortest possible time frame; and
- guidelines relating to the removal of children from the Australian jurisdiction and the assessment required to ensure that this is best for the child.

An improvement in consistency of risk assessment and independent monitoring, data collection and research coordinated at a national level would potentially bring greater scrutiny and accountability through national benchmarking.

#### **Recommendation 1**

That a comprehensive review be held of the division of responsibility for child protection between the Commonwealth and the States/Territories as a matter of urgency and that such a review make recommendations in regards to coordination, sharing of resources and areas for cooperation between the Commonwealth and the States and Territories that will enhance children’s welfare and well-being throughout Australia. The review should include reference to the matters set out at 2.2 and should include input of NLA and other agencies working with and representing parents and children.

### **2.3 Family Court and Children’s Court Collaboration**

Currently, Family Courts determine welfare issues for children of separating couples or between grandparents/ extended families and parents (private law) and Children’s Courts determine welfare issues for children who may be in need of protection between states and families (public law). For as long as separate courts determine public and private disputes about children, the incidence of families with child welfare issues moving between these courts requires:

- Processes for information transfer/sharing between different Courts dealing with the same families, avoiding “reinventing the wheel”. Protocols or memorandums of understanding need to be developed, or legislative change needs to occur to enable the transfer and/or sharing of information about children eg expert reports, orders and affidavits, between the Courts. To the extent there is any legislative impediment it should be removed to prevent systems abuse of children and young people.
- Opportunities for family law judicial officers and protection and care magistrates to attend child welfare related training together with family law judicial officers to receive training about protection and care processes and Children’s Court magistrates to receive training on family court processes. This is particularly important in regional and remote areas to ensure the appropriate expertise for judicial officers in proceedings involving children.
- Opportunities for judicial officers to move between family courts and State-based Children’s Courts; and
- The development of nationally accepted and applicable definitions of child abuse (physical, sexual, emotional and psychological), and neglect as part of a national framework.
- See examples at 6.13 for further illustration of these issues.

### **Recommendation 3**

That there should be

(i) protocols in place to facilitate timely information sharing between Family Courts and Children’s Courts in relation to families with child welfare issues moving between them.

(ii) cross-jurisdictional participation by family law and child protection judicial officers in judicial education programs relating to child welfare matters.

## **2.4 Family Relationship Centres – Child Welfare Referral Issues**

The infrastructure of the Family Relationship Centres established as a consequence of the family law reforms could be utilized as intake points and referral centres to programmes and counselling that could be utilized by families where there are child welfare issues. (For more detail see **Stronger Prevention Focus** paragraph 1.2)

## **3. IMPROVING RESPONSES FOR CHILDREN IN CARE AND YOUNG PEOPLE LEAVING CARE**

### **3.1 Streamlining Assessment – Kinship & Police Checks**

Commonwealth and State and Territory Governments need to work together to streamline the process for assessment of kinship and other family

nominated carers including in relation to police checks to minimise number of placements of children in care and to expedite family/kinship placements.

For example, in WA assessments of friends and relatives as potential carers can take several weeks. In part this seems to be due to delays in obtaining police clearances, (see **Improving Children Protection systems** paragraph 6.12 Recommendation 14), and current DCP assessment processes.

### **3.2 Supervised Therapeutic Contact**

There needs to be an expansion and use of Commonwealth funded Family law services/resources, eg Child Contact Centres for supervised therapeutic contact to improve the quality and quantity of contact and facilitate reunification of families. (For more detail see **Stronger Prevention Focus** paragraph 1.2).

### **3.3 Responsive Housing Policy**

Welfare authority placements of children in culturally appropriate arrangements sometimes causes overcrowding with consequential problems. Housing policy needs to be flexible and responsive to changed situations.

### **3.4 Foster Carers**

Incentives are required to attract people to consider becoming foster carers as the increasing numbers of children being taken into care is placing an enormous demand on the limited resources that are available. There needs to be adequate recognition of the skills required to provide foster care and adequate remuneration to attract skilled carers rather than relying on well-meaning members of the community. (See also paragraph 3.6 and Recommendation 8).

