To investigate legal representation schemes for children in the US, Canada and the UK – administration, delivery and innovation
To investigate legal representation schemes for children in the US, Canada and the UK – administration, delivery and innovation

I understand that the Churchill Trust may publish this Report, either in hard copy or on the internet or both, and consent to such publication.

I indemnify the Churchill Trust against any loss, costs or damages it may suffer arising out of any claim or proceedings made against the Trust in respect of or arising out of the publication of any Report submitted to the Trust and which the Trust places on a website for access over the internet.

I also warrant that my Final Report is original and does not infringe the copyright of any person, or contain anything which is, or the incorporation of which into the Final Report is, actionable for defamation, a breach of any privacy law or obligation, breach of confidence, contempt of court, passing-off or contravention of any other private right or of any law.

Kylie Beckhouse

Signed:

Dated: 6 JULY 2015
Acknowledgements

It has been an extraordinary privilege to travel widely and speak with such a vast array of experts in the field of child legal representation. It would not have been possible without the support of many people who have provided their time, inspiration, knowledge and support for my Churchill Fellowship journey.

The Churchill Fellowship provided me with a unique opportunity to spend time with people who have shaped, and continue to shape, child representation practices across the world. I was able to explore many different aspects of the representation of children with a broad range of people, all of whom were committed to improving the legal services provided to children.

In particular, I consider myself fortunate to have visited the three most sophisticated single-focus government agencies in the world: the Office of the Child’s Representative (OCR) in Denver, Colorado; the Office of the Children’s Lawyer (OCL) in Toronto, Ontario; and the Children and Family Court Advisory and Support Service (Cafcass) in the UK.

I was inspired by the work undertaken by some of the best institutional providers of legal representation services for children, including KidsVoice in Pittsburgh, Pennsylvania, and the Juvenile Rights Practice at the Legal Aid Society of New York, to name but two. I was warmly welcomed and greatly helped by scores of court administrators and judicial officers, through whom I began to understand what ‘client-focused’ service delivery could mean in Australia. I also had the good fortune to meet and learn from national leaders who have shaped the development and professionalisation of children’s law as a specialisation across the US, including Professor Donald Duquette (and his team) at Michigan University’s Child Advocacy Law Clinic (also the home of the National Quality Improvement Center for Child Representation) and Howard Davidson (and his team) at the American Bar Association’s Centre for Children and the Law.

I thank all of those who gave their time so generously – it was a privilege to have met with some of the most reputable influencers in the field of children’s representation schemes and children’s law, all with the common goal of improving outcomes for children and families involved in the legal system.

To those in the legal assistance sector and children’s lawyers across the world, thank you for your commitment and dedication, as well as your willingness to share your time, stories, experiences and good humour.

Finally, thank you to my wonderful family – Joseph, Olivia and Sofia – for their tireless support and tolerance, without whom I could not have completed this work.
Table of contents

1. Executive summary.................................................................................................................. 7
2. Recommendations..................................................................................................................... 9
3. Background and context ...........................................................................................................12
   Administration of child representation schemes in Australia ............................................... 12
   The Australian legislative framework for child representation ............................................. 13
   A note on terminology .............................................................................................................. 15
4. Models for delivering child representation services .............................................................17
   Court administration model .................................................................................................. 17
   Single-focus government agency .......................................................................................... 19
   Legal services provided under government tender or contract ............................................. 22
5. Supporting children and families in court ............................................................................25
   Appointing a child representative ....................................................................................... 25
   Other support roles ............................................................................................................. 32
   Timely provision of information to courts ........................................................................... 36
6. Hearing the voice of the child ...............................................................................................41
   Meeting with children .......................................................................................................... 41
   Court practices ..................................................................................................................... 44
   The Australian situation ....................................................................................................... 48
7. Ensuring quality child legal representation services are delivered .....................................50
   Panel selection and renewal processes ............................................................................... 50
   Attendance at interview ....................................................................................................... 51
   Payments and funding .......................................................................................................... 51
   Performance standards ......................................................................................................... 53
   Support mechanisms ........................................................................................................... 54
   Monitoring performance ...................................................................................................... 54
   Renewal processes ............................................................................................................... 55
   Feedback mechanisms .......................................................................................................... 57
   Implications for Australian practice .................................................................................... 60
8. **Managing children’s law practices** ................................................................. 61
   Multidisciplinary teemed approach ............................................................... 61
   Supervision ........................................................................................................ 61
   Recruitment and induction processes ............................................................. 66
   Specialised sections and divisions ................................................................. 68
   Implications for Australian practice .............................................................. 71

9. **Training and professional development** .................................................... 72
   University undergraduate programs ............................................................. 72
   In-house induction and training ...................................................................... 74
   Mandatory training as a prerequisite ............................................................. 75
   Ongoing professional development .............................................................. 76
   Specialist accreditation .................................................................................... 78

10. **System-wide initiatives to improve the experience and outcomes for children** ........ 80
    *Child Abuse Prevention and Treatment Act* .............................................. 81
    *Adoption Assistance and Child Welfare Act* .............................................. 81
    Family Preservation and Family Support Services Program ...................... 81
    Child Welfare Waiver Program .................................................................... 82
    *Strengthening Abuse and Neglect Courts Act* .......................................... 82
    Interstate compacts ....................................................................................... 82
    Implications for Australia .............................................................................. 84

11. **Conclusion** .................................................................................................. 85

12. **References** .................................................................................................. 88

13. **Attachment 1** ............................................................................................ 90

14. **Schedule of consultations** .......................................................................... 91
# Table of acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABA</td>
<td>American Bar Association</td>
</tr>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>ACP</td>
<td>Attorney for Children Program of the New York State Unified Court Division – Appellate Division</td>
</tr>
<tr>
<td>AIFS</td>
<td>Australian Institute of Family Studies</td>
</tr>
<tr>
<td>Cafcass</td>
<td>Children and Family Court Advisory and Support Service (UK)</td>
</tr>
<tr>
<td>CCPA</td>
<td><em>Children and Young Persons (Care and Protection) Act 1998</em> (Australia)</td>
</tr>
<tr>
<td>CAPTA</td>
<td><em>Child Abuse Prevention and Treatment Act 1974</em> (US)</td>
</tr>
<tr>
<td>CASA</td>
<td>Court Appointed Special Advocate (US)</td>
</tr>
<tr>
<td>CCAN</td>
<td>Counsel for Child Abuse and Neglect (Washington DC)</td>
</tr>
<tr>
<td>CFI</td>
<td>Child and Family Investigator (Colorado)</td>
</tr>
<tr>
<td>CLC</td>
<td>Children’s Law Centre (California, Washington DC)</td>
</tr>
<tr>
<td>FLA</td>
<td><em>Family Law Act 1975</em> (Australia)</td>
</tr>
<tr>
<td>ICL</td>
<td>Independent Children’s Lawyer (Australia)</td>
</tr>
<tr>
<td>NACC</td>
<td>National Association for Counsel of Children (US)</td>
</tr>
<tr>
<td>NCSC</td>
<td>National Centre for State Courts (US)</td>
</tr>
<tr>
<td>NCJFCJ</td>
<td>National Council of Juvenile and Family Court Judges</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>OCL</td>
<td>Office of the Children’s Lawyer (Ontario)</td>
</tr>
<tr>
<td>OCR</td>
<td>Office of the Child’s Representative (Colorado)</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
</tbody>
</table>
1. Executive summary

The legal representation of vulnerable children is arguably one of the most critical roles played by lawyers in the family and child protection legal systems.

The United Nations Convention on the Rights of the Child (UNCROC) obliges Australian courts to facilitate the participation of children in proceedings relevant to their care and to ensure that their views are heard.¹ The appointment of a lawyer to represent the interests of a child impacted by family law or child protection proceedings is a key means by which Australia meets this international obligation.

It is estimated that each year Legal Aid commissions across Australia facilitate the appointment of over 10,000 child representatives to act for children in such matters. Child representatives play a critical role in facilitating the participation of children and in focusing courts and parties on the views of the children they represent. This is crucial, because the children are generally unable to advocate effectively on their own behalf, and their parents are often unable to advocate effectively for them either.

A recent Australian study by the Australian Institute of Family Studies (AIFS)² suggests that the involvement of a competent child representative can contribute to better outcomes for children involved in legal proceedings. However, the report also raises concerns about the performance of some child representatives, and oversight of these representatives, concluding that at times Australian practice falls short of community expectations.

I applied for a Churchill Fellowship hopeful that an investigation of the administration and delivery of, and current innovations in, legal representation schemes for children in the US, Canada and the UK could lead to new ideas and fresh approaches to child representation practices across Australia.

The Churchill Fellowship gave me the rare privilege of meeting over 90 experts in nine cities throughout the US, Canada and the UK, all of whom have an involvement in the legal representation services received by children

---

In this report I examine a variety of approaches to international practice, including:

- The structures used in each jurisdiction to deliver child representation services
- How cases are allocated and child representatives are appointed
- The early provision of information about children and families to courts
- Roles and practices that support children and families through court processes
- Hearing the voice of the child
- Ensuring that quality child legal representation services are delivered
- Best practice approaches to managing a children’s legal practice
- Training and professional development, and
- System-wide initiatives for improving outcomes for children.

This report draws on notable developments and initiatives taking place internationally that might inform improvements, and it makes recommendations on what we in Australia could do to improve our approaches to child legal representation.

I look forward to working with my colleagues across Australia and NSW to implement the recommendations.

