



Ninth Australasian Conference on Child Abuse and Neglect

# The Family Law Council's Recommendations on Family Law and Child Protection

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# Federal involvement in child protection

- Disproportionate representation of child protection concerns in family law cases heading towards trial
- Child sexual abuse
- Domestic violence
- Drug and alcohol abuse



# The need for an investigatory capacity

- Family Reports
- Use of Order 30A experts
- Subpoena of state child protection files



# Can we expect state child protection authorities to investigate all child abuse concerns in family law cases?

- About 50% of notifications investigated
- Different missions



# The response of child protection authorities to abuse notifications in family law cases

- The seriousness of the reported concern
- The level of information to justify the concern
- Whether the child is currently at risk of abuse
- Competing demands upon scarce resources



# Responsibility for protective intervention

- Two views of protective responsibility
- Child protection as a government responsibility
- The viable carer approach
- Evaluating the two views
- The significance of the legislative framework



# The Catch 22

- Child protection authorities may not get involved because there are family law proceedings.
- Parents may be unable to act to protect the children (or to defend themselves against wrongful allegations) without independent investigation and the advocacy of a public authority.



# When neither federal nor state systems protect children

- Burden on individuals to litigate
- The problem of legal aid
- The risks to children from system failures
- The expense of litigating through the family law system
- Consent orders and the problem of breaches



# Proposal for Federal Child Protection Service

- Need for a capacity to provide early independent assessment of child protection concerns arising in family law proceedings
- Role would be to investigate child protection concerns in family law proceedings when no investigation or assessment has otherwise occurred



# Proposal for Federal Child Protection Service (cont)

- Threshold requirements:
  - the child abuse allegation is likely to be a major disputed issue in any subsequent proceedings
  - evidence is not likely to be presented to the Court through other means.
- Providing an investigatory service for both Family Court and FMS
- Entirely consistent with Magellan



# Proposal for Federal Child Protection Service (cont)

- The cost of delivering the Child Protection Service
  - Modest annual expenditure
  - Mix of permanent and contract staff
  - Co-location with existing services
  - Savings through earlier resolution
  - Makes legal aid dollar go further



# Co-ordination between the CPS and State/Territory authorities

- Does not duplicate work of state child protection services
- Need for good information exchange
- Mandatory notification to State and Territory child protection authorities to remain where risk of immediate harm
- Reduction in workload of state/territory authorities



# Taking action under state laws

- Continuing role for Children's/Youth courts
  - Emergency action to protect a child from the risk of immediate harm.
  - Taking action in the Children's/Youth Court in preference to a proceeding under the Family Law Act.
  - Residence and contact orders under state law



# The One Court Principle

- A decision should be taken as early as possible whether a matter should proceed under the Family Law Act or under child welfare law
- There should be only one court dealing with the matter
- Dissatisfaction dealt with by appeal



# Federal-State Coordinating Committee

- High level committee involving state/territory child protection authorities, children's/youth courts, family courts
- Responsibility for practical implementation
  - Seek to agree policy
  - Resolve problems
  - Review protocols between Family Court and state/territory authorities



# FAMILY LAW COUNCIL

## *Family Law and Child Protection: Final Report*

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On website at: [www.law.gov.au/flc](http://www.law.gov.au/flc)



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