

# Family Law Matters Procedure

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## 1. Purpose

The purpose of this procedure is to assist Department of Child Protection (DCP) case work staff to understand and respond to family law matters. The procedure includes guidance regarding:

- responding to requests to intervene in Family Law proceedings
- the role of the Co-located Child Protection Practitioner
- managing notifications from the FCFLC
- responding to 69ZW Orders and Subpoenas.

## 2. Scope

This procedure applies to all departmental staff with case management responsibilities for matters that intersect with the Federal Circuit and Family Law Court of Australia (FCFLC).

## 3. Authority

### 3.1 Legislative context

#### *Children and Young People (Safety) Act, 2017 – ‘CYPS Act’*

- **Section 32(1)(b)** requires the Chief Executive to assess any report or notification (however described and whether or not received under this Act) made to the department indicating that a child or young person may be at risk. This section includes reports and court orders from the FCFLC where they allege harm or risk of harm to children or young people.
- **Section 32(2)** provides a legal basis for the department to investigate a report from the FCFLC using the same practices and processes that are used to investigate and assess any notification made to the department under the CYPS Act.
- **Section 164** details the confidentiality provision that DCP workers are bound by and also permits the sharing of information with a Commonwealth agency for the proper performance of its functions.

#### *Children and Young People (Safety) Regulations, 2017*

#### *Family Law Act 1975 (Cth) – ‘FLA’*

- **Section 67Z (Subdivision D) – Allegation of child abuse and family violence by an ‘interested person’** requires the FCFLC to report allegations of child abuse and family violence to the authorised child welfare authority (in South Australia, DCP). Any allegations are filed by the interested party in a ‘Notice of Risk’.
- **Section 69ZW - Evidence relating to child abuse or family violence** allows the court to make an order requiring DCP to provide the court with documents or information specified in the order to assist with their decision making.
- **Section 91B - Intervention by a child welfare officer** stipulates that the FCFLC may invite the state child welfare authority to intervene in any proceedings under the FLA Act that affect or may affect the welfare of the child.

#### *Instrument of Authorisation between DCP and the FCFLC*

In addition to the information sharing provisions permitted under section 164 of the CYPS Act, the Chief Executive has signed a specific authorisation for the departmental Co-located Child Protection Practitioner to

disclose information held by the department to Family Law Judicial Officers, registry staff, independent children's lawyers, Court Child Experts and SAPOL. Such disclosures of information are made in line with the confidentiality provisions of the CYPS Act.

## 3.2 Whole of Government requirements

Not Applicable.

## 3.3 DCP requirements

Not Applicable.

# 4. Procedure Requirements

## 4.1 Request to intervene in family law proceedings

A request for DCP to intervene in family law proceedings is made via section 91B of the *Family Law Act 1975*. This section of the Act is utilised when family law proceedings 'may affect the welfare of a child'. The request to intervene comes from the FCFLC inviting the DCP to take the matter out of the family law jurisdiction and into the Youth Court jurisdiction, become party to the family law proceedings or assist the court by way of information provision. In order for the department to be able to respond to the request to intervene, a current thorough and holistic assessment must have been undertaken or must be undertaken after the request to intervene has been received.

By way of information provision to the FCFLC, the Judicial Officer requires information regarding child safety and wellbeing, in each party to proceedings care. The FCFLC have no investigative powers, hence the request for DCP to intervene in family law proceedings requires the department to assess the safety and risk issues relating to the children and parties to proceedings.

The Practice Leader, Court Services and Liaison has oversight of all matters that progress through the FCFLC subject to these intervention orders. This includes quality assurance of court reports and oversight of decision making with respect to the invitation to intervene, although the delegation for decision making remains with the allocated supervisor (for cases allocated to their team). It is strongly recommended that a collaborative approach is taken to decision making that is also inclusive of solicitors from the Crown Solicitor's Office (CSO).

### 4.1.1 Responding to a request to intervene court order

The request to intervene order is sent by the FCFLC to a central mailbox monitored by the Court Services and Liaison team. Differing processes exist for cases that are open or closed at the time the court order is received. DCP requires current assessment information to respond to the court's request to intervene. The request to intervene is the department's opportunity to assess caregivers' ability to provide children and young people with safe care and to give children and young people an additional avenue to have their voice heard within the Family law jurisdiction.

#### Open cases:

- For matters where a request to intervene court order is received on an open case, the Court Services and Liaison team will email the FCFLC order, the [DCP report template](#) and the completed Crown instruction letter to the allocated DCP case worker and supervisor. This email will specify the date the completed report must be emailed to the Practice Leader, Court Services and Liaison for quality assurance (generally one week prior to the court hearing).

- The Practice Leader, Court Services and Liaison facilitates a consultation with the allocated office and a solicitor from CSO to discuss the case and the proposed content for the report.
- An updated report is required for every FCFLC hearing to formally update the court about the matter.
- The CSO are instructed via the consultation and the report provided. The departmental Co-located Child Protection Practitioner attends all FCFLC hearings with CSO and will liaise directly with the allocated supervisor.
- The allocated supervisor as the delegated authority is also able to attend FCFLC hearings.