Kylie Beckhouse (Executive Director – Family Law, Legal Aid NSW)
323 Castlereagh Street, Sydney
kylie.beckhouse@legalaid.nsw.gov.au
02 9219 5789
2. Recommendations

In the Australian child protection and family law systems we have a history of implementing reviews, legislative amendments and reforms aimed at improving decision-making about children and families. However, if we are serious about a human rights framework, we also need to consider what system reforms might be introduced across Australia to improve a child’s journey through our legal processes. As Professor Eileen Munro says in her preface to the interim report on child protection reforms in the UK:

There are ... barriers to good practice which can be removed and incentives to better practice which can be put in place. I hope that the result will be a recalibration of the whole system around the immediate needs of the individual children and families that it seeks to serve.  

It is with this lens and in this spirit that I make the following recommendations for change.

1. **Redesign the initial information-gathering, screening and assessment processes undertaken by Family Courts and the resultant agency responses**

Committing more resources in the early stages of a matter could improve our responses to children and families. International practice suggests that structural changes to how we allocate resources such as family consultants, experts and children’s lawyers could result in better information being available at an early stage to allow courts to make well-informed decisions about children. This has the potential to be cost neutral. See Chapter 5 for details.

2. **Place an upper limit on the number of files allocated to child representatives**

There can be no doubt there is a direct link between reasonable caseloads and the effective legal representation of children. Agreement about what is a reasonable upper caseload limit is controversial, given that it relates to support roles as well. However, a formal policy position should be adopted in order to assure that child representatives have adequate time and resources available. See Chapter 5 for details.

3. **Review the National Guidelines for Independent Children’s Lawyers and the legislative framework to ensure they lead to an appropriate level of participation for children in family law processes**

While various guidelines exist in Australia to guide the practices of child representatives, they should be reviewed to ensure they clearly articulate community and stakeholder expectations about the involvement of children. A review would need to consider the currency of the notion of ‘systems abuse’ and whether any amendments to the Family Law Act are required to ensure an appropriate level of participation of children in court processes. See Chapter 6 for details.

---

4. For the Children’s Courts and Family Courts, develop principles to guide decision-making about the participation of children in legal processes, including judicial interactions with children

While the extent of a child’s participation in court processes should be determined on a case-by-case basis, guidelines need to be developed to inform decision-making. These guidelines should articulate appropriate procedures to ensure that judicial meetings are conducted in a safe, transparent and child-inclusive manner. See Chapter 6 for details.

5. Introduce a system-wide feedback mechanism for child representation services in order to elicit the views and perspectives of people across the system, including children

We could improve our approach to monitoring the performance of child representatives by adopting system-wide feedback mechanisms. Such processes should seek feedback from all stakeholders, including children and judges. Mechanisms, such as court assessment procedures, should be introduced for monitoring the performance of children’s lawyers. These mechanisms should be targeted at both assessing the skills of the child representative and ensuring they are generally meeting the needs of children they represent. See Chapter 7 for details.

6. Investigate whether establishing a single-focus advocacy office for children would better ensure that all of their legal needs are appropriately addressed

Establishing a single-focus national office tasked with overseeing the provision of child representation, investigatory and expert report writing services might better ensure better public accountability, improve resource allocation practices and achieve more national consistency across the family law system. A single-focus agency would partner with Legal Aid commissions, who should continue to deliver the majority of child representations services. Legal Aid commissions have the size and scale to provide more consistent services, and due to their training, support and supervision structures, lead to better child representation practices. See Chapters 4, 5 and 8 for details.

7. In children’s law practices, trial a multidisciplinary team approach to the delivery of child representation services

A trial of a multidisciplinary approach to child representation in Australia would allow us to test whether there are benefits that children could derive from a multidisciplinary team approach to the legal representation of children, and whether this approach could be as cost effective as traditional methods of legal service delivery. See Chapter 8 for details.
8. **Dedicate funding and resources to supporting, monitoring and training child representatives so they can deliver higher quality child representation services**

Investing resources in effective monitoring processes, training and supervision would yield better outcomes in terms of the quality of child representation services delivered. There is a connection between the resourcing of child protection and family law legal systems and the quality of legal services delivered. See Chapters 7 and 9 for details.

9. **Forge closer links between children’s legal practices and university law schools and clinical programs**

Partnerships between child representation legal services with active litigation practices in both child protection and family law have the potential to lead to significant improvements in the standards of child representation in Australia. The integration of law students and interns into family law and children’s legal services would encourage good lawyers to engage in this important work. This practice may also contribute to the professionalisation of child representation law, so that it develops into an area of legal expertise. See Chapter 9 for details.

Following publication of this report, I will discuss my finding and recommendations with the peak national and state committees whose aim it is to improve the family law and child protection systems in Australia and NSW. I will also distribute the report as widely as possible, including publishing articles to national audiences. The task of presenting the report’s findings has begun, and I will continue to present them at national and state conferences.
3. Background and context

Administration of child representation schemes in Australia

In Australia, Legal Aid commissions are funded by State and Commonwealth agencies to provide a range of legal services, including legal representation of children in family courts and children’s courts. It is estimated that across Australia each year over 10,000 child representatives are appointed by Legal Aid commissions to act for children in these jurisdictions. In the 2013/14 financial year, Legal Aid NSW appointed 2,011 lawyers to appear for children in child protection matters and 1,490 lawyers to appear as independent lawyers for children in family law matters.4

These statistics are hardly a surprise. In addition to parenting disputes being heard in family courts nationally, 51,997 children were in state care or under protection orders during 2012/13, and 50,307 children were in out-of-home care over the same period.5 Most of these children would at some point have had a child representative act on their behalf.

Legal aid commissions use a ‘mixed model’ of service delivery to provide child representation services. In 2012/13, Legal Aid NSW engaged private practitioners in approximately 79% of cases in family and child protection law,6 and this mixed model is generally considered to be the most effective and cost-efficient way of providing legal services.7 Legal Aid NSW operates with 13 panels across all legal program areas. As at 30 June 2013, there were 4,290 appointments of practitioners to Legal Aid NSW panels.8

Legal aid commissions are also responsible for a range of functions associated with administering child representation services, including:

- Appointing appropriately qualified lawyers to panels
- Entering into contracts with child representatives in private practice for the provision of services
- Paying the fees, costs and expenses of child representatives appointed, and
- Auditing child representative practices to ensure conformity to practice standards.

In NSW and the majority of other states, legal practitioners must be appointed to a panel before undertaking Legal Aid work. Panel members sign a service agreement that requires compliance with

---

4 Internal Statistical Report at February 2015
6 Legal Aid NSW Submission to the Productivity Commission Inquiry into Access to Justice Arrangement, October 2013
7 Legal Aid NSW Act 1979 NSW requires fees for Legal Aid services to be less than the ordinary professional costs of a service – Section 39(4)
8 Legal Aid NSW Submission to the Productivity Commission, op cit, p.95
the practice standards attached to that panel and to other Legal Aid policies and guidelines. These practice standards documents incorporate and supplement other standards of professional conduct that lawyers must observe. In NSW, for example, these include professional responsibilities under the Legal Profession Act (NSW), Representation Principles for Children’s Lawyers (Law Society of NSW), National Guidelines for Independent Children’s Lawyers and Children’s Court of NSW Code of Conduct.

A legal practitioner’s compliance with their service agreement is monitored through an audit process conducted in NSW by audit staff in the Professional Practices Branch of Legal Aid NSW. In larger states such as NSW, the in-house speciality family law practices of Legal Aid commissions have no oversight of the work undertaken by lawyers appointed to these panels. This at times leads to a debate as to what the roles of Legal Aid commissions should be in overseeing panels. Some argue that the commissions should deliver services in partnership with the private profession and that it is the role of professional bodies and courts to monitor performance and compliance with subject-matter-specific standards of professional conduct. Others argue that Legal Aid commissions should monitor the performance of the private profession which undertakes work on their behalf to ensure that work is undertaken in accordance with their own practice standards.

Legal Aid commissions, often in partnership with other agencies, also take a leadership role in:

- Initial training of child representatives
- Providing accessible and regular state-wide training, and
- Providing resources to child representatives to support good practice.

**The Australian legislative framework for child representation**

This report is concerned with child representation in Australia across both the family law and state child protection systems.

Part VII of the *Family Law Act 1975* (FLA) empowers family courts in Australia to make orders about who a child will live with, how much time the child should spend with other people, and how often and in what ways a child and parent should communicate with one another. In Australia, child protection law is governed by state legislation, and in NSW by the *Children and Young Persons (Care

---


10 These Guidelines have been endorsed by the Chief Justice of the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia. They can be found at www.familylawcourts.gov.au/wps/wcm/resources/file/ebd5040648b7ac3/ICL%20G uidelines%202013.html

11 Published and owned by the Children’s Court Advisory Committee but can be viewed at www.legalaid.nsw.gov.au/for-laywers/resources-and-tools/family-law/code-of-conduct-for-legal-representatives

and Protection) Act 1998 (CCPA). The CCPA allows the department responsible for child protection in NSW to apply to the Children’s Court of NSW for a care and protection order to remove a child from a parent’s care in order to protect the child from abuse and neglect.

Appointing a child representative is one way in which Australia can be seen to meet its obligations under the United Nations Convention on the Rights of the Child (UNCROC) regarding a child’s right to express a view on matter affecting them. Article 12 of UNCROC provides that:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 9 of UNCROC arguably goes further, imposing a right for a child to be given the opportunity to participate in proceedings when it is proposed that they be separated from their parents:

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.