There is a recognised shortage of foster placements for larger siblings groups, including those with early adolescent children, for adolescents with challenging behaviours, and for newly arrived refugee children and young people.

### **3.5 Kinship Carers**

Additional support to kinship carers may lessen the need for foster carers in many cases. (See paragraph 6.5 Recommendation 13)

### **3.6 Inadequate provision for adolescents**

There seems to be limited capacity on the part of welfare authorities to respond to the needs of adolescents including those leaving care. In Victoria, the new *Children Youth and Families Act 2005* only makes limited mention of the principle of assisting young people make the transition from leaving care, with no obligation on the part of the state to assist in this process. Recent

reports identifying 40% of homeless young people<sup>3</sup> having been in child protection care starkly highlight the problem.

A major systems failure is the gap in proper remedial and support services for young people.

It is hard for young people to get long-term treatment when they have entrenched problems outside the threshold requirements for services from Mental Health facilities (typically drug overdose issues, drug induced psychosis, suicidal or homicidal behaviour). Effectively this means young people fall between the gaps and are unable to access services, particularly residential treatment services.

Longitudinal Australian research<sup>4</sup> indicates that there will be a new cohort of young people who will have emergent issues in early adolescence who will not previously have had dealings with child protection authorities. A focus on the early years should not be at the expense of building supports and services for children in transition to youth.

#### **Recommendation 8**

That

- (i) Governments ensure processes are streamlined between states and government departments to enable timely assessment of relative carers;
- (ii) Foster carers be adequately trained, resourced and remunerated; and
- (iii) Governments review services currently available to young people to ensure their needs are met

## **4. IMPROVING RESPONSES TO INDIGENOUS CHILDREN**

### **4.1 Consultation with Indigenous Organisations/Individuals**

Numerous reports, including the Royal Commission into Aboriginal Deaths in Custody in 1991, the "Bringing Them Home" Report<sup>5</sup>, and the Gordon Inquiry<sup>6</sup> have emphasised the need for consultation with Indigenous people.

Any response must include specific consultation with Indigenous people and providers of services to indigenous people, including legal aid service providers.

Governments need to ensure that the recommendations of the many reports are shared and considered in a way that is useful for communities.

<sup>3</sup> "Which way home? A new approach to homelessness", p28 Section One: Experiencing homelessness and its causes, Federal Government's Green Paper May 2008,

<sup>4</sup> Patterns and precursors of adolescent antisocial behaviour, October 2002 & 2003 Executive Summaries of First and Second Reports - Australian Temperament Project.

<sup>5</sup> Bringing them Home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, 1997

<sup>6</sup> Gordon Inquiry, Putting People First. Report to Parliament December 2002

#### **4.2 Indigenous Males – Shift in Focus to Empowerment**

More work needs to be done with Aboriginal men who are too often perceived as the problem and not as a potential resource for the solution. A shift in focus is needed to safely empower them to take responsibility for change rather than just removing them from the community. Although removal may be appropriate in some cases, it may simply shift the problem to another community. More resources and supports are needed for perpetrators who will be going back to the community eg drug and alcohol rehabilitation services.

#### **4.3 Indigenous Regional Offenders**

The impact of offending on Indigenous children in some regional and remote communities requires that, pre-sentence programmes developed in metropolitan areas to deal with offenders who have committed offences involving family violence, sexual abuse, or offences motivated by substance abuse and mental health issues should be extended and adapted to regional areas in consultation with local Indigenous communities. This may assist to prevent the “revolving door” on offending and imprisonment.

#### **4.4 Northern Western Australia – Coroner Hope’s Inquiry into Aboriginal Deaths in Fitzroy Crossing, WA**

Coroner Hope’s 2008 coronial report into Aboriginal Deaths in Fitzroy Crossing<sup>7</sup> in the Kimberley highlighted problems with health and mental health services, education and child protection. NLA supports the recommendations made by Coroner Hope that there be a general increase in health services to improve the health of Aborigines, in particular, compared with other Western Australians, and that mental health services be extended to enable Kimberley residents to be treated for serious mental health problems without having to leave the region. NLA understands that this problem is not confined to the Kimberley region, with reports of concerns about lack of local mental health services being reported from offices across Western Australia. Services in relation to these issues are also inadequate in other areas of Australia.

