



Government of Western Australia
Department of Justice



Government of Western Australia
Department of Communities



Memorandum of Understanding

to support the

Sharing of Information

between

Family Court of Western Australia

Department of Justice

Department of Communities

Legal Aid Western Australia

January 2022

BACKGROUND

The matters contained in this Memorandum of Understanding are in addition to, and do not otherwise affect (unless expressly provided), any other protocols or procedures currently existing between the parties.

OPERATIVE PART

1. Parties

- 1.1 The parties to this Memorandum of Understanding (MOU) are the Family Court of Western Australia (including Family Law Magistrates of Western Australia) (the Court), the Department of Communities (Communities), Legal Aid Western Australia (including Independent Children's Lawyers (ICL) appointed by Legal Aid Western Australia) (LAWA), and the Department of Justice (DoJ).
- 1.2 The Court is responsible for providing dispute resolution services in accordance with its obligations under statute, particularly the *Family Law Act 1975* (Cth) (FLA) and the *Family Court Act 1997* (WA) (FCA).
- 1.3 Communities is responsible for delivering child protection services in accordance with its obligations under statute, particularly the *Children and Community Services Act 2004* (CCSA).
- 1.4 LAWA is responsible for administering the scheme of legal assistance in accordance with the *Legal Aid Commission Act 1976* (WA) including the appointment of an ICL and the provision of duty lawyer services at courts throughout the State of Western Australia.
- 1.5 DoJ is responsible for administration of the Court including service delivery functions of Family Court Counselling and Consultancy Service, based in the Court Counselling and Support Services Directorate, Court and Tribunal Services Division.
- 1.6 Representatives from each party constitute the Protocols Committee.

2. Purpose

- 2.1 The parties recognise that they share the same aim in the fulfilment of their duties - that is, to provide the best possible outcomes for children.
- 2.2 As far as is practicable, and permissible under the relevant statutory provisions, the parties agree to share and exchange information and resources in individual cases where to do so would assist in achieving the joint aim.

2.3 Information disclosed pursuant to this MOU will be retained and destroyed in accordance with the relevant agency's record keeping plan made under the *State Records Act 2000*.

2.4 Practice Guidelines are attached to this MOU which document the procedures agreed between the parties to facilitate the efficient and timely sharing of information and resources to achieve the joint aim.

3. Terms

3.1 This MOU will become effective when signed by the parties. It will remain in place until varied by agreement between the parties or terminated by one of the parties.

3.2 Any party may terminate this MOU upon giving no less than thirty (30) days' notice in writing to the other parties.

3.3 The MOU, excluding the attached Practice Guidelines, is not to be altered, varied or modified in any respect except by agreement in writing by the parties. The parties may agree to vary the terms of this MOU, in writing, at any time.

3.4 The Practice Guidelines attached to this MOU will be monitored, and reviewed as a standing agenda item by the Protocols Committee.

3.5 The Protocols Committee will meet no less than three times per annum.

3.6 The Practice Guidelines may be amended by the parties, by providing notice to all parties if:

(a) the Protocols Committee determine amendment is required for efficient information sharing purposes;

(b) legislation is updated; and/or

(c) a policy referenced within or relevant to the MOU is updated.

3.7 The parties agree that the provisions of this MOU are neither legally binding nor enforceable as between the parties.

3.8 As the purpose of this MOU is to establish cooperative working arrangements, the parties acknowledge that when grievances arise they will attempt to resolve such grievances by negotiation in good faith.