**Closed cases - Noarlunga, St Marys, Mount Barker, Elizabeth, Playford, Blair Athol and Woodville offices (and country offices where appropriate):**

- For matters where a request to intervene court order is received on a closed case, the Practice Leader, Court Services and Liaison will conduct an assessment of information to determine if an investigation and assessment is required to respond to the court order. In cases where the child or young person resides in the office catchment areas of Noarlunga, St Marys, Mount Barker, Elizabeth, Playford, Blair Athol or Woodville, and it is assessed by the Practice Leader, Court Services and Liaison that an investigation is required, a child protection investigation will be conducted by the Court Services and Liaison team. Where necessary, the senior social workers in the Court Services and Liaison team will conduct a child protection investigation to inform DCP and potentially FCFLC decision making, and will write the associated report.
- If it is assessed by the Practice Leader, Court Services and Liaison that Youth Court Orders are required to secure the safety of a child or young person, consultation will occur with the supervisor of the relevant office as early as possible noting that:
  - the Court Services and Liaison team will complete the first Adelaide Youth Court (AYC) court report and interim case plan and undertake casework including contact up until the first AYC hearing and handover meetings with staff, parents/parties to proceedings and the child and young person
  - the Court Services and Liaison team will complete an Family Group Conference referral where appropriate
  - the Court Services and Liaison team will complete the Aboriginal and Torres Strait Islander Child Placement Principle Recognised Organisation Consultation form where required
  - the Court Services and Liaison team will attempt to identify a temporary placement within the family's network and initiate the Winangay temporary carer assessment and complete the home safety check where necessary
  - the allocated office will facilitate placement of a child or young person if a temporary placement/kinship placement cannot be secured by the Court Services and Liaison team
  - the Court Services Team will facilitate a case handover meeting with the allocated office and an introduction to the family where possible/appropriate.

**Closed cases - Mount Gambier, Kadina, Port Pirie, Port Augusta, Ceduna, Port Augusta, Gawler and Murray Bridge:**

- For cases where the children or young people reside in the office catchment areas of Mount Gambier, Kadina, Port Pirie, Port Augusta, Ceduna, Port Augusta, Gawler and Murray Bridge, the FCFLC Order and the CSO instruction letter completed by the Court Services and Liaison team will be emailed to the Duty Supervisor by the Court Services and Liaison team.
- Case consultation is facilitated by the Practice Leader, Court Services and Liaison with an office supervisor and allocated solicitor from CSO to discuss the request to intervene and possible safety and risk issues. The local office investigates the matter where current risk issues are identified (the Court Services and Liaison team may be able to assist at times) and writes the report to the FCFLC. This report must be sent to the Practice Leader, Court Services and Liaison one week prior to the court hearing.

## 4.2 Co-located Child Protection Practitioner

The Co-located Child Protection Practitioner facilitates the sharing of information between DCP and the FCFLC and relevant stakeholders:

- **Independent Children’s Lawyers (ICL)** who are appointed in the FCFLC by a Registrar or Judge primarily to ensure that all information relevant to a child or young person’s welfare is put before the court for consideration. The Co-located Practitioner provides information to ICLs regarding the child and young person that is contained on departmental files. The ICL can also provide information regarding the status of the Family Law proceedings to the Co-located Child Protection Practitioner.
- **Court Child Experts** who are psychologists and/or social workers employed by the FCFLC assist with the resolution of disputes, provide assessment reports and give evidence in the FCFLC. The Co-located Child Protection Practitioner can seek permission to obtain these expert reports where available.
- **FCFLC Judicial Registrars, Senior Judicial Registrars and Judges** can be provided with a formal letter from DCP advising of departmental involvement in a matter that is being considered in the FCFLC. The [template for this letter can be found here](#) and should be sent to the Co-located Child Protection Practitioner via the [DCP:Family Law Interface](#) mailbox. Family members will advise if a matter is before the court and provide the court file number to add to the letter. If this is not possible, DCP staff can request this information via an email to DCP: Family Law Interface mailbox noting the family’s details. A letter cannot be sent to the court if the family have not initiated proceedings in the FCFLC.
- **FCFLC Aboriginal and Torres Strait Islander Listing/Court** provides a specialised courtroom for Aboriginal litigants. This courtroom commences with an acknowledgement to Country, has a degree of informality, is a closed court and has access to specialised culturally appropriate services to assist parties to proceedings. The Co-located Child Protection Practitioner supports parties where appropriate during these hearings upon request and shares departmental information where appropriate.

The Co-located Child Protection Practitioner can be contacted via email to [DCP:Family Law Interface](#) where DCP case workers require information such as the FCFLC Order. The emails must include the child(ren)’s names and dates of birth and the parents’ or parties’ names and dates of birth.

For enquiries, contact the Co-located Child Protection Practitioner on 0439 814 613.

## 4.3 Notifications from the Federal Circuit and Family Law Courts

Under section 67Z(3) of the *Family Law Act 1975*, the FCFLC are required to notify DCP of any child abuse allegations. Once the notification is assessed by the DCP Call Centre, a written response is provided to the FCFLC by the Court Services and Liaison team. The response is a summary of information held on departmental files to assist the FCFLC with their decision making. The Court Services and Liaison team uploads the written response to a C3MS family law case. The notifications, once assessed, are treated as all other notifications, including being referred to the relevant office for a response where notifications are screened in.

## 4.4 69ZW Orders and Subpoenas

Under section 69ZW of the *Family Law Act 1975*, the FCFLC may make an order requiring DCP to provide documents or information specified in the order. This order may pertain to notifications, the outcome or findings of investigations and reports received by DCP. Often 69ZW orders are included in a ‘request to intervene’ order. 69ZW orders are dealt with similarly to subpoenas (and can be broader). The DCP Subpoena and Information Release team are responsible for responding to both 69ZW orders and subpoenas.

## 5. Compliance, Monitoring and Evaluation

The Practice Leader, Court Services and Liaison monitors the compliance, monitoring and evaluation of this procedure, seeking advice from DCP Legal Services as appropriate.

## 6. Related documents

Related documents, forms and templates
<a href="#">FCFLC Report Template</a>
<a href="#">Alert Letter Template</a>

## 7. Glossary

Term	Meaning
FCFLC	Federal Circuit and Family Law Court

## Document control

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