It is suggested that the Commonwealth should provide the West Australian Government with any assistance necessary to implement the recommendations of Coroner Hope’s inquiry into the high Aboriginal suicide rates in the Kimberley.

#### **4.5 Regional Representation – Conflict of Interest Issues**

Another challenge for Indigenous people in remote areas is that the Aboriginal Legal Service has often represented an alleged perpetrator of a criminal offence and, as a consequence, cannot represent other family members in protection proceedings that may result due to conflicts. Additional funding and

---

<sup>7</sup> A Hope, State Coroner, Record of Investigation into Death Ref No: 37/07

new strategies are required to support new and existing services in bridging this gap.

#### **4.6 Retention of Indigenous Protection Workers**

Commissions often hear complaints from members of remote Indigenous communities about seeing child protection caseworkers only on a limited fly in fly out basis who differ each visit. NLA endorses the recommendations of the NTER Task Force chief that child protection officers need to be embedded within the communities they serve.

#### **4.7 Recruitment of Indigenous therapists**

There needs to be an investment in the development of well-trained Indigenous therapists, counsellors and protection workers.

#### **4.8 Design & Delivery of Indigenous Programs**

It is suggested that local input from Indigenous communities into the design and delivery of programmes will help to ensure that they are relevant and useful to local people and take account of the circumstances of a particular locality. The employment of local Indigenous staff greatly assists in relation to this aim and it is important for there to be local contacts for facilitators providing programmes on circuit to assist with input into offender treatment strategies and for the provision of interpreting services if needed.

#### **Recommendation 9**

That continued efforts need to be made to obtain input from local indigenous communities into the design and delivery of programmes being implemented in their communities and to ensure the employment of local Indigenous staff where possible.

## **5. ATTRACTING AND RETAINING THE RIGHT WORKFORCE**

### **5.1 Risk Assessment Training & Consistency – Child Protection Workers**

Variations in training and experience of child protection caseworkers can adversely impact on the way a child welfare issue is managed to the detriment of children and their families.

The Commonwealth in collaboration with State and Territory Governments should ensure that there is a workforce in the protection and care field that is appropriately trained and qualified to work with families where there are child protection concerns. Appropriate and ongoing training in relation to a common risk assessment framework is essential.

## 5.2 Remote & Regional Retention Issues

Positive incentives, including adequate remuneration, are needed to attract and retain staff in all areas but especially in remote and regional areas. There is a need for continued/ongoing training, appropriate support, incentives for housing and financial assistance for remote workers given the higher cost of living and the challenges associated with the environment. Assistance and flexibility are also required to enable workers to return to the metropolitan area in special circumstances or emergencies. The provision of airfares to home towns may be an option that could be utilised to enable staff to retain key social and family relationships that offer them the support they need in their difficult jobs and also enable them to commit to remote areas for a longer period of time.

Giving workers the opportunity to utilize a few days per month to work on policy or law reform or other “non coal face” issues may provide long-term benefits which could assist workers to develop the resilience they need to do this difficult work. The workers themselves need to be consulted to develop strategies that will facilitate their retention. Welfare authorities also have difficulty recruiting residential staff for what limited hostel accommodation is available in regional locations. In the current context of increasing numbers of children being placed into care and a lack of foster and family placement options, positive incentives and training is also required in this area.

### **Recommendation 10**

That positive incentives and specialised training be provided to attract social workers, residential hostel staff, psychologists, psychiatrists and other mental health workers to work in the protection area, especially those with expertise in working with children and young people.

## 5.3 Lawyers & Judicial Officers – Child Protection

The need for the “right workforce” extends to lawyers and judicial officers dealing with child protection matters being appropriately trained in dealing with these child related matters as discussed above under **Better Collaboration Between Services** paragraph 2.3 and Recommendation 3.

To the extent that it is possible a common language needs to be developed for communication between welfare agencies, parents, children, their advisors and the other professionals working with the family to facilitate the development of safety plans which keep children safe whilst optimising their opportunity to maintain and develop their relationships with their families.