In parenting proceedings under the FLA, the views and voice of the child can be facilitated via two principal methods. A child may meet with a family report writer or expert witness so that they can prepare a child and family assessment, called a family report. In addition, they might have an Independent Children’s Lawyer (ICL) appointed to represent their best interests.

The FLA provides legislative direction about the role of the ICL, and national guidelines about the ICL’s role provide greater detail on expectations. An ICL is not appointed in all parenting

---

13 This has been incorporated into the FLA and as part of the objects and principles of the legislation at Section 60B (4).
14 Section 62G FLA
15 See sections 68L, 68LA and 68M FLA
16 National Legal Aid Guidelines for Independent Children’s Lawyers (2013)
proceedings; as a broad rule, they are appointed only in matters where the court considers the child’s interests require independent representation. Guidance for the type of matters that warrant the appointment of an ICL can be found in the seminal case of Re K.  

In that case the court set out the situations where the appointment of an ICL could be justified, including matters where there are allegations of sexual, physical or psychological abuse, allegations of antisocial conduct by one or both parents that impact on the child (e.g. family violence), or where there is a relocation proposal that would restrict, or in practice exclude, the other parent from having contact with the child. They are not binding criteria, and Legal Aid commissions make the final decision as to whether an ICL will be appointed.

In child protection proceedings in NSW under the Children and Young Persons (Care and Protection) Act, the court may also appoint a legal representative for the child. There are two models of representation: a child representative may be either an independent legal representative with a best interests role or, for children 12 years and over, a direct legal representative who acts on instructions. In proceedings under child protection law in NSW, children are always represented.

The views and voices of these children can also be better represented by the provision of an independent report by the Children’s Court Clinic. This clinic provides independent expert clinical assessments (either psychological or psychiatric) of children and parents to assist the Children’s Court in making decisions.

A note on terminology

This report is concerned with child representation in two contexts – the child protection system and the family law system – but many of the practices referred to may have applicability beyond these contexts.

In the report I use the term ‘family law’ to reflect its Australian usage. It refers to private family law disputes arising from domestic relationships (married or de facto) concerning arrangements for children and the division of property when a relationship breaks down. It includes the system that regulates disputes about domestic relations, such as custody, access/visitation and child abduction disputes. It should be noted that the Australian family law system refers to the body of federal laws that governs domestic relationships, principally the FLA.

I use the term ‘child protection law’ also to reflect Australian usage. It is the area of public law in which government authorities intervene in the lives of families when child abuse, neglect or other

17 (1994) 17 Fam LR 537
18 Sections 99 and 99D of the CCPA
19 See section 99A, 99B and 99C of the CCPA but note that presumptions operate so that a child of 12 years and above will be assumed to be able to instruct a lawyer ‘directly’, although this can be rebutted.
20 The Children’s Court Clinic was established under section 158 of the Children’s Court Act 1987. Its function is governed by sections 52-59 of the Children and Young Persons (Care and Protection) Act 1998.
21 Macquarie University Law Term Finder
risks are suspected. It incorporates neglect and abuse laws where the state has intervened. In Australia, child protection law is governed by state legislation, and in NSW it is governed by the *Children and Young Persons (Care and Protection) Act*.

Many of the agencies I visited offered a range of services for children, including for children in the criminal law jurisdiction. In some jurisdictions this was referred to as ‘delinquency’, and to avoid confusion I have used this term.

The term ‘child representative’ is a generic one intended to describe a variety of roles for a legal practitioner who is appointed to provide legal representation to a child. The words ‘lawyer’ and ‘attorney’ are used interchangeably throughout this report to refer to legal practitioners.

For brevity, the report refers to ‘children’ rather than ‘children and young people’, and if refers to ‘parents’ rather than ‘parents and carers’. The term ‘child protection department’ is used to describe a child welfare authority.

In the jurisdictions I visited, courts have a variety of names that do not always reflect common usage in Australia or describe the jurisdiction they are exercising. For example, a court might be referred to as a ‘family court’ but exercise jurisdiction in child protection law. The reader needs to be aware of this throughout the report.
4. Models for delivering child representation services

I visited 13 agencies that are mandated to oversee and coordinate the provision of legal representation services for children within their jurisdictions. Much of this report draws on the approaches of these agencies. This chapter describes the different administrative models viewed, provides an overview of how these agencies are structured, and looks at the roles they play in delivering child representation services within their jurisdictions. The three administrative models I observed are:

- The court administration model
- The single-focus government agency
- Legal services provided under government tender or contract.

The purpose of this chapter is not to provide an analysis of which model would work best in the Australian context. Rather, it is to outline some of the limitations and strengths of these structures and assess whether they offer any solutions to some of the challenges we face in Australia.

Court administration model

A common approach across the US, the court administration model has an administrative arm of the court manage the appointment of, and budget for, the provision of court-appointed child legal representation services.

- In Washington DC the Counsel for Child Abuse and Neglect (CCAN), a branch of the Family Court of the District of Columbia Superior Court, has been appointed by the Chief Judge to take responsibility for the ongoing administration of its panel of child representatives. The CCAN office is located within the court complex and consists of a managing attorney, a social worker and three clerks. The managing attorney and social worker provide training and support to court-appointed attorneys. Individual judges appoint child representatives with the guidance of a roster. In addition, the CCAN office distributes a newsletter with legal, training and social work updates for attorneys. The clerical staff handle case assignment processing, financial eligibility and enquiries.
The Attorney for Children Program (ACP) of the New York State Unified Court\(^{22}\) is responsible for administering child representation services across New York State. The 2nd Department Program, which I visited in Brooklyn, contracts with approximately 650 attorneys to serve in 10 counties. Child representatives on the panel are allocated work in the areas of delinquency, neglect, termination, guardianship, adoption, custody and divorce. They appear in the Surrogate’s Court, Family Court and Supreme Court. The Office of Attorneys for Children is informed by an advisory committee, appointed by the Presiding Justice, and it is their job to evaluate applications for appointment and recertification of attorneys to the panel, review complaints, and address matters pertaining to the practice of representing children and parents. The committee makes recommendations to the Director and the Presiding Justice.\(^ {23}\)

The court administration model also operates as a ‘mixed model’ of service delivery. Both of the agencies described above, CCAN and ACP, are responsible for appointing child representatives to their panels, generally from private legal practice. However, they also contract with larger institutions, such as the Legal Aid Society of New York and the Children’s Law Centre of Washington DC, to provide child representation services.

In this model the court administration takes responsibility for:

- Appointing attorneys to panels
- Entering into model contracts with attorneys for providing services
- Paying fees and case-related expenses
- Developing performance standards
- Providing initial and ongoing training and support to attorneys
- Managing rosters for the allocation of work, and
- Providing resources.

The benefits of this model include the following:

- Judges have control over the appointment of child representatives and are able to match the appropriate attorney to a child or matter.
- The courts have control over and responsibility for the funding of the child representatives.
- Judges are in the best position to prioritise the allocation of child representatives, especially in times of budgetary constraint.

\(^{22}\) It sits within the Appellate Division of the Unified Court.

\(^{23}\) Rule 679 of the Second Department Rules
• Judicial officers can take responsibility for the appointment process, as well as the development of practice standards that regulate the performance of representatives for children.24

• Judges are in a good position to oversee performance and monitor the allocation of work.

There were, however, some downsides to this model:

• It has the potential to undermine judicial independence, or at least perceptions of independence, particularly as judges approve the accounts submitted by the child representatives appearing before them and often select the representative appointed to appear for the child.

• Child representatives, knowing that the judges they appear before effectively ‘hold the purse strings’ could be more compliant and non-challenging in their approach to representation. One attorney confided that there was often a potential for judges to appoint the most “polite and settlement-focused attorneys”.

• Child representatives play a multifaceted role that goes beyond the courtroom. There is potentially a risk under this approach that other important aspects of the role of the child representative, such as facilitating a child’s participation in court proceedings, is not as valued in the court setting.

**Single-focus government agency**

An alternative model involves establishing a designated single-focus government entity which manages representation services for children. The following examples of this model come from the US and Canada respectively.

• The **Office of the Child’s Representative (OCR)** in Denver, Colorado, is a state agency mandated to provide legal representation services to children involved in legal proceedings in the Colorado court system. OCR attorneys represent the interests of children in cases involving dependency and neglect (child abuse), delinquency, domestic relations, adoption, truancy, probate, mental health and paternity. There are 17,000 children with open cases across Colorado, most with a child representative appointed. A relatively small staff of 10 oversees the operation,25 four of them attorneys who supervise the 230 independent attorneys on their panel. They also contract with institutional providers, such as the Rocky Mountains Children’s Legal Centre.

---

24 See for example to Administrative Order 03-07 of Family Court of the District of Columbia Superior Court and the CCAN Attorney Practice Standards.