4. Approval

Name: The Honourable Justice Gail Sutherland

Position title: Chief Judge, Family Court of Western Australia

Signature:  _____ **Date:** 10 / 12 / 2021

Name: Dr Adam Tomison

Position title: Director General, Department of Justice

Signature:  _____ **Date:** 15 / 12 / 2021

Name: Mr Mike Rowe

Position title: Director General, Department of Communities

Signature:  _____ **Date:** 24 / 12 / 2021

Name: Dr Graham Hill

Position title: Director, Legal Aid Western Australia

Signature:  _____ **Date:** 21 / 12 / 21



Government of Western Australia
Department of Justice



Government of Western Australia
Department of Communities



Practice Guidelines

to support the

Sharing of Information

between

Family Court of Western Australia

Department of Justice

Department of Communities

Legal Aid of Western Australia

January 2022

BACKGROUND

The Practice Guidelines (PG) are an attachment to the Memorandum of Understanding (MOU) to support the sharing of information between the Family Court of Western Australia (the Court), Department of Communities (Communities), Legal Aid of Western Australia (LAWA) and Department of Justice (DoJ), dated January 2022.

OPERATIVE PART

1. PRINCIPLES

- 1.1 The parties acknowledge that that efficient, collaborative exchange of information is critical to achieve the best possible outcomes for children who are the subject of Court proceedings.
- 1.2 The parties acknowledge that information may be obtained pursuant to the CCSA, FCA and FLA.
- 1.3 The parties will, in each case, give consideration to the most appropriate and efficient procedure to be utilised for the sharing of information, noting that s 23 of the CCSA does not require the issuing of Court orders for Communities to provide relevant information to the Court, DoJ, or LAWA about children who are the subject of Court proceedings.
- 1.4 Wherever practicable, the exchange of information between the parties shall be documented. Each party will maintain and provide up to date contact details to enable the prompt and efficient sharing of information.
- 1.5 The parties will be responsible to manage and action the following within their respective organisations:
 - (a) Communicate and distribute approved final versions of the MOU and PG to all relevant members of their organisation.
 - (b) Publish approved final versions of the MOU and PG on their organisation's relevant resource platforms.
 - (c) Ensure that delegated authorities within their organisation have approved any amendments and updates to the PG that may arise during the term of the MOU.
 - (d) Provide information and training to all relevant members of their organisation.

2. PARTIES TO THE MOU

- 2.1 The parties to the MOU include authorised officers of each organisation and/or as authorised by appointment by the organisation (such as an ICL).
- 2.2 Parties to Court proceedings include the ICL appointed in those proceedings.

3. SECTION 23 OF THE CCSA

- 3.1 Pursuant to s 23 of the CCSA, Communities may disclose to any or all of the parties, information that is likely to be relevant to the:
- (a) care of a child;
 - (b) physical, emotional, psychological and educational development of a child;
 - (c) physical, emotional, and psychological health of a child;
 - (d) safety of a child; and/or
 - (e) safety of a person who has been subjected to, or exposed to, family violence.

4. LAWA REQUEST FOR COMMUNITIES INFORMATION

- 4.1 Where a person has sought legal assistance from LAWA concerning a parenting application and it becomes apparent that Communities are involved in the case, LAWA may contact Communities to make enquiries about Communities' involvement and any other relevant matter.
- 4.2 Communities may provide relevant information to LAWA, pursuant to s 23 of the CCSA.
- 4.3 An authority from the applicant who has applied for legal assistance is to be provided prior to any request for information.
- 4.4 This provision of information shall only be used by LAWA to assist in determining the level of assistance LAWA will provide.

5. REFERRAL OF CLIENTS FROM COMMUNITIES

- 5.1 In the course of its duties, Communities may refer a client to the Court to file a parenting application in the Court and/or to seek legal assistance in relation to the possibility of filing an application.
- 5.2 In such circumstances, Communities will provide a referral document to the client and/or the Court.
- 5.3 Communities' referral documentation should include:
- (a) Reason for the referral;
 - (b) Information about Communities' involvement with the client;
 - (c) Whether or not the client is supported in their parenting application;
 - (d) Consideration as to what orders would be in the best interests of the child; and
 - (e) Contact details of Communities' staff member and/or service delivery team to respond to further enquiries.
- 5.4 The Court and/or LAWA may then make any further enquiries with Communities regarding their involvement with the matter and request any relevant information or their attendance at the next Court event.

