RESPONSE TO OPTIONS PAPER: IMPROVING THE INTERFACE BETWEEN THE STATE AND TERRITORY CHILD PROTECTION SYSTEMS AND THE FEDERAL FAMILY LAW SYSTEM

Please provide responses by email to: **collaboration.projects@ag.gov.au**

by Wednesday, 8 February 2012.

RESPONDENT DETAILS

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PART TWO - CASE MANAGEMENT AND INFORMATION SHARING

Recommendation 1: Stakeholders in each jurisdiction should review the current Memorandums of Understanding and Protocols in place between their federal family courts and State and Territory child welfare authorities and amend them, or create new ones if required, with reference to the best practice framework drafted by the Commonwealth Attorney-General's Department.

Comment: Supported.

It is understood that the Attorney-General's Department's best practice framework is still being developed. Building on the work that has already been done in a number of State and Territory jurisdictions, and with particular reference to the Western Australian experience of such arrangements, NLA suggests that the proposed framework should encourage the family courts and State and Territory child welfare authorities to have MOUs and protocols that:

(i) Articulate a shared vision for the parties - that their aim in the fulfilment of their duties is to provide **the best possible outcomes for children**, as opposed to the narrow focus of the "protection" of children, which has the potential to limit cooperation in respect of information sharing to those children that meet the child welfare authorities' thresholds in respect of protection concerns;

(ii) Utilise and include other stakeholders such as the children's courts, legal aid commissions and the Northern Territory Department of Justice (appoints children's representatives in child welfare proceedings), to maximise the ability of the courts to make timely, informed decisions minimising necessary resource implications (see (vi) and (vii) below);

(iii) Commit the parties to share information and resources as far as is practicable and permissible pursuant to provisions of their legislation in individual cases where to do so would achieve this aim;

(iv) Commit the parties to distributing the MOU and to ensure that information and training is provided to staff of their agencies to ensure the workability of the arrangements;

(v) Commit the parties to meeting regularly to monitor the operation of the MOU and to address any case management issues that are identified;

(vi) Maximise the ability of the court to make timely, informed decisions in respect of the care arrangements for children including:

(a) processes for the transferring of relevant court documents (including reports from Single Experts and other professionals) between the family courts and the children's courts (may potentially require amendment to section 121 of the *Family Law Act 1975* and similar children's court legislation);

(b) provision for the continuity of representation of children in the family courts and the children's court;

(c) provision for collaborative case discussions with the child welfare authorities in respect of shared clients, including the potential for child welfare authorities to intervene in proceedings in the family courts when child protection concerns arise, so that there is a "one court" approach to the management and determination of these matters;

(vii) Minimise the resource implications associated with information sharing including:

(a) information to be shared electronically where possible and practicable, including arrangements for child welfare authorities to provide the family courts with an email notification of the fact that they have relevant information about a family in circumstances where the authority believes that a family member is intending to commence proceedings in the family courts, or becomes aware that such proceedings are on foot (see the WA MOU);

(b) processes facilitating information sharing with the ICL including the opportunity to inspect the files of the child welfare authority;

(c) "pre section 69ZW orders" which enable the ICL and/or family consultant to identify relevant reports/assessments which have already been prepared in respect of the family, so that section 69ZW orders can be made specifying the documents to be produced, limiting the need for the issue of a subpoena for the files of child welfare authorities;

(d) subpoena to be served electronically following the use of arrangements referred to in (b) and (c) where practicable not requiring the provision of conduct money;

(e) processes in respect of the report to be provided (or not provided) by the child welfare authorities in response to form 4 notifications, depending on the nature of the notification and the jurisdiction in which the incidents the subject of the allegations are alleged to have occurred;

(f) processes for ex-parte recovery order applications which enable the child welfare authority to communicate information limited to whether there is reason to be concerned about proceeding to determine such an application in the absence of

the other party and/or information from the child welfare authority.

Recommendation 2: Memorandums of Understanding and Protocols should include provisions relating to procedures for dealing with Independent Children's Lawyers (ICLs).