25 The 10 staff include four supervising attorneys as well as staff specialising in IT, HR, finance, contracts and payments, administrative support and training roles.
The Office of the Children’s Lawyer (OCL) in Toronto, Ontario, is an independent branch of the Ministry of the Attorney General. The OCL represents children in child protection, custody and access cases and acts as a litigation guardian in some civil and estate cases. The OCL also has a clinical department whose members conduct investigations and prepare reports for the court in custody and access cases. It employs approximately 85 staff members, many of whom are child representatives who act on behalf of children in legal proceedings, and also engages the services of around 450 panel lawyers to represent the children of Ontario and 280 investigators to prepare child and family assessment reports for courts. The OCL legal and clinical panel members are supervised by in-house lawyers and clinicians. For example, 12 in-house lawyers supervise the work undertaken by attorneys on their panels on a ratio of around 30 to 1. The OCL accepts about 8,000 new cases a year and, as of 31 March 2013, had more than 10,300 open cases (11,000 in 2011).26

In the UK the same overall idea is used, but there is a different approach to promoting the welfare of children before family courts. The Children and Family Court Advisory and Support Service (Cafcass) is a non-departmental public body established by statute and accountable to the Ministry of Justice.27 It was established to provide a range of services previously provided by other agencies.28

27 Cafcass was established by the Criminal Justice and Court Services Act 2000, while responsibility for Cafcass lies with the Department for Education.
28 Cafcass brought together the family court services previously provided by the Family Court Welfare Service, the Guardian ad Litem Service and the Children’s Division of the Official Solicitor’s Office.
• **Cafcass** is asked by family courts to become involved in public and private law cases as the independent voice of the child. Cafcass estimates that it does this for over 140,000 children each year. It is the largest employer of social workers in England, with its core functions being to:
  
  • Safeguard and promote the welfare of children in family court proceedings
  • Give advice to any court about any application made to it in such proceedings
  • Make provision for children to be represented in such proceedings, and
  • Provide information, advice and other support for children and their families.

It employs a small pool of lawyers who provide technical assistance across the UK and conduct specialised litigation in High Court matters or in complicated matters with an international element, such as forced marriage, surrogacy or special medical procedures.

Both the OCL and Cafcass use mixed models to deliver services. While Cafcass is not a legal agency, it takes responsibility for many aspects of the representation of children and is therefore included here as an example of a single-focus agency.

In summary, single-focus agencies generally take responsibility for:

• Appointing professionals engaged in child representation services to panels
• Entering into model contracts for the provision of services
• Paying fees to agents for services
• Establishing minimum practice standards
• Providing training and support, and
• Supervising professionals on panels.

I observed the single-focus agency approach to be a highly effective model for ensuring high-quality attorney standards. Other advantages of this model include the following:

• The agencies are accountable for the standard of work delivered by those on their panels. To achieve this they have clear, effective and resource-efficient supervision structures.
• Complex, high-profile work is often provided by specialised in-house child representatives who also fulfil a casework function. The existence of in-house practitioners and a panel also allows conflicts of interest to be managed effectively.
• The independence of these services from the judicial process allows more scope for proper supervision and support of child representatives. Arguably, judicial officers should be one step removed from the supervision of lawyers appearing before them.
• Single-focus agencies do not have to compromise service delivery because of competing demands from other sometimes larger program areas. They exist for the sole purpose of centralising the provision of legal services to children in their jurisdictions and improving standards of representation for children, and they are solely accountable for this purpose.

• Agencies established by statute are best placed to have information-sharing protocols and to benefit from legislation that allows the obtaining and sharing of information, with other agencies such as police or child protection authorities, about risks of harm to children and families.

• There is more public accountability for the provision of quality child representation services, as compared to all other models. For example, Cafcass is regularly inspected by the Office for Standards in Education, Children’s Services and Skills to ensure it is meeting its stated aims. Likewise, the OCL is subject to ‘value for money’ audits by the Auditor General of Ontario, who reports on areas in which the OCL’s systems, policies and procedures need improvement. The OCL is required to table an annual report to Parliament about the services it delivers.

• Because of this accountability to the family law system for the decisions they make about the allocation of child representatives, the agencies have had to establish consistent and transparent criteria to guide decision-making.

Some of the downsides to this model are as follows:

• Courts are often best placed to decide on the needs of a matter, yet they do not control the appointment process. For example, due to funding constraints the OCL cannot accept all court requests (notably, in 2011, 44% of custody and access matters referred to them were refused).

• Appointments can be slower than in systems in which the courts appoint child representatives. The OCL, for example, aims for a 20-day turnaround time for appointments but reported that it consistently operates outside this performance indicator.29

Legal services provided under government tender or contract

Under this model, agencies are contracted by the state to provide child representation services directly to courts, irrespective of the volume. It is not uncommon in the US to also have ‘respondent’ or ‘parent’ representation contracted to other agencies.30

---

29 Auditor General Ontario Annual Report 2011, Canada, 2011, p.18

30 In child protection matters, often a public defender’s office was contracted to provide these services, for example in The Bronx, New York.
• The **Children’s Law Center of California** represents the interests of children in Los Angeles and Sacramento County. With a staff of approximately 275, it represents all of the nearly 33,000 children under the jurisdiction of these dependency courts.

• The **Children’s Law Center of Washington DC** is appointed to represent children in the district. It employs around 90 staff and represents around 5,000 children each year.

• The Juvenile Rights Practice of the **Legal Aid Society of New York**\(^{31}\) is contracted to provide representation services to children who appear before the family courts in New York City. With a legal staff of 200 lawyers, it provides representation to an estimated 34,000-plus children annually.

• In Pittsburgh, **KidsVoice**, with a staff of around 60, is contracted to provide child representation services to around 3,000 children involved in the child welfare system in Allegheny County.

• In Flint, Michigan, a town with a population of around 100,000, the **Flint Child Advocacy Team** was established by five lawyers for the purposes of a tender. They undertake no work other than the representation of children appearing before the Genesee County Court.

An institutional approach to child representation is preferred by the National Association for Counsel of Children (NACC), a peak representative association for child representatives in the US. The NACC comments that:

> The delivery of high quality child welfare legal services requires a practice infrastructure which provides the attorney with the necessary time, compensation, and resources. The NACC believes, therefore, that one of the best mechanisms for delivery of high quality legal services to children is an institutional structure that allows multiple attorneys to focus their attention on the representation of children in general and the representation of children in child welfare law proceedings in particular – in other words, a dedicated child welfare law office.\(^{32}\)

The Center for Family Representation in New York was one of the first institutional providers of parent representation services. Executive Director Susan Jacobs said:

> Before then, New York City preferred to use solo practitioners who were members of the panel of attorneys eligible for court assignment as the only parent defender arrangement. Because of the caseloads most of these lawyers carried, and because they commonly were solo practitioners, they spent almost all of their time at the courthouse. Even when they prepared diligently for upcoming court

---

\(^{31}\) The Legal Aid Society of New York is the oldest and largest private not-for-profit organisation providing free legal services in America. It employs 1,900 staff across all program areas.

appearances, the lawyers were largely unable to work closely with their clients through the myriad out-of-court agency-related activities that are often vital to successful outcomes in their cases.33

What Ms Jacobs might have been alluding to here is the impact of large caseloads on the quality of legal services. Some contracts require an institutional provider to undertake all of the representation services for children in a range of courts. This has the potential to compromise the quality of services provided, as outlined in Chapter 5. Many of these institutional providers have built into their structure an upper limit on caseloads to address this tension. It is also notable that, in order to provide a broad range of legal services to children, most of these institutional providers rely heavily on alternate funding sources, in the form of grants, fundraising, philanthropic donations and pro bono schemes.

By my observation, institutional approaches to the representation of children by larger agencies have a variety of strengths and benefits. One interviewee commented, for example, that they are “easier to contact”.34 Also, they have the size and scale to provide more consistent services, and those I visited appeared to have established and well-documented training, support and supervision structures; these are examined in more detail in Chapter 8.

34 Interview with Judith Sandalow, Washington, Children’s Law Centre, 6 November 2014
5. Supporting children and families in court

When the Australian Institute of Family Studies (AIFS) examined the practices of child representatives across Australia it found that:

The role of the ICL is multifaceted and it suggests three overlapping functions in the ICL role: facilitating the participation of the child or young person in the proceedings; evidence gathering; and litigation management playing an ‘honest broker’ role in: case management; and settlement negotiation.\textsuperscript{35}

It is a role that places high demands on practitioners. In the jurisdictions I visited, I found there were more professionals involved in the discharge of this important obligation than in Australia.

This chapter reports on how decisions are made about the allocation of a child representative and the other ancillary or support services that I observed as being available for families on their journey through the legal system.

I also examine a range of international approaches that go some way to ensuring the availability of better information at an early stage so that courts can make well-informed decisions about children.

The appointment of a child representative

In the jurisdictions I observed, a child representative is appointed in child protection matters as a matter of course. This is not the case in family law matters, where I observed different decision-making approaches to the appointment and allocation of child representatives.\textsuperscript{36}

The three single-focus agencies I visited (the OCR, the OCL and Cafcass) all referred to budgetary pressures they had faced at times, and the restrictions this placed on their ability to meet the requests they received from courts for the appointment of child representatives. In 2011 the OCL in Ontario, for example, faced heavy criticism when it was only able to meet requests for the appointment of child representatives in 44\% of matters. The Auditor-General wrote:

In the 2010/11 fiscal year, the Office exercised its discretion to refuse more than 40\% of child custody and access cases referred to it by a court. We found, however, that the Office had not adequately assessed the impact of these refusals on the children and courts. Many of the decisions to refuse cases were made primarily because of a lack of financial resources.\textsuperscript{37}

\textsuperscript{35} R Kaspiew, R Carson, S Moore, J Deblaquiere, J De Maio & B Horsfall \textit{The role and efficacy of Independent Children’s Lawyers – Findings from the AIFS Independent Children’s Lawyer Study}, Family Matters, 2014, no. 94, p.61, hereafter cited as Kaspiew et al.

\textsuperscript{36} Due to the nature of child protection matters and the speed with which they come before courts in most jurisdictions, representatives for children were appointed as a matter of course and generally on the first court date.

\textsuperscript{37} \textit{ibid}, p.18
In response, the OCL undertook a major review of its services, and by 2013 it had established a new set of 26 criteria for accepting custody and access cases, and had increased the existing 13 criteria it used for refusing cases to 23. The 23 criteria provide a broader number of reasons why a case may be refused, including when funding limitations are a factor.  