6. PROVISION OF INFORMATION PRIOR TO THE URGENT EX PARTE HEARING OF AN APPLICATION SEEKING A RECOVERY ORDER

- 6.1 If a party seeking to file an urgent ex parte application for a recovery order seeks assistance from the LAWA Duty Lawyer service, the Duty Lawyer may contact the Communities co-located child protection officer and make enquiries regarding any involvement Communities may have had with the parties, and request relevant information. In the event there has been any involvement or is any relevant information, the Communities co-located child protection officer may disclose that information to LAWA.
- 6.2 When an urgent ex parte application for a recovery order is accepted for filing by a Judicial Officer, the Judicial Officer may direct that the file be immediately referred to the Communities co-located child protection officer to enquire whether there are any concerns or relevant information in relation to the application for a recovery order.

- 6.3 If the Communities co-located child protection officer is not available, then the referral will be forwarded to Communities' Central Intake Team.
- 6.4 Communities may disclose such relevant information upon an enquiry and provide a written response for the Court which will be placed on the file for the attention of the presiding Judicial Officer to release to the parties unless it is not appropriate to do so.

7. PRE-S69ZW (FLA) / S202K (FCA) ORDERS

- 7.1 It is open to the Court to issue a pre s 69ZW / 202K order seeking information about the existence of relevant documents in the following terms:

“Pursuant to section 23 of the *Children and Community Services Act 2004* (WA), the CEO of the Department of Communities or their delegate, is requested to advise of the existence of any relevant documentation in relation to this case and to provide information relating to such documentation including but not limited to the following:

- (a) whether Department of Communities has a file in relation to the matter;
- (b) the date the file was opened;
- (c) the most recent intervention by Department of Communities in relation to the matter;
- (d) the current status of any ongoing interventions by Department of Communities;
- (e) the estimated timeframe for the completion of those interventions; and
- (f) to the extent possible, the nature of the documents on the Department of Communities file.”

- 7.2 A copy of the relevant order is to be provided by the Court to Communities.
- 7.3 Communities will authorise the release of such information and a copy of their written response will be placed on the Court file for the attention of the presiding Judicial Officer and for release to the parties unless it is not appropriate to do so.

8. SECTION 69ZW (FLA) / 202K (FCA) ORDERS

- 8.1 It is open to the Court to issue a s 69ZW / 202K order seeking specific documents or information in the following terms:

“Pursuant to section 69ZW of the *Family Law Act 1975* (Cth) **OR** section 202K of the *Family Court Act 1997* (WA) and section 23 of the *Children and Community Services Act 2004* (WA), the CEO of the Department of Communities or their delegate provide the Court with the following documents or information: (specify documents or information required).”

8.2 The Court will also make the following order, if relevant:

“It is noted that it has been disclosed in these proceedings that the following person/s have notified the Department of Communities of concerns in relation to the child/ren: (state names of known notifiers).”

8.3 A copy of the relevant order is to be provided by the Court to Communities.

8.4 Upon receipt of such order, Communities will provide the documents (or copies thereof) to the Court, to be held by the Subpoena Section. The Court will determine whether the parties may inspect the documents provided.

8.5 Any documents relied upon by the Court must be admitted into evidence. Any documents not relied upon are to be returned to Communities, or if they are copies, destroyed when the matter is finalised.

9. PROCEDURES FOLLOWING THE FILING OF A NOTICE OF CHILD ABUSE AND FAMILY VIOLENCE OR RISK (A "NOTIFICATION")

9.1 The Court is required under the provisions of the FLA and FCA to provide a copy to Communities of a Notification that has been filed in proceedings. In addition, the Court is required to notify Communities if a person suspects on reasonable grounds that a child has been subjected to, or is at risk of being subjected to, abuse or family violence. Communities agrees to provide written information to the Court upon receipt of such Notifications.

