

**FAMILY LAW AND CHILD PROTECTION FINAL REPORT
SEPTEMBER 2002**

Excerpt from full report – view in full from submissions page

RECOMMENDATIONS

Recommendation 1

The Federal Government should establish a Child Protection Service.

Recommendation 2

The Child Protection Service should be a national service.

Recommendation 3

The objectives of the Child Protection Service should be:

1. To investigate child protection concerns and provide information arising from such investigation to courts exercising jurisdiction under the *Family Law Act*.
2. To ensure, in the course of its work, that children and families are not subjected to unnecessary investigation, assessment or stress.
3. To avoid unnecessary duplication of resources and effort in the investigation and determination of matters involving both family law and child welfare law issues.
4. To promote the development of a co-operative approach between State and Federal agencies in responding to concerns about child abuse and neglect.

Recommendation 4

The Child Protection Service should be an independent service staffed by people with a background in child protection and social welfare and should embrace a multi-disciplinary approach.

Recommendation 5

The Child Protection Service should be comprised of a mix of core permanent staff and draw on a mix of contract, fee for service and part-time staff to service rural, regional and remote

areas, the needs of indigenous communities and other cultural groups.

Recommendation 6

The Child Protection Service should be co-located with appropriate matched services to maximise its effectiveness.

Recommendation 7

The establishment of a Child Protection Service should be accompanied by the development of Protocols for co-operation between it and State or Territory child protection authorities.

Recommendation 8

The establishment of a Child Protection Service should be accompanied by consequential modification to the mandatory notification system pursuant to s.67Z and s.67ZA of the *Family Law Act*, providing for the mandatory notification of specified child abuse concerns to State and Territory child protection authorities.

Recommendation 9

Section 67ZA of the *Family Law Act* should be amended to provide that the courts exercising jurisdiction under the *Family Law Act* can share such information as is reasonably necessary with child protection authorities and the CPS whenever abuse issues arise in proceedings, and ensuring that there is no need for notification to a child protection authority as a precondition for such information sharing.

Recommendation 10

The *Family Law Act* should be amended to allow Children's and Youth Courts to make consent orders regarding residence and contact in certain circumstances.

Recommendation 11

Section 69ZK should be amended to make clear beyond doubt that residence and contact orders made pursuant to child welfare legislation as an outcome of proceedings brought by a child protection authority for the protection of a child are not inconsistent with the *Family Law Act 1975*.

Recommendation 12

States and Territories should be encouraged to amend their laws to make it possible for Children's and Youth Courts to make orders concerning residence and contact as an outcome of child protection proceedings brought by the child protection authority.

Recommendation 13

In child protection matters, duplication of effort between state and federal systems should be avoided, and a decision should be taken as early as possible whether a matter should proceed under the *Family Law Act* or under child welfare law with the consequence that there should be only one court dealing with the matter. This is to be known as the 'One Court principle'.

Recommendation 14

The Council of Community Services Ministers and Standing Committee of Attorneys-General should jointly appoint a Committee consisting of representatives of the child protection authorities in States and Territories, Children's and Youth Courts, the Family Court of Australia, the Family Court of Western Australia, the Federal Magistrates Service and the CPS. The Committee shall:

- a) promote cooperation in ensuring the effectiveness of the One Court principle;
- b) endeavour to agree on the circumstances when the child protection authority should take responsibility for presenting the child protection concerns either under child welfare legislation or by becoming a party to family law proceedings and when it is appropriate for the matter to be left to others, such as the parents, to resolve in private proceedings under the *Family Law Act*;

- c) review the operation of the various Protocols between the Family Court and State and Territory child protection departments with a view to promoting as much consistency as is possible given the variations in state legislation and circumstances;
- d) encourage a high-level of commitment to the Protocols and their incorporation in all relevant agencies;
- e) explore all the practical issues of improving information sharing, examining how to better coordinate elements of the system, and further refining the role of the CPS;
- f) keep under review and progressively enhance the various Protocols and promote ongoing collaboration between the child protection authorities in the States and Territories and the Courts exercising jurisdiction under the *Family Law Act*.

Recommendation 15

Children's and Youth courts should be encouraged to collaboratively develop and implement a short form of reporting of their decisions.

Recommendation 16

Section 19N(3) should be amended along the following lines:

“Subsection (2) does not apply to:

(a) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age has been seriously abused; or

(b) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age is at risk of serious abuse

unless in the opinion of the Court there is sufficient other evidence of an admission of the adult or disclosure of the child relating to such abuse which is available to the Court.”

Recommendation 17

Sections 62F(8) and 70NI of the *Family Law Act* should be amended along the following lines so as not to apply to:

“(a) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age has been seriously abused; or

(b) any admission of an adult or disclosure of a child which indicates a child under eighteen years of age is at risk of serious abuse

unless in the opinion of the Court there is sufficient other evidence of an admission of the adult or disclosure of the child relating to such abuse which is available to the Court.”