### **Recommendation 11**

That Governments provide funding for the ongoing training, including inter-disciplinary, of all professionals who work in the field of Child Protection, including those who provide support, contact, legal and medical services to facilitate their ability to constructively work with families to keep children safe.

## 6. IMPROVING CHILD PROTECTION SYSTEMS

**6.1** Underlying any fundamental improvement to the child protection system is the need for the creation of a system based on a more collaborative working relationship with parents rather than reactionary risk minimisation strategies and, in some cases, some punitive approaches. There is also a need to remove the concern many families have about asking the welfare authorities for help for fear that they will lose their children as a consequence. Commissions assist families at the tertiary stage of child protection intervention. Anecdotally, clients often describe the intervention as being like a prosecution and that therapeutic or remedial assistance is limited.

**6.2** The challenge for workers is that the focus at the wider social and political level is usually on the role of child welfare authorities in removing children from acute risk situations, the need to “get it right” and the consequences associated with “getting it wrong”. The emphasis is not on the work that needs to be done to assess whether it is possible to develop a safety plan that will enable children to stay with their families or to reunify with them in the event that removal is necessary for their safety in the short term. In this environment the pressure is on agencies and individuals to demonstrate that they have appropriate procedures and processes in place to minimize risk and that these processes and procedures have been followed, making this a priority over the amount of time that is spent working with the families themselves.

This can only be achieved with a change in “welfare” culture across Australia. In WA the “Signs of Safety” child protection framework is being implemented. It is hoped this framework will promote a more collaborative approach to child protection work. “Signs of Safety”<sup>8</sup> involves an information gathering exercise which requires workers to identify the dangers defined as aspects of the available information that demonstrates the likelihood of past, present or future maltreatment, the existing strengths being all aspects that indicate safety (defined as strengths demonstrated as protection related to the concerns over time) including exceptions to the alleged concerning behaviour, resources, goals and willingness to work with the worker and any complicating factors.

The process for analysing the information gathered with the family and other professionals working with them involves describing what it is that the worker and other professionals are worried about, what is working well in relation to the family, and what needs to happen to minimise the risk of harm to the

---

<sup>8</sup> Turnell, A (2004) *Relationship Grounded, Safety organised Child protection practice: Dreamtime or real-time Option for Child Welfare?* Resolution Consultancy

Turnell, A & Edwards S (1999) *Signs of Safety A Solution and safety Oriented Approach to Child Protection Casework* New York, WW Norman and Company Inc

children. The resulting safety or action plan is built from these straightforward statements and is described in terms that can be understood by everyone involved, including the children.

A more collaborative culture based on prevention may not only lessen the number of children coming into the child protection system but for those who do this will also facilitate the greater use of home based orders that enable children to stay with their families with early intervention and support.

### **6.3 Accountability for delivery of remedial services**

Generally it appears that there is either a reluctance to make court orders or a lack of accountability in relation to non-compliance with court orders in relation to such things as time frames for the preparation of placement assessments and contact arrangements. The fact that there is no apparent accountability for welfare authorities within the legal framework for failure to provide court ordered services to families is particularly concerning when contrasted with the consequences for parents of non compliance with the welfare authorities requirements, and must be addressed.

### **6.4 Child Protection Conferencing**

Parents and families need to have an understanding of the issues causing concern and be given an opportunity to meet to discuss the issues. In jurisdictions around the world a Child Protection Conference is held at a relatively early stage when there are welfare concerns in relation to the children in a family. Government departments and organisations such as schools, day care, hospitals, and counselling agencies are mandated to attend these conferences, raise any concerns, and discuss ways of protecting children. The parents and their lawyers are invited and professional chair people conduct the meetings so that all attendees are in no doubt about what the issues are, what safety mechanisms and strengths there are, and to come to an agreement about how to ensure the children are kept safe. Models of this kind have been implemented in a number of Australian jurisdictions where parents and children can be represented by lawyers at the Family Group Meeting. In WA steps are being taken to introduce a Signs of Safety based case conference process with lawyers involved. Case conference process of this kind can be used both before and after statutory action is commenced.

A national framework could ensure that relevant Government department staff are mandated to attend with attendees reimbursed for their time at these conferences.