This ‘guideline’ approach is not dissimilar to Australian practice, especially in a climate of financial constraint. In several situations in Australia the *Re K* criteria have been used for determining whether or not to accept the appointment of an ICL.

Rather than solely applying a guideline approach, the three single-focus agencies I visited took a more nuanced approach that required considering exactly what resource was being sought. A child representative was often allocated only in the most serious of matters and once other avenues and resources had been exhausted, as the following examples highlight.

- In Ontario, when the Office of the Children’s Lawyer (OCL) receives an order referring a matter from a court it has four options available:
  1. Provide legal representation
  2. Provide an investigation report (an investigator can be appointed to report and make recommendations to the court on all matters concerning custody of or access to the child and the child’s support and education within 90 days)
  3. Appoint legal representation and obtain an investigation report (the appointment of a legal representative can occur at any stage of a matter), or
  4. Refuse the request.

---

39 (1994) 17 FAM LR 537, see previous discussion in ‘Legislative framework’
40 Under section 89 of the *Courts of Justice Act*
41 Under section 112 of the *Courts of Justice Act*
In the UK, once a children’s guardian\(^43\) is appointed or a child is joined as a party to proceedings, a publically funded legal representative is automatically appointed and funded by Legal Aid (which also administers payment). Cafcass has a triage process for family law matters, with the following options available:

- No Cafcass involvement
- Providing a safeguarding letter, but doing no more work
- Appointing a ‘Section 7’ reporter to provide a child and family assessment, or
- Appointing a child guardian (who is generally represented by a lawyer).

Both of the agencies mentioned above appeared to provide high-quality services on a limited budget. Their intake processes are targeted to ensure the needs of a matter are met via the most appropriate tool or process, and sometimes this does not require the appointment of a child legal representative.

This is an option also available if a matter is referred to the OCR in Colorado. Here, while the appointment of a guardian ad litem or an attorney as counsel for child is governed by Chief Justice Directive,\(^44\) another option is for the OCR to appoint a Child and Family Investigator (CFI) in family law cases. CFIs are sometimes appointed for brief and focused directive investigations. In the Colorado family law system, 66% of parties have no attorney and in 78% of matters there is only one attorney, so it is a necessary resource.\(^45\) The CFI serves as an investigative arm of the court, with their primary purpose being to assure that the best interests of the children are thoroughly explored and understood, and accurately conveyed to the court.\(^46\)

Legal Aid commissions across Australia can fund a child and family assessment report if there is a grant of legal aid for the legal representation of a party (usually the child representative). Arguably this encourages applications to be made for the appointment of a child representative when the matter may not require one. In Colorado, Ontario and the UK, at the time of making intake decisions,

---

\(^{43}\) In some jurisdictions, such as England, a guardian ad litem or children’s guardian can be appointed to represent the best interests of the child. The children’s guardian is tasked with advocating for the child’s best interests. Once appointed, the children’s guardian appoints a lawyer for the child unless the court has already done so. If the child wishes to directly instruct the lawyer, and the lawyer believes the child is of ‘sufficient maturity’ to do so, the court may appoint a separate lawyer to represent the children’s guardian. If the child is not of sufficient maturity to instruct the lawyer, the lawyer follows the children’s guardian direction. If there is no children’s guardian, the lawyer must act in furtherance of the best interests of the child. See Section 41 of the Children Act 1989 (UK).

\(^{44}\) Chief Justice Directive Concerning Court Appointments Through the Office of the Child’s Representative 04-06 Supreme Court of Colorado

\(^{45}\) Meeting with William DeLisio, Family Law Program Manager, Court Services Division, Colorado Courts 22 October 2014

\(^{46}\) Chief Justice Directive Concerning Court Appointments Through the Office of the Child’s Representative 04-06 Supreme Court of Colorado C.R.S. 14-10-116.5, 04-08 Amended 12/12
attention is much more focused on the needs of the child and on what tool (whether an investigative report, therapeutic report or appointment of a child representative) could add value.

The single-focus agencies I observed also have supervision processes during cases to ensure that the involvement of a child representative is still required. For example, in a matter that is contested but later becomes undefended, the child representative may no longer be required.

In 2013 an internal review conducted by the OCL of its allocation practices noted:

The judiciary confirmed that they believe that “early and active” involvement by OCL counsel assists in resolving cases ... There was consistent feedback that there is a need for panel members and their regional supervisors to assess, on an ongoing basis throughout the life of a case, the role an OCL counsel is performing in order to determine if OCL participation is still necessary and if so, how the lawyer can maximize her/his effectiveness. 47

In Australia, if the request for an ICL is met, a child representative is (in most cases) appointed for the duration of the legal proceedings. While an assessment of the ongoing need for a child representative takes place, it is not at the forefront of case administration practices. The Canadian experience could well be applied in the Australian context.

Historically in Australia, issues relating to the adequacy of funding in the family law and child protection systems have been identified as potentially constraining the services delivered by child representatives. As the AIFS has noted, “the lack of funding available for the appointment of ICLs and the under-remuneration of ICLs for their work were identified as significant issues”. Currently there is an inability in the Australian family law system to personalise the allocation of tools available. While appreciating the multifaceted nature of the child representative role, at the time of appointment we should clearly be able to articulate which aspect of that role the appointment will most likely facilitate, and ask whether there is another way this can be achieved.

The three single-focus agencies also identified that their primary question when allocating resources is whether their services can add value to a matter or improve a child’s journey through the legal process. In Australia, the criteria articulated in Re K 48 arguably fail to pose the most important question: how will the child’s best interests be assisted by the appointment of a children’s representative? Given that Re K also contains some now-antiquated notions that are in practice disregarded49 (sensibly, in my view), the criteria would benefit from review.

In the context of contracting resources across the family law system in Australia, there are attractions to ensuring a system that allocates resources that are proportionate to need and have a client focus, as I observed in Colorado, Ontario and the UK.

---


48 (1994) 17 Fam LR 537

49 See for example ‘the sexuality or sexual preference of a parent’.
Allocation and caseloads of child representatives

In 2013 the ACT Children’s Commissioner\(^50\) conducted a very small study on the views of children and young people on participation in family law proceedings. The children involved expressed a range of views as to the ‘ideal’ behaviours and attributes of a child representative – for young girls, for example, gender was very important to them.\(^51\)

Most children’s legal practices in Australia match a child representative to a matter based on geographical location and continuity of representation principles. If exceptional circumstances exist, most practices can ensure an appropriate match of a matter to a child representative. However, the process of identifying what exceptional circumstances are and designing a system to accommodate them is more difficult. Take, for example, a recent inappropriate matching in Australia.

Pearl was a 12-year-old Aboriginal girl from regional NSW who, at the time the matter came to court, was living with an aunt in Sydney. Pearl alleged that she had been sexually abused by her stepfather, and the judicial officer hearing the matter appropriately requested the appointment of a child representative. The request form, however, contained no identifying features of the matter, and a male ICL from a non-English-speaking background was appointed. Pearl refused to see the ICL.

Most would agree that the appointment system failed Pearl in this example. To better understand the capacity of agencies to match in appropriate circumstances, I went armed with her story as I asked the agencies about their processes for ensuring the best ‘fit’.

In New York, the Attorney for Children Program (ACP) reported that child representation work is allocated by judges according to a roster system. The ACP claimed to ensure diversity on its roster by including a man, a woman and people identifying as Afro-American, Latino and Jewish. It was of the view that a judge would be in a good position to appropriately allocate Pearl’s matter to one of the child representatives on the roster.

The OCL in Colorado reported that, when recruiting for child representation panels, it is conscious of ensuring diversity, and actively recruits Spanish-speaking child representatives for this reason. The OCL’s allocation system is overseen by judges, and the OCL was of the view that a judge would be in a good position to allocate these matters appropriately.

---

\(^{50}\) A Roy Survey of young people on family court processes, ACT Children’s Commissioner, Canberra, Australia, 2013

\(^{51}\) The children who participated said the personal attributes of the ICL were important – they described the ideal as being kind, caring, trustworthy and honest; some also expressed a preference for a child representative of the same gender.
The OCR in Ontario aims for continuity of representation, and its referral form identifies the features of a matter, including:

- Language spoken
- Cultural background
- Gender of the alleged abuser, and
- Associated criminal law matters.

The OCR’s intake officers were confident that if the court made clear the circumstances of Pearl’s matter they would be able to allocate it appropriately.

In jurisdictions operating under a court administration model, judicial officers reported having much better control over the allocation process and felt that they were best placed to ensure that the child representative was a ‘good fit’, though in my estimation the judicial officers’ definition of ‘good fit’ tended to be based more on legal competency than other criteria.

In Ontario, matching based on gender, ethnicity or language groups only occurs in exceptional matters. However, the OCR was the only agency I visited that appeared to have a sophisticated understanding of the complexity of the issue and the challenges involved in implementing appropriate matching processes.