Comment: Supported. See (vii)(b) in response to Recommendation 1.

The procedures should include the opportunity to inspect the files of the child welfare authority and a section 91B order should not be required to trigger those procedures.

To ensure that effective procedures are developed, appropriately implemented and monitored legal aid commissions and the Northern Territory Department of Justice should be parties to the MOUs/Protocols because of their role in the appointment, training and management of ICLs and children's representatives.

Recommendation 3: The Family Court of Australia and the Federal Magistrates Court of Australia should consider:

(a) making section 69ZW orders as early as possible in proceedings, if deemed appropriate, and
(b) including guidance as to the timings for the making of section 69ZW orders and for the making of "targeted" section 69ZW orders in the Judicial Benchbook.

Comment: Supported. See (vii) (c) to Recommendation 1.

NLA also suggests that consideration be given to using an approach similar to that used in Western Australia of making "pre section 69ZW orders" which enable the ICL and/or family consultant to identify relevant reports/ assessments which have already been prepared in respect of the family, so that targeted section 69ZW orders can be made specifying the documents to be produced, limiting the need for the issue of a subpoena for the files of child welfare authorities.

Recommendation 4: State and Territory child welfare authorities should work with the federal family courts to develop guidelines and templates for their responses to section 69ZW orders, Form 4's, subpoenas and Magellan reports.

Comment: Supported. See (iv) and (vii)(e) in response to Recommendation 1.

Joint training or cross agency training involving professionals from the child welfare authorities and the family courts will be necessary to facilitate the development of the necessary guidelines and templates and the cultural shift required to promote collaborative working arrangements. This could include joint training for staff of the parties to the MOU, the provision of family law related training by the family courts and legal aid commissions to

child welfare authority staff (including lawyers), and training from child welfare authorities to judicial officers of the family courts, family consultants, ICLs and other family lawyers in relation to their role and practices.

Where there is the potential for all of the parties to the MOU in individual jurisdictions to use a common assessment framework, (seen in the implementation of "signs of safety" as the child protection assessment framework in WA and the Queensland experience), this should be supported and encouraged and opportunities to train staff from the parties to the MOU together should be utilised in addition to training within the individual agencies. Parties should be encouraged to develop a common assessment framework and associated language for communication in relation to child welfare concerns.

Recommendation 5: State and Territory child welfare authorities should establish centralised contact points to address referrals and enquiries from the federal family courts.

Comment: Supported.

NLA considers that this initiative would facilitate the information sharing arrangements contained in the MOUs/Protocols referred to in Recommendation 1 above and, in particular, such centralised contact points are necessary to facilitate the collaborative case discussion recommended by NLA in (vi)(c) in response to Recommendation 1.

These workers would represent the values, practices and concerns of their agency in problem solving and client management processes, increasing the knowledge and understanding of the courts and the child welfare authority of each other, their respective roles and their shared responsibility for the welfare of children. This has been the experience in the jurisdictions in which such arrangements are in place.

In addition to the elements of the role identified in 2.5 of the Options Paper the central contact point could be integral to the implementation of processes for applications for ex-parte recovery orders, which enable the child welfare authority to communicate information limited to whether there is reason to be concerned about proceeding to determine such an application in the absence of the other party and/or information from the child welfare authority. They would also be well placed to identify training needs for the staff of MOU/protocol stakeholders and family law practitioners and to participate in the provision of that training.

Recommendation 6: State and Territory child welfare authorities should establish a network of interstate child welfare collaboration officers.

Comment:

NLA agrees that there is a need for a liaison arrangement in circumstances where jurisdictional issues arise between states and territories. It is understood that there are already informal information sharing arrangements in place between "the centralised contact points" that child welfare authorities have put in place in the jurisdictions in which such arrangements are currently in operation. It is suggested that given their knowledge and understanding of family court and child protection processes, these officers should be appointed in each jurisdiction and should operate as the "network of interstate collaboration officers" as part of their duties, rather than a new network of officers being established for this purpose.