#### **Recommendation 12**

That as part of a national framework consideration should be given to all States and Territories adopting child protection conferencing processes with parents and children able to be legally represented as part of best practice.

### **6.5 Standard Approach for Relative Carers (Extended Family Members)**

Statistics reveal that grandparents and extended family members are increasingly taking on the care of children due to protection concerns for children with either or both parents. The Victorian experience suggests a nexus between increasing extended family placements and the removal of children from parents.

The parental responsibility issues for these children can be confusing. They can be subject to:

- Family Court parenting orders,
- Children's Court protection orders with the Department 'placing' the child with the family members; or
- Orders made by the Children's Court, which provide for someone other than the parents to have parental responsibility with the financial support of the welfare authority. This order takes different forms in different jurisdictions and may not be recognised interstate, in the territories or overseas.

#### **• Family Court Parenting Orders:**

When the welfare authority refers extended family members to a Commission or the Family Courts to apply for Family Court Orders, in some circumstances the family members will not qualify for legal aid and will then have to deal with the associated complexities and expenses of filing applications themselves.

Family Courts will usually need to view the files of the welfare authorities, will often appoint an Independent Children's Lawyer (ICL) and will then determine the best interests of the child. If a Family Court order is made the child will then live with the family member but without financial assistance or social services provided by the welfare authority. The family member will also have to pay filing fees for their Family Court application/s, and, potentially, be required to make a contribution towards the cost of the ICL and any Single Expert report prepared to assist the Court. They also have to manage the consequences of making an application against their own family members.

#### **• Protection Orders- Placement with Families**

When welfare authorities apply for a protection order and place the child with extended family, the family receives financial assistance through foster care allowances, and other assistance with contact and social services. The welfare authority however has parental responsibility for the child, which is not always in the child's best interests.

One child wrote to her lawyer to tell her she wanted her relative carer to make decisions for her, rather than the Department. Part of her letter said...

*"it would be nice when (carer) can sign things for me instead of having to ask DCP, I just want a normal life, like any normal girl, it really bothers me when I ask (carer) about something and she can't give me an answer without first asking (caseworker). I want to be free to live my life like my friends do."*

- **Parental Responsibility Orders- Children's Court**

When children are to remain in the care of the welfare authority long term, it may be an option to enable the carers to have a form of parental responsibility for the child. In the United Kingdom, this is done through 'Special Guardianship Orders'. In WA this is achieved through 'Protection Orders: Enduring Parental Responsibility', and in Victoria through Permanent Care Orders. Unfortunately this arrangement is not always recognized interstate or overseas. A national framework or national legislation may be able to assist to overcome problem.

In these cases a parenting order through the Family Court may be inadequate as the welfare authority's financial and ongoing social services may be required to assist the child to maintain supervised contact with the parent and have access to counselling and other resources.

**Example 7, WA**

The parents were unable to care for the children as one of them had drug and mental health issues and the other had criminal and anger management issues. DCP indicated that the children would be placed into care unless a grandparent applied to the Family Court for orders for the children to live with them. The grandparents applied to the Family Court and an ICL was appointed. The grandparents could not afford a lawyer as they were at the end of their working lives, but did not qualify for legal aid. They were also meeting the costs associated with the care of the children and had to complete the court applications themselves. The parents of the children were granted legal aid. The grandparents had to contribute towards the costs of the ICL. They were granted parental responsibility for the children but then, as well as meeting the associated costs, had to supervise contact and care for the children without support from the welfare authority.

**Example 8, WA**

The mother had not had any contact with the children for a considerable period. The father had serious drug issues. The welfare authority removed the children from the father and placed them with his mother, their paternal grandmother. The welfare authority applied for a protection order and discouraged the paternal grandmother from being involved in the Court proceedings. The children instructed their lawyer that they would like their grandmother to have parental responsibility for them. The children's lawyer invited the grandmother to intervene in the proceedings and eventually the grandmother was granted enduring parental responsibility for the children at the Children's Court.

**Recommendation 13**

That there be improved streamlined processes to facilitate the capacity for extended family members to take on the care of children in circumstances where the welfare authority considers that a protection and care application will be necessary if the extended family do not obtain Family Court Orders in relation parental responsibility and live with arrangements for the child/ren.