The Children’s Lawyer for Ontario, Lucy McSweeney, said there was an expectation in Ontario that all child representatives will be both culturally competent as well as ‘community competent’. Community competency was described as having knowledge of local services and referral points. She commented, for example, that:

> It is no good having an Aboriginal lawyer from another area who knows nothing of the local services ... you need to create an environment where people can ask questions and admit what they don’t know.52

In the UK, Cafcass staff reported that they have no control over the appointment process for legal representatives but that they have developed their own guidelines, which broadly provide that:

- A number of factors need to be taken into account when appointing a legal representative, including “availability, geography, the needs of particular children and, if a solicitor has previously acted for the children, continuity”
- The legal representative should be on the Law Society’s Children Panel, and
- Guardians should use as wide a range of solicitors as possible and avoid using the same firm in no more than a maximum of one-third of their matters to avoid accusations of restrictions of trade.53

---

52 Interview with Lucy McSweeney, Toronto, Canada, 24 November 2014
While the intent of these guidelines is clear, there is no formal process in the UK for monitoring compliance with such guidelines.

I found that the case allocation practices in some jurisdictions are also influenced by limitations on files to be allocated or limitations on payment. Some agencies recognise the ‘restrictions on trade’ issue and seek to avoid it:

- Part 36 of the Rules of the Chief Judge in New York places an upper limit of US$75,000 per annum on income from government sources. It also lists people unacceptable for assignments, and this includes family of judges and employees. These Rules also place a maximum limit of 150 child clients on each attorney.
- In Ontario, the OCR has adopted a policy of not allocating more than 50 files at one time without prior authorisation. It aims through these guidelines to avoid being the sole livelihood of a practitioner.
- In Washington DC, total payments in each year are capped at $135,000 per attorney.

Other agencies link reasonable caseloads to the effective representation of children. The caseloads of the legal services I visited varied significantly, and some legal services admitted to being ‘in crisis’. At the Children’s Law Center (CLC) of California, for example, the caseload of Los Angeles dependency court attorneys averaged 300 children, significantly higher than the California Judicial Council recommendation. Across California, the average caseload ranges between 250 and 300 children per child representative, and in 15 counties the average exceeds 400 children.\(^{54}\)

However, agreement about what a ‘workable’ number is has proved more controversial. In the US, the issue has been the subject of legislation and guidelines, in an attempt to deal with divergent practices. For example, in 1993 attorneys in the Child Advocacy Unit of the Legal Aid Society in Pittsburgh were each responsible for representing 1,100 children.\(^{55}\) In Georgia in 2006, a federal court ruled that the state had violated its children’s constitutional rights by making lawyers carry caseloads of up to 500 clients.

In the US, the National Association for Counsel of Children (NACC) has adopted a formal policy position that a system of child representation must include reasonable caseload limits in order to assure that the child has an attorney with adequate time and resources. More specifically, they have adopted a guideline that recommends that a full-time attorney carry no more than 100 active clients

\(^{54}\) www.latimes.com/local/california/la-me-lawyers-overloaded-20141114-story.html. The council said these lawyers should ideally handle 77 clients at a time unless they are assisted by at least a part-time investigator; but even in that case they should manage no more than 188.

\(^{55}\) C Wu & L Wilson, ‘Caseloads’, NACC, op cit, p.54
at a time, assuming the attorney’s cases are at various stages and recognising that some of the clients will be in sibling groups in which the lawyer may have multiple clients.\textsuperscript{56}

During my visits I found that, despite the NACC guideline, practices across the jurisdictions vary.

- In New York State, court rules place a maximum limit of 150 child clients on each attorney, although this is not reflected in lower caseloads across agencies in New York. The \textit{Legal Aid Society of New York} imposes an upper limit of 120 cases per attorney, yet the \textit{Centre for Family Representation in New York} reported that its caseloads fluctuate between 65 and 85.
- Some child welfare law offices have adopted their own standards, such as the \textit{CLC of Washington}, which caps its attorneys’ caseloads at 50 each.
- In Colorado, multidisciplinary offices have case caps of between 45 and 65, and the \textit{OCL} ceases allocating cases to private panel attorneys once their practices exceed 100.
- In stark contrast, the caseload of lawyers at the \textit{CLC of California} was reported to be at 300, significantly higher than the California Judicial Council recommends. The Council has said that these lawyers should ideally handle 77 clients at a time unless they are assisted by at least a part-time investigator, and even in that case they should manage no more than 188.\textsuperscript{57}

There is no doubt that caseload is a factor that impacts on the capacity of a child representative to provide quality services. Yet it is a difficult exercise to articulate what a reasonable upper caseload limit is, even more so when weighing up the impact of other support roles on caseload capacity.

\textbf{Other support roles}

In the US, legislation requires that children in child protection proceedings are represented in court.\textsuperscript{58} However, no minimum education requirements are stated, and perhaps as a consequence an array of services have evolved to ensure compliance.

\textit{Court appointed special advocates}

In the US, volunteer court appointed special advocates (CASAs) are sometimes appointed in child protection proceedings, and there are estimated to be over 900 CASA programs across the

\begin{itemize}
  \item \textsuperscript{56} Both the Standards and the Recommendations are available on the NACC’s web site at www.naccchildlaw.org
  \item \textsuperscript{57} www.latimes.com/local/california/la-me-lawyers-overloaded-20141114-story.html
  \item \textsuperscript{58} See the \textit{Child Abuse Prevention and Treatment Act}
\end{itemize}
All share a common purpose of providing community volunteers to advocate in the best interests of children, particularly in the most difficult cases. For example, many children assigned to CASAs have learning disabilities, physical disabilities and/or significant emotional and mental health problems.

The volunteers are screened, trained and supervised. Their role is to get to know the children and their circumstances, spend time with them, advocate for their best interests (including making recommendations to the court), and become involved in key issues in their life, especially permanent placement and school, health and mental health issues.

**Family court facilitators**

I observed that the family court facilitator role was often referred to in the US, but that the term does not have a uniform meaning.

In Colorado I had the opportunity to view the work of family court facilitators who were employed by the court administration to provide individual case management and coordination of family-related matters, including domestic relations, domestic violence, dependency and neglect and delinquency cases before the Colorado Judicial Department courts. The role requires the family court facilitator to assist the court and the parties to manage cases in a timely and effective manner. They are “responsible for fostering a sense of cooperation and communication with parties, attorneys, other agencies and professionals involved in each case.”

In California, however, the role appeared to be more of a triage and referral one, played by a non-legally-qualified person located at family court facilities. In the words of one of the facilitators there, “We help people [who do not have lawyers] to help themselves.”

**Parenting coordinators**

Jurisdictions across the US are increasingly using court-appointed parenting coordinators to assist parents in resolving disputes about parenting their children. Parenting coordinators also make recommendations to the court for orders if the parents are unable reach a resolution. They are appointed during court proceedings and post order, notwithstanding that all parties and children

---

59 Data provided by the National CASA Association. See www.casaforchildren.org/site/c.mtISJ7MPisE/b.5539947/k.6B12/Role_of_a_CASA_Volunteer.htm

60 www.casala.org/our-mission/

61 Interview with Barbara Bosley, Family Court Facilitator, Denver Juvenile Court, 23 October 2014

62 From position description available at Colorado Judicial Branch website; www.courts.state.co.us/Careers/Description_Detail.cfm?Job_Description_ID=73

may be represented. The goal is to assist with implementing orders, monitor compliance and resolve conflicts quickly, particularly those that are time sensitive and involve day-to-day issues.

**Parent or youth advocates**

Some legal services I observed employ parent or youth advocates. These individuals are responsible for creating a relationship with children or parents and then supporting them through court proceedings in a peer support role.

- At the **Detroit Center for Family Representation**, one advocate, Nancy Vivoda, reported working closely with a social worker. Nancy is a mother of five children who had the personal experience of her children entering the foster care system. She was successfully reunified with her children following a rigorous treatment plan. She has been provided with intensive social work training to equip her for the role of parent advocate. Her role is to support parents and also to ‘reality test’ them, by being a neutral person at the table, and to work closely with the social worker and support clients at court and occasionally on contact visits.

- The **Center for Family Representation in New York** employs four people in similar roles. They were described as “trained professionals who have personally experienced the child welfare system, can empathise with vulnerable families [and can] give emotional support and help parents engage in services”.

**Child and family investigators**

Most jurisdictions I observed use the services of trained child and family investigators to undertake initial assessments to ensure courts are given as much readily available information as possible to make determinations in a child’s best interests. These roles can be distinguished from the process of obtaining a child and family parental capacity assessment, as child and family investigators tend to be appointed in the early stages of a matter.

However, in addition to using child and family investigators in the context of early investigation processes for courts, many agencies employ them to support legal work undertaken for children.

---

64 I was unable to view the work of a parenting coordinator in the jurisdictions I visited but more information can be found at: Moses and Townsend *Parenting Coordinators: The Good, the Bad and the Ugly - The Role of the Parenting Coordinator*, Tennessee Bar Association, US, 2012

65 See also the *Guidelines for Parenting Coordination* developed by the AFCC Task Force on Parenting Coordination, May 2005
The **Children’s Law Center in Washington DC** allocates an investigator to work with a lawyer and a social worker on each case. The investigators undertake tasks such as serving subpoenas, filing pleadings, gathering child records, driving clients to appointments, visiting and observing clients, and finding appropriate services for children (e.g. mental health support, tutoring). They were described by Centre Executive Director Judith Sandalow as “smart kids just out of school” who “are in the job for about two years and then … move on”.

The investigators employed by the **CLC of California** hold bachelor degrees in social science and have experience in child-related fields. They are allocated on a ratio of one for every two lawyers. Due to the high proportion of investigators employed, the CLC also employs 10 investigator supervisors, who play a critical role. The attorneys from this service are in court every day with caseloads of up to 300 per attorney and only ever met with children at the court; the investigator is seen as an agent of the attorney in this service.
Timely provision of information to courts

Appropriate gathering and sharing of information is critical to good decision-making about children. I observed a variety of methods for assessing the needs of a matter at an early stage.