See also (vii)(e) in response to Recommendation 1.

The best practice framework should provide that, in the case of Form 4's that involve allegations of incidents which are alleged to have occurred in another State or Territory's jurisdiction, the Form 4 should be directed to the child welfare authority in that jurisdiction and not the local child welfare authority's "interstate collaboration officer".

Recommendation 7: When referring a viable carer to the federal family courts, State and Territory child welfare authorities should provide:

(a) written information to those courts detailing the reasons for the referral, and

(b) reports and other evidence.

Further, State and Territory child welfare authorities should intervene in such family law proceedings, if appropriate.

Comment: Supported. See (i), (iii), (vi)(a) and (vii)(a) in response to Recommendation 1. See also the response to Recommendation 4.

Joint training or cross agency training involving professionals from the child welfare authorities and the family courts/legal aid commissions will be necessary to facilitate the development of the necessary cultural shift required to promote such information sharing and collaborative working arrangements, and to ensure that child welfare authorities understand the evidentiary requirements of the family courts and the benefits of intervention in appropriate circumstances.

Where possible and appropriate "warm" referral arrangements should be in place between child welfare authorities and legal aid commissions, and other legal service providers such as Aboriginal & Torres Strait Islander Legal Services, to facilitate the making of parenting order applications by viable carers in the family courts as an early intervention and prevention initiative.

Any other comments relating to this section.
Comment:

PART THREE – RISK IDENTIFICATION AND ASSESSMENT

Recommendation 8: Stakeholders in each jurisdiction should consider possibilities for the sharing of experts' reports between the child protection system and the family law system.
Comment: Supported. See also (i), (iii), (vi)(a) in response to Recommendation 1 and the response to Recommendation 7. To ensure that effective procedures are developed, appropriately implemented and monitored the children's courts, legal aid commissions and the Northern Territory Department of Justice should be parties to the MOUs/Protocols. NLA also supports the proposal that State and Territory courts be provided with access to the Commonwealth Courts Portal to enable them to access appropriate information in respect of outcomes of cases and court orders as proposed in the Options Paper. It will be necessary for information and training to be provided to staff of these courts to ensure that the processes that are established are workable and appropriately utilised.

Recommendation 9: Officers from State and Territory child welfare authorities should provide training to officers from the Family Court of Australia and the Federal Magistrates Court of Australia in relation to how child welfare authorities determine if a child is in need of care or protection or is at risk.
Comment: Supported. See also the response to Recommendations 4, 7 and 11. Joint training or cross agency training involving professionals from the child welfare authorities and the family courts will be necessary to facilitate and promote collaborative working arrangements. This could include joint training for staff of the parties to the MOU, the provision of family law related training by the family courts and legal aid commissions to child welfare authority staff (including lawyers), and training from child welfare authorities to judicial officers of the family courts, family consultants, ICLs and other family lawyers in relation to their role and practices. Where there is the potential for all of the parties to the MOU in individual jurisdictions to use a common assessment framework, (seen in the implementation of "signs of safety" as the child protection assessment framework in WA and the Queensland experience), this should

be supported and encouraged, and opportunities to train staff from the parties to the MOU together should be utilised in addition to training within the individual agencies. Parties should be encouraged to develop a common assessment framework and associated language for communication in relation to child welfare concerns.

Recommendation 10: The Family Court of Australia and the Federal Magistrates Court of Australia should provide training to officers from State and Territory child welfare authorities on the federal family courts and how they operate, to reduce concerns of child welfare officers regarding appearances in the family courts.

Comment: Supported. See also the response to Recommendations 4, 7, 9 and 11.

Such training should also include ICLs and other family lawyers in relation to their roles and practices to facilitate and promote collaborative working practices.

Recommendation 11: The Family Court of Australia and the Federal Magistrates Court should consider:

(a) limiting the use of section 91B orders to cases where the court determines that neither parent is a viable carer, and
(b) providing a checklist to State and Territory child welfare authorities simultaneously with any section 91B order providing information as to why the court views it as important for the child welfare authority to intervene.