9.2 When forwarding such Notifications to Communities, the Court shall also forward such information or evidence filed in relation to the allegations contained in the Notification as is considered appropriate to assist Communities in their consideration of the Notification.

9.3 If the Notification alleges child abuse or risk of child abuse (whether or not family violence or risk of family violence is alleged), Communities will provide to the Court a written report in relation to the allegations within 6 weeks of receipt of the Notification. In the event this timeframe cannot be met, Communities will advise the Court in writing and advise of the timeframe proposed.

9.4 Notwithstanding PG 9.3, the Court may, by order or written request, advise Communities that a written report is not required in relation to allegations of abuse or risk of abuse.

9.5 If the Notification alleges family violence or risk of family violence (and does not allege child abuse or risk of child abuse), Communities are not required to provide to the Court a written report unless so requested, by order, made by a Judge, Magistrate or Registrar or by written request.

9.6 Notwithstanding PG 9.3, 9.4 and 9.5, Communities may elect to provide a written report to the Court if considered necessary by Communities.

9.7 In determining whether a report is or is not required from Communities, the Court will consider information that may be available from other sources. The Court will also consider refraining from making s 69ZW / 202K orders in cases where a written report will be received from Communities in accordance with this Part unless the information is required on an urgent basis.

10. SUBPOENAS DIRECTED TO COMMUNITIES

10.1 The Court will not give leave to a party (including an ICL) to issue a subpoena directed to Communities, without first considering:

- (a) The information that has been received, pursuant to disclosure by Communities under s 23 of CCSA;
- (b) The information received, pursuant to PG 5 above;
- (c) The written information received, if any, pursuant to PG 6 above;
- (d) The use of a pre-s 69ZW / 202K order;
- (e) The issuing of, and inspection of documents provided pursuant to a s 69ZW / 202K order; and
- (f) Any written report received from Communities in response to the filing of a Notification.

10.2 The Court will also require from the requesting party confirmation:

- (a) of the documents and information already received from Communities, the precise documents sought by the requesting party and the relevance of those documents; and/or
- (b) that they are not seeking that Communities produce documents that have already been produced in proceedings or may be produced by means other than subpoena.

10.3 Communities will advise as to the availability of the documents sought to be subpoenaed if contacted by the requesting party.

10.4 The Court will generally not grant leave for the issue of a subpoena seeking production of Communities entire file, or for documents that may be obtained pursuant to a s 69ZW / 202K order.

11. COLLABORATIVE INFORMATION EXCHANGE

11.1 In cases that are currently before the Court and are, or will be open to Communities, the parties shall work collaboratively, wherever practicable.

11.2 In order to facilitate collaboration, the Court will:

- (a) make its files available for inspection and photocopying (free of charge) to Communities;
- (b) direct that Communities are provided with copies of Court orders when requested by Communities, other than as set out in the PG;
- (c) facilitate the attendance of Communities officers at Court events by telephone where practicable;
- (d) require legal representatives from Communities to attend only when necessary; and
- (e) facilitate as far as practicable the joint discussion of the case including providing conference rooms and facilities.

11.3 In order to facilitate collaboration, Communities will:

- (a) Facilitate the disclosure of relevant information pursuant to s 23 of the CCSA by its officers, including the Communities co-located child protection officer, or any other authorised Communities officer, to the Court, DOJ and LAWA (including ICLs) to effectively manage the case; and
- (b) make available as far as practicable its officers to attend Court events and conferences.

12. PROVISION OF ORDERS TO COMMUNITIES PURSUANT TO SECTION 68P (FLA) / 174 (FCA)

12.1 Pursuant to s 68P FLA and 174 FCA, the Court is obliged to provide to a child welfare officer (Communities) a copy of any relevant order which is inconsistent with a family violence order.

12.2 The Court does not require any response from Communities upon their receipt of such order.