- In Colorado, Child and Family Investigators (CFIs) can be appointed in family law cases. The CFI scheme is managed by the OCR, but appointments are made by the court with the primary purpose of ensuring that the best interests of the child are thoroughly explored and understood, then accurately conveyed to the court. The CFIs undergo special training for the role and come from both social work and legal backgrounds. According to court standards, “The CFI shall be subject to direct and cross examination by both parties if called as a witness. He or she is to gather information, formulate recommendations, and report to the court concerning the child/ren’s best interests with regard to whatever issues were set forth in the court’s order of appointment.”

- In Ontario, the OCL can appoint an investigator to report and make recommendations to the court on all matters concerning custody of or access to the child and the child’s support and education. The OCR administers and supervises the services of investigators. The investigators are mainly appointed in family law matters and within 90 days are expected to:
  - Meet with each party
  - Sign releases of information and send out requests to ‘collaterals’ (police, Children’s Aid Society, school, family doctor, treating specialists, etc.)
  - Have at least two interviews with the child
  - Formulate recommendations
  - Hold a disclosure meeting to inform the parties of the voice of the child, the findings and recommendations made, with the expectation that the clinician may use mediator skills at these meetings.

66 Standard 3 of the Chief Justice Directive concerning Court Appointments of Child and Family Investigators C.R.S. 14-10-116.5, 04-08 Amended 12/12, Supreme Court of Colorado

67 The Courts of Justice Act gives the court power to request an investigation report under section 112.
In the UK, Cafcass has increasingly focused on providing courts with safety assessments early in the life of a matter. Courts making decisions about children refer all family law applications to Cafcass. Before the first hearing, Cafcass will carry out safeguarding enquiries, including checks of child protection authorities and police, and hold telephone risk identification interviews with parties to find out whether there are any concerns about the safety and welfare of the child. This is made easier by the co-location of police staff in Cafcass so that access to information is readily available. For example, the relevant Act allows a mandatory check without the need for consent, and the co-located employees run checks which are available in a few hours. They then provide the court with a short report, referred to as a ‘safeguarding letter’, on the outcomes of the safety check. Cafcass staff work closely with the court; in London, for example, they have a pre-meeting with the judges where they go through the safeguarding letter before court begins.

Individuals who are appointed as investigators often play another role once their inquiries are completed. In Colorado, the CFI can later be appointed as a ‘parenting time co-ordinator’ to assist in resolving disputes about parenting both during and after court proceedings.

Agencies in the US can seek the release of otherwise confidential child abuse and neglect information under federal law. This information is obtained by authorities in various ways. A common practice in some US states, Canada and the UK is to have parties sign authorities to have police details, child protection details and medical records released to child representatives without the need for subpoenas or other such devices. To speed up the provision of this information, signed authorities from parties are often completed at court.

While much has been written in Australia on the barriers to the early obtaining of critical information on risk, my research indicates that there might be some practical solutions to overcoming some of these. Across Australia all states and territories have enacted legislation that gives individuals a right to access information held about them. In NSW this process is governed by the Government Information (Public Access) Act 2009. Courts, Legal Aid commissions and law societies could explore whether these statutes could assist with the early release of critical information on risk, by adopting practices similar to the one I observed in Ontario, where courts and lawyers are adept at obtaining the authority of parties to release information about them. Australian Legal Aid commissions might consider whether they could adopt such practices in a child representation context.

---

68 Ofsted Report Inspection of Cafcass as a national organisation 2014, UK, 2014
69 Ibid
70 See the Child Abuse Prevention and Treatment Act 1974 (CAPTA)
Front-loading services to families

In some jurisdictions I observed there is, particularly regarding child protection matters, an accepted and documented practice of ‘front-loading’ services to families. That is, within an agreed timeframe of a matter coming to court, the jurisdictions focus resources on active evidence-gathering processes to ensure that courts have the best possible understanding of the views and needs of a child and their family. The investigation and initial assessment processes already outlined formed part of this front-loading approach.

- In the child protection jurisdiction in the US, many states have adopted a model known as ‘Cornerstone Advocacy’. Developed by the Centre for Family Representation in New York, it articulates a set of expectations on all agencies in the system during the first 60 days of a case.71

Agencies across Colorado have adopted the Cornerstone Advocacy principles, which for them involve front-loading representation services in the first 30 days. This expectation is supported by the Colorado Chief Justice Directive (CJD)72 and the OCR’s Performance Requirements, which require attorneys to comply with the requirements of the CJD as well as providing additional requirements like structuring cases to follow Cornerstone Advocacy principles.

The four priority areas for this advocacy approach are as follows:

- Visiting arrangements for children and their parents need to be safe, frequent, as long as possible, and closely representative of family life.
- A child’s interim living arrangements must support their connection to family and be focused on minimising disruption to school, sport, special needs, etc.
- In the early stages, referrals are required to services that address the child’s and parents’ needs.
- Services must provide opportunities for youth to meaningfully participate in their case.73

71 J Cohen & M Cortese Cornerstone advocacy in the first 60 days: Achieving safe and lasting reunification for families, American Bar Association, Child Law Practice, USA, 2009

72 (CJD) 04-06 outlines the authority and responsibility of the OCR and duties of guardians ad litem and articulates the expectations of all GAL within 30 days of appointment.

73 For a fuller explanation see M Guggenheim & S Jacobs ‘A new national movement in parent representation’, Clearinghouse Review, May 2013, Volume 47, Numbers 1–2
In the UK, I observed similar approaches to the front-loading of services at an early point in the legal proceedings.

- Cafcass has recently participated in front-loading assessment projects in Liverpool and Lincolnshire. The Lincolnshire pilot of what is called ‘Cafcass Plus’ focuses on the welfare of unborn babies and the involvement of Family Court advisors with some families at an early stage in situations where a local authority is considering making an application for care proceedings. An evaluation of the scheme has found that high-quality and timely assessment of families supports efficient decision-making, results in a deeper understanding of risk and could reduce delays in decision-making.74

Implications for Australian practice

In Australia, child representatives carry significantly more obligations than child representatives practising in the jurisdictions I visited. They are evidence-gatherers, litigation managers and facilitators of a child’s participation.75 Having viewed a range of roles that support the work of child representatives in other countries, I conclude that our model places high demands on the work expected to be undertaken by child representatives.

In recent years there has been debate in the Australian family law system about the barriers that prevent family courts from obtaining important and relevant information about families at an early stage in proceedings. There is current interest in improving responses to families with complex needs, but addressing the needs of families can be complicated or frustrated by the interaction and division of state and federal laws.76 Many have commented on the particular problems caused by rules on confidentiality.77 As Altobelli and Bryant describe the predicament:

The context of these interim hearings is often one of urgency; of risk to a child or a parent; of highly conflicted, hastily prepared, irrelevant and often inconclusive evidence; and of highly partisan, subjective, uncorroborated assertions ... confidentiality rules impede better decision-making at a critical point in the legal proceedings.

75 Kaspiew et al. ‘The role and efficacy of Independent Children’s Lawyers – Findings from the AIFS Independent Children’s Lawyer Study’, Family Matters, 2014, no. 94, p.61
76 The Family Law Council of Australia is currently investigating the opportunities for enhancing collaboration and information-sharing between the family courts and relevant services. See www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncil.htm#ofreference.asp
time in the lives of parents and children. Ironically it’s not that better information to inform risk assessment does not exist – rather it is not made available to the court in a timely and efficient manner.  

The child protection jurisdiction in Australia faces similar challenges. While information from government authorities might be more readily available, good-quality decision-making at an early stage is often hampered by a lack of comprehensive independent information about the circumstances of the family before it.

Based on my observations, I believe that initial information-gathering practices and family assessment and screening processes in Australia should be reviewed. Such a review should include consideration of:

- Whether the information currently available to judicial officers at interim and preliminary hearings meets needs and expectations
- Whether court-based family consultant services should be more focused on providing initial assessments earlier, including thorough and timely safety assessments, or whether this role should be played by another type of professional, such as an investigatory service
- What role Legal Aid commissions could play in administering more investigatory-type services and whether they are in a position to make a limited grant of legal assistance for a child and family assessment as a stand-alone service
- The criteria for allocating child representatives
- Whether concentrating more resources earlier on, and articulating the expectations of all parties in the initial stages of a matter (front-loading), has any application in Australia, and
- Current barriers to obtaining critical information on risk early in proceedings, and practical solutions to overcoming barriers to obtaining this information.

---

6. Hearing the voice of the child

While it was not the primary concern of my research to examine models of child representation, I did observe a range of practices regarding lawyers meeting and working with children and ensuring that children have a voice in the decision-making process.

Meeting with children

Internationally there are various guidelines, service contracts and best practice models that set out clear expectations around meetings between a child representative and a child.

Lawyers in Ontario are expected to listen to the voice of a child contextually over several meetings when first appointed.\textsuperscript{79} It is a three-pronged process called the ‘contextual approach’ and it is said to avoid the paternalistic or ‘protectionist’ lawyer who says something like “she said ‘X’ but I know what is best for a child of this age”. In the view of the OCL, “advocating uncritically the influenced and manipulated views of children is unhelpful and irresponsible”.\textsuperscript{80} This approach allows direct representation in some circumstances but it is still subject to a best interest component. In Colorado, child representatives are required by statute to, within 30 days, personally meet the child they represent, under a best interest model.