Legislative change may also be required to enable foster carers to have parental responsibility for a child in some circumstances to avoid the child feeling labelled as different to other children.

### **6.6 National Framework in Australia – Signs of Safety**

Given the common landscape in many Family Court and Children’s Court matters of domestic/family violence, mental health issues, and drug and alcohol issues, the Commonwealth government, in consultation with States and Territory Governments, should develop a common national framework for risk assessment that can be applied in both jurisdictions, for example the “Signs of Safety” child protection framework now being introduced in Western Australia. (See paragraph 6.2 above for more detailed information on “Signs of Safety”).

### **6.7 Indigenous Issues**

Adequate Commonwealth funding needs to be provided to legal aid service providers such as the Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services, and Commissions to enable each parent and child, and if appropriate, each extended family member carer, to be funded adequately in protection proceedings, and where there are protective concerns raised in Family Court matters, in those family court cases.

### **6.8 Involvement of Children**

Where appropriate, children need to be kept informed of the decisions made affecting them, and where they are sufficiently mature, participate in the proceedings involving them such as being advised when applications are being made for their care and protection.

There should be standard best practice guidelines for all parties engaged in the child protection process to ensure compliance with the UN Convention on the Rights of the Child, Article 9 including:

- the role of child protection workers, and related agency workers, including the manner in which risk assessments are carried out and interviewing practices with children and young people;
- for the appointment of Child Representatives and Independent Children’s Lawyers along with;
- the role of lawyers to comply with the Convention of the Rights of Children.

---

<sup>9</sup> For example, “Representation Principles for Children’s Lawyers” NSW Law Society 3<sup>rd</sup> ed September 2007 is a best practice guide for lawyers.

Parents and children need to have access to independent legal advice in circumstances where welfare authorities are asking the family to agree to the removal of a child or a parent from the home without statutory intervention.

### **6.9 Funding & Expeditious Case Management**

Adequate funding and infrastructure needs to be provided to ensure that where a child has been removed from his or her family by welfare authorities, a court can deal with their case expeditiously in a way that ensures that family members are adequately informed and included in the decision making process.

#### **Contrast practice in Victoria & Western Australia**

In Victoria, when children are taken into State care, the matter is heard at the Children's Court no later than the next business day (if a child is taken into care early in the day, the matter may have its first listing later that same day). In the Perth metropolitan area, the legislative requirements allow up to five working days for the first listing of a matter and there is no consequence for non-compliance with this time frame, which is often exceeded. Victorian legislation reflects the recognition by the Supreme Court of the importance of early access to judicial scrutiny of the exercise of administrative power, given its serious consequences for the child and family.

### **6.10 Statutory Accountability**

Any national legislation/uniform legislation should include legal remedies and sanctions under legislation to ensure State departments responsible for protection and care are accountable for their actions and inactions.

### **6.11 Children's Meaningful Relationship with Both Parents**

Every child who is separated from one or both parents has to be given the opportunity to maintain personal relations and direct contact with both parents on a regular basis when it is in their best interests. This is well recognised under Family Law legislation and by Family Law Courts. (See under heading Stronger Focus on Prevention paragraph 1.2).

### **6.12 Streamlining of Police Checks**

There needs to be co-operation between Commonwealth, and State and Territory Governments to streamline the process for federal and interstate police checks in protection and care matters. It is LAWA's experience that lengthy delay, sometimes of weeks not just days, is often built into requests for extended family or family friends to be assessed as carers while waiting for a police clearance. This often places children in foster care unnecessarily, and in some cases prevents a parent from living with their child with the support of another adult. This adversely impacts on bonding and attachment particularly when babies are involved.

**Recommendation 14**

That a streamlined process be developed by Commonwealth, and State and Territory Governments to enable timely police checks.

**6.13 Commonwealth & Western Australian Legislation**

The Commonwealth Government has enacted legislation in relation to parental responsibility and care arrangements for children of parents who are married and are separated using the Marriage Power in the Commonwealth Constitution in the *Family Law Act 1975*.

Parental responsibility and the care arrangements for the children of parents who are not married is the subject of this same legislation as a consequence of States (except WA and South Australia) referring these powers to the Commonwealth. WA has historically enacted mirror legislation to enable children of un-married parents to be treated in the same way as children of married parents. The protection of children in Australia could be subject to laws being enacted by the Commonwealth using referred powers from the States or alternatively States enacting uniform legislation.

The *Family Law Act* includes definitions of abuse and outlines factors that are required to be taken into account in determining the best interests of children. Family Courts have access to Family Consultants (trained social scientists) and to judicial officers who have substantive backgrounds in legal practice in family law and protection and care work.

Family Courts and the Federal Magistrates Court make decisions in relation to children in private law disputes. In the States and Territories, Children's Courts make decisions in relation to children in public law disputes. These are the same Children's Courts that deal with children involved in the criminal justice system.

The division between the Courts dealing with private and public family matters is logically challenging, particularly given the effect of recent family law reforms which have resulted in issues of domestic violence, mental health, alcohol and substance abuse and child abuse being the core business of the Family Courts, assessed as the first priority in child related matters. The benefits of this approach has been acknowledged in the recent evaluation of the Child Related Proceedings Programme in Western Australia (the Sankey report<sup>10</sup>)

Relatives of children who could be the subject of care orders are also going to the Family Courts for orders that the children live with them, often at the instigation of their local state welfare authority.

<sup>10</sup> "Evaluation of Child-related Proceedings Model Family Court of Western Australia Department of the Attorney General" Final Report December 2007 by Sankey Associates

**6.14** There are a number of challenges, which will have to be addressed if consideration is to be given to all family matters being dealt with in the one court. These include:

- in some States the delay involved in child related proceedings being determined in the Family Courts could mean greater delay than that which is currently experienced in relation to protection matters;
- some States have processes for interim hearings in protection matters that are faster than what could be achieved in the Family Courts in similar circumstances;
- a high proportion of the most complex criminal proceedings relate to young people who also have formal child protection involvement, and are in the care of the State. For these young people, the experience of being in one Court and usually having the one lawyer act for them in both their criminal and protection matters is significant
- as there is a significant number of young people in the care of welfare authorities with criminal proceedings, changes to services and supports to meet these young people's legal and wider needs would be at risk of fragmentation and a flexible approach would be required; and
- the integration of services with expertise in regard to children and young people such as the Children's Court Clinic in Victoria which provides family assessments in criminal, child protection and crimes family violence (violence restraining orders) proceedings

### **6.15 England – Family and Children Legislation**

In England, there is one law to cover children in both disputes between parents and disputes between state and parents, called the Children Act 1989. Divorce and property are dealt with in separate legislation. This is quite different to Australia where the care of children of separating parents is dealt with in the same legislation as divorce and property settlement but the protection of children considered to be at risk in their families is the subject of separate state legislation

The state welfare authority will apply to their Family Court equivalent for a Protection/Care Order, the family members can become parties and the Court has power to make private law 'residence and contact' orders as well as public law care and protection orders. This means the court can make "live with" orders or "special guardianship orders" to the relatives along with supervision orders to enable the family to receive support without the need for the family members to bring an application against other family members. Legal Aid is provided to all parties to ensure that family members are not financially disadvantaged.

Uniquely, WA is much better placed than other jurisdictions to combine its Family Court and children's court framework. The FCWA is a state court

exercising federal and state jurisdictions. The state legislation that establishes the court also gives it the powers of the Children’s Court in child protection matters. In practice, the FCWA has rarely used these powers.

### **Recommendation 2**

That there be reviews of current

- (i) state child welfare legislation to consider whether it would be in the best interests of children to develop a unified family law/child protection court to manage all cases involving the welfare of children throughout Australia.
- (ii) state and federal legislation to consider whether it would be in the best interests of children to develop unified laws relating to children, young people and families involving the welfare of children throughout Australia.

**6.16** Some LAWA case examples, which reflect the adverse impact on children and families of separate legislation and Courts for private and public children’s matters are detailed below:

### **Example 9, WA and QLD**

Family Court proceedings were commenced in Western Australia and Orders made for the child to live with the mother and spend time with the father. The mother left Perth for Queensland with the child. The child experienced domestic violence between the mother and her new partner. The father made an application in the Perth Family Court for a recovery order but by then the Department of Child Safety (“DOCS”) in Queensland had already applied to the local Children’s Court and obtained a protection order for the child and placed the child into a foster home.

The Family Court could not make any orders. DOCS was unable to easily transfer the case to Western Australia and unable to do an assessment of the child’s father because he was in WA. Eventually the child’s father’s family paid for the father to go to Queensland for assessment by DOCS. He was permitted contact with the child, assessed and told if he obtained Family Court orders, he could take the child home to WA. As Family Courts cannot make orders when a child is subject to a protection order, DOCS wrote a letter consenting to the Family Court making parenting orders. The father lodged his application in the Family Court. Orders were made and, then DOCS withdrew its application in the Children’s Court and the child was brought home to his family, school and friends in WA.

This process was protracted due to the two state child welfare departments (“DCP” in WA and “DOCS” in Qld) being subject to different legislation and different policies, and because it was necessary for both the Children’s Court and the Family Court to be involved. This boy remained in foster care in a State he was not familiar with for a number of months while the legal issues were resolved.

**Example 10, WA**

Proceedings started in the Family Court in 2005. DCP were involved with the family from 2004. During the Family Court proceedings DCP filed its Protection Application in the Children's Court in March 2007. The Family Court then adjourned its matter generally. The process involved in providing the expert reports on the Family Court file to the Children's Court and in appointing the Independent Children's Lawyer in the Family Court to be the Child Representative in the Children's Court caused considerable delay which meant that a protection and care order was not made until December 2007. This subjected the family to protracted and confusing court proceedings.

**Example 11, WA**

A case started in the Children's Court in mid 2006. The parents were together when the proceedings commenced but subsequently separated. After separation DCP determined that they would withdraw the proceedings if the father obtained a "live with" order in the Family Court. He applied to the Family Court in mid 2007. The parents then had both the Children's Court and Family Court proceedings on foot while the Courts decided the appropriate outcome. Eventually the Department consented to an order being made by the Family Court but did not withdraw the application in the Children's Court until Family Court orders were made. The parents were required to go to the Family Court in relation to interim live with orders then back to the Children's Court for DCP to withdraw their application.

**Example 12, WA**

The father of a child abused her in Perth. She was placed with extended family in another state and in her early teens, she wanted them to be able to make decisions for her care. This could only happen if the Perth Children's Court was prepared to make an order that the child be in the care of DCP until age 18, then use complex transfer procedures to the other state. The Department in the other State would then have to apply to their Children's Court for the carers to have parental responsibility. Had there been national legislation or uniform legislation involving simple interstate registration procedures for orders this complex process would not have been required.

**6.17 National Child Protection Register**

In other jurisdictions, there is a national register of children who are considered to be in need of protection where their best interests suggest that they should remain in the family home with a high level of support. The register is known to health, education, police and other service providers to ensure they are aware that these children must be closely monitored when there is contact with their services. The Federal Government should consider such an option to assist services to be provided and communication to be facilitated between Departments and agencies for families who need the additional monitoring. It is important the register be national to ensure families who move between states don't become lost in the system.

In the United Kingdom, Child Protection conferences are held between the family and relevant service providers to determine whether or not children's names need to be put on the register. In many instances this saves the family from being involved in litigation whilst maintaining a high level of monitoring and support from all relevant government and community services. Whilst NLA would not like to see children 'labelled', there is an understanding that there is a greater level of concern amongst children about the labelling they feel when they are the subjects of a protection order. NLA recommends the Federal Government investigate whether a national register would assist in protecting children.

**Recommendation 15**

That the Commonwealth Government consider the establishment of a National Child Protection Register to facilitate safety and support of children in their own homes.

**Conclusion**

Thankyou for the opportunity to provide these comments. We would welcome the opportunity to discuss the concerns that we have raised with you further, at either a national or individual jurisdiction level.

If you require anything further from us, please do not hesitate to contact Ms Smith who will refer matters accordingly.

Thankyou again,

Yours sincerely

A handwritten signature in black ink, appearing to read 'H. Gilmore'.

Hamish Gilmore  
Chairperson  
National Legal Aid