Comment:

NLA does not support limiting the use of section 91B orders to cases in which the court determines that neither parent is a viable carer as proposed in Recommendation 11(a).

The family courts are not equipped to carry out a forensic investigation of allegations raised in the context of family court proceedings and often require the assistance of the child welfare authorities to inform the court's determination in respect of the parenting capacity of the parties to family court proceedings. There are also many parenting order matters in the family courts where child welfare authorities have concerns about the welfare of the children, are working with the family, liaising with family consultants and the ICL, but despite their level of involvement do not actively participate in the proceedings at court.

NLA considers that the implementation of MOUs/Protocols for improved information sharing, collaborative working arrangements and cross training as proposed in response to Recommendation 1, will overcome some of the current issues which lead to the making of section 91B orders, such as, for example, in Queensland the requirement of the child welfare authority for such an order to be made for information to be shared with the ICL.

It is also suggested that the New Zealand approach in circumstances where there are

concerns that a child might be in need of protection and care might also be a model for an appropriate option. Pursuant to section 19 of the *Children Youth and their Families Act 1989,* where the judicial officer believes a child is in need of care or protection, they can refer the matter to a care and protection coordinator (perhaps the "central contact officer" or appropriately trained family consultants) who is required to convene (with some exceptions and options) a family group conference with representative/s of the child welfare authority in attendance. A declaration that a child is in need of care and protection cannot be made until there has been a family group conference and input from the child protection authority. A report in respect of the outcome of the process has to be provided to the court within a limited time frame. In some circumstances a declaration that a child is in need of care and protection will be considered appropriate (or in the Australian context, a protection and care application to the children's court), in others safety plans and supports will be developed to address the issues that have been identified.

Recommendation 12: State and Territory child welfare authorities should develop best practice frameworks for responding to a federal family court's request for intervention in proceedings under section 91B, with serious consideration to be given to intervening in circumstances where a family court determines that neither parent is a viable carer.

Comment: Supported. See also the responses to Recommendation 4, 7, 9 and 11 and (vi)(c) in relation to the best practice framework for MOU/Protocols in response to Recommendation 1.

Recommendation 13: State and Territory child welfare authorities should consider developing guidelines for family law practitioners and self-represented litigants on how to complete the Notice of Child Abuse or Family Violence (Form 4).

Comment: See response to Recommendations 4, 7, 9, 10 and 11.

Such guidelines should be developed in collaboration with the family courts and legal aid commissions. Cross agency training involving professionals from these agencies, ICLs and family lawyers will be necessary to facilitate and promote the appropriate development and application of the guidelines.

Any other comments relating to this section.

Comment:

PART FOUR – EXPANDING THE EXERCISE OF CURRENT JURISDICTION

Recommendation 14: The Commonwealth Attorney-General's Department should monitor the outcomes of projects in South Australia and Western Australia relating to improving the interface between the child protection systems and the federal family law system.
Comment: Supported. The work of the Integrated Services Committee in Western Australia and the South Australian Pilot project will provide a research and evidence base which shall inform decision-making in relation to information sharing and case management and associated practice and process changes in other jurisdictions.

Any other comments relating to this section.
Comment:

PART FIVE – RELATIONSHIP BUILDING

Recommendation 15: Stakeholders in each jurisdiction should convene on a regular basis (for example, biannually) to discuss matters relevant to the interface between the child protection system and the federal family law system in their jurisdiction.
Comment: Supported. See (i) and (v) in response to Recommendation 1. The parties should commit to meeting regularly to monitor the operation of the MOU and to address any case management issues that are identified. In addition, these meetings and the MOU/Protocols should include other stakeholders such as the children's courts, legal aid commissions and the Northern Territory Department of Justice given their role in the training, appointment and management of ICLs; and, in the case of the commissions, also the provision of duty lawyer services and grants of aid.

Any other comments relating to this section.
Comment: