

12 October 2012

Adele Byrne
Principal Registrar
Federal Magistrates Court of Australia
305 William Street
MELBOURNE VIC 3000

adele.byrne@fmc.gov.au

Dear Ms Byrne

Consultation on early intervention process in parenting matters when allegations of risk are raised

Thank you for your letter dated the 6th September 2012 inviting comments on a proposed form 4 Notice of Risk to be filed with every Application or Response in proceedings seeking parenting orders in the Federal Magistrates Court.

Our comments follow:

1. NLA notes the content of the report by Professor Richard Chisholm, Family Courts Violence Review, 27 November 2009, in relation to notifications of allegation of violence or abuse:

" Under the Rules of Court, parties are obliged to file such a notice where allegations of violence or abuse have been made. Experience has shown that this system is not working. This Report suggests that because of this, and because issues of family violence and other risks factors are so common in parenting cases brought to the courts, it would be better to have a system of risk and assessment that applies to all parenting cases."¹

NLA is very much in favour of procedures which ensure the early notification of issues and enable the ready exchange of information between the child protection authorities and the family law system.

NLA also notes the recent work of the Attorney-General's Department and Professor Chisholm about the interface between the family law and child protection systems. NLA is looking forward to receipt of the final report and recommendations arising out of that work which will help to inform the best responses when allegations of risk are raised.

¹ P. 6

2. Whilst it may be unavoidable, NLA has some concerns that the Instructions for Completion of the form, and the form itself may be beyond the capacity of many unrepresented litigants who often have literacy issues.

3. The expression "serious parental incapacity", is likely to need some explanation, so as to reduce the potential for large numbers of positive notifications not involving relevant risk.

4. Whilst the relevant sections of the legislation should comprise part of the instructions for completion of the form, some explanation about what might appear to be within the examples provided for by the legislation, but which does not constitute family violence, eg along the lines of the facts in the recent case of Carra & Schultz [2012] FMCAfam930 (31 August 2012), could also be included with the aim of reducing the potential for large numbers of positive notifications alleging family violence but which do not involve family violence.

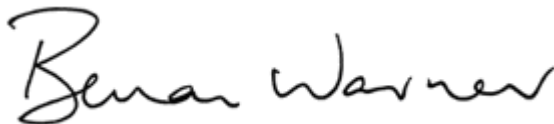
5. NLA has some concerns about the potential impact on the child protection authorities if a Notice of Risk is required for all cases. The work on the interface between the family law and child protection systems is noted, and perhaps information sharing agreements between the courts, the authorities and legal aid, might address the question of whether some assessment of the positive notifications could be provided with the notice to child protection authorities, with a view to assisting in prioritising matters and minimising workload for them.

6. Whatever approach is taken NLA is supportive of the same access and protections across all family law courts, and commissions will endeavour as far as possible to provide advice and duty lawyer services in support of any new provisions.

Please do not hesitate to contact us if you require anything further or wish to discuss this matter.

We thank you for the opportunity to provide these comments.

Yours sincerely

A handwritten signature in black ink, reading "Bevan Warner". The signature is written in a cursive, flowing style.

Bevan Warner
Chair