Across the US, there are guidelines that expect lawyers to meet with the children they represent. As one administrator said, “Attorneys won’t be paid unless they have met with their client, even if that meeting is via Skype”.\textsuperscript{81}

While each jurisdiction I visited had different approaches to representation, they were all able to articulate clear expectations about their processes for meeting with children; these expectations related to frequency, location, who was to be present, how old a child should be to mandate a meeting occurring, how soon after the appointment a meeting should occur, and ongoing contact.

In Australia, child representatives, while not legislatively mandated to speak to children, are obliged to place any views expressed by the child before the court, pursuant to section 68LA of the FLA. The National Guidelines for Independent Children’s Lawyers provide further, more specific directions.\textsuperscript{82} Part 6 makes clear the expectation that the child representative will meet the child unless “the child is under school age or there are exceptional circumstances, for example where there is an ongoing investigation of sexual abuse allegations and in the particular circumstances there is a risk of systems abuse for the child”. Legal Aid NSW incorporates into its Practice Standards its fee structure a

\textsuperscript{79} Section 24 Children’s Law Reform Act 1990 Ontario, Canada
\textsuperscript{80} McSweeney & Leach, Children’s participation in family law decision-making: Considerations for striking the balance, presented to Ontario Association of Family Mediators, Ontario, Canada, 2011, p.15
\textsuperscript{81} Harriet Weinberger interview, op cit.
\textsuperscript{82} National Guidelines for Independent Children’s Lawyers (2013) endorsed by the Chief Justice of the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia.
requirement that child representatives will meet regularly with the child they represent and allow a minimum of two hours per matter for this task. Should a child representative practising in NSW wish to obtain direction on expectations about their conduct as a child representative, the following documents can be referenced: Legal Profession Act 2004 (NSW), Representation Principles for Children’s Lawyers83 (Law Society of NSW), National Guidelines for Independent Children’s Lawyers84 and the Children’s Court of NSW Code of Conduct.85

However, upon reading these documents it is likely the child representative could still be unclear about the expectations held in the family law system for contact between them and the child. This is not assisted by the phenomenon of ‘systems abuse’. The National Guidelines for Independent Children’s Lawyers describe systems abuse as occurring when “a child is further traumatised by the systems (courts, child protection or other State Welfare Authority), which he/she encounters or which are appointed to make decisions about the child”. While this term does not appear in the FLA, the notion does appear in section 6BLa(S)(d), which requires the child representative to endeavour to minimise the trauma to the child associated with proceedings.

In family law matters, the alienation and dysfunction of one parent is often so extreme as to cause the child representative to take a protectionist stance in their representation of the child, as a way of insulating them from the conflict. The child representative may argue that the child is already overly involved with that parent, or that the child should not be drawn into ‘choosing sides’ on the grounds that this would only perpetuate the trauma, thereby creating loyalty conflicts and anxiety. Many such children also have prolonged involvement with the legal system, including attending multiple interviews and having a sense that they are ‘over-assessed’.

Recent studies involving children in the family law system have highlighted a need to question our current approach. We now understand that lack of direct contact between a children representative and a child may increase stress levels and lead to a lack of faith and trust in the court system. AIFS research has found that, in matters involving family violence and child abuse, child representatives can feel constrained by protective concerns and can have negative views of the needs of children and their wish to participate.86

Children’s representatives in the US are familiar with a seminal text edited by Professor Donald Duquette and Anne Haralambie on the representation of children, known commonly as the ‘Red Book’. Two chapters of the book are devoted to the topic of working with child clients. On this topic

---

84 These Guidelines have been endorsed by the Chief Justice of the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia. They can be found at www.familylawcourts.gov.au/wps/wcm/resources/file/ebd504048b7ac3/ICL%20Guidelines%202013.pdf
85 Published and owned by the Children’s Court Advisory Committee but can be viewed at www.legalaid.nsw.gov.au/for-lawyers/resources-and-tools/family-law/code-of-conduct-for-legal-representatives
86 AIFS (2013) op. cit, p.132
the Red Book notes that many child clients will have had prior involvement with courts or government bodies:

These prior encounters may have been unpleasant or even traumatic for the child, leaving the child with a distrust of adults in the system. Knowing this, and approaching the representation of the child client with consideration of his or her past and/or concurrent involvement in other matters, will help the attorney establish the trust necessary for a positive attorney-client relationship.87

The Red Book makes no reference to ‘systems abuse’ – quite the opposite in fact. It refers to the ‘heightened duty’ that a child representative has to ensure that their client understands the relevant issues, and notes that representation “starts with really listening to the child and understanding the short term and long term consequences of any position taken on the entire fabric of the child’s life” and that “the best representation of children involves a decision-making partnership”.88

I asked many child representatives about the application of the systems abuse principle in their jurisdictions. Most were unfamiliar with the use of the term in a child representation context. In response to my question one commented: “We did a lot of training on ‘systems abuse’ years ago now – I see it as a cop-out, and it is rarely mentioned in New York.”89

Not only were expectations about meetings with children clearer in the jurisdictions I observed, but in the US the area is enriched by active research on approaches that lawyers and judges can take when communicating with children. One of the leaders in the field, Thomas Lyon,90 from the University of Southern California, estimates that he has published over 60 papers in law reviews, psychology journals and books, has authored or co-authored over 90 research presentations at psychology and law conferences, and has conducted over 200 training sessions with judges, attorneys, law professors, social workers, psychologists, and reporters.91 Perhaps reflective of his research activities, he has an office located at the Edmund D. Edelman Children’s Court in Los Angeles, where he conducts research on the topic. In stark contrast to Australia, there are a variety of excellent resources available to legal practitioners in the US on approaches to lawyers and judges communicating effectively with children.

The American Bar Association’s Center for Children and the Law regularly promotes resources on the topic to assist the legal profession. These include:

88 Duquette & Haralambie *op.cit.* p.122
89 Harriet Weinberger interview, *op cit.*
90 From the University of Southern California, Gould School of Law and Department of Psychology
91 See http://works.bepress.com/thomasylyon/
• A series of articles published on their website about interviewing children with disabilities in child abuse cases, with a follow-up piece outlining best practices and providing guidance on interviewing children with specific disabilities\textsuperscript{92}

• The 3rd edition (2014) of the Handbook on Questioning Children: A Linguistic Perspective,\textsuperscript{93} a practical guide for professionals involved in child interviewing, and

• A training video, Interviewing the Child Client: Approaches and Techniques for a Successful Interview, which is available online.

I would suggest that training for child representatives across Australia should incorporate some of the material being produced in the US. Further work is needed, however, to ensure that the current National Guidelines for Independent Children’s Lawyers and the legislative framework are promoting the appropriate level of participation of children in family law processes, as well as promoting community confidence in these processes.

Court practices

I visited nine courts during my research and was able to view a range of practices in place for supporting children and families who use them, a number of which show marked differences to practices in Australia.

The involvement of children in the court is one point of difference. Pursuant to Article 12 of UNCROC, a child is entitled to participate in and be heard in judicial proceedings about their lives. While theoretically this may be read to suggest that children are entitled to communicate directly with judicial officers, in the Australian family law and child protection systems we are fortunate to have child representatives and clinicians who routinely meet with children involved in court proceedings and communicate their views and wishes on their behalf. There is, however, a growing body of research in Australia that suggests that some children may be dissatisfied with these processes and indeed would prefer to have more direct participation in the decision-making processes.\textsuperscript{94} Across the US, Canada and the UK, I visited courts where it was commonplace for children and families themselves to attend court facilities. Furthermore, the participation of children in court processes was more often the norm, rather than an exception.

In recent times these countries have all considered the presence of children at courts, their participation in court proceedings and the general transparency of court processes concerning children. I should note at this point that there is much greater support for the attendance and participation of children in child protection proceedings than in private family law proceedings. Notwithstanding this, in private family law proceedings there is still consideration of what the child’s


\textsuperscript{94} M Fernando ‘Children’s direct participation and the views of Australian judges’, Family Matters, 2013, Australia, no. 92, p.41
involvement in legal proceedings would entail. There is also the option to facilitate a child’s participation in proceedings, in appropriate circumstances.

I was particularly challenged by the Edmund D. Edelman Children’s Court in Los Angeles, a purpose-built facility opened in 1992. It was designed on the basis of a longstanding philosophy and practice that encourages and facilitates the attendance of children in a child-sensitive court facility. The complex features child-sensitive courtrooms, child-appropriate interview rooms, children’s research facilities, recreational facilities for children, an outdoor playground, light fixtures designed to blur boundaries between indoors and outdoors, and a cafeteria. These facilities cater for about 25,000 cases annually that go before a total of 21 judges, commissioners and referees who oversee cases at the court.

Children attend most hearings in the court and are given a gift (a bear) on attendance. I observed the court process to be informal and the court to be respectful of all who attended. For example, the judge clarified such things as names, pronunciations, address information and confidentiality, and acknowledged all of the support people who attended.

The philosophy that underpins the court goes beyond the participation of children, however. Since 2012 the Children’s Courts in Los Angeles County have been open to the media, and members of the public can watch proceedings, unless the judge decides it is in the best interest of the child to exclude them. The lawyers I spoke to at the court held the view that public scrutiny improves the performance and accountability of child representatives.

I was fortunate to view a range of processes involving children attending, and at times participating in, courts in Los Angeles, Denver, Pittsburgh, New York, Toronto and the UK. In most of the courts, gifts were provided to children who attended, and most also had small libraries from which they could choose a book (and they were usually encouraged to keep them). In the Family Court in Manhattan, the library came complete with a roster of volunteer grandmothers who read to the children attending court. The Legal Aid Society of New York is co-located with family courts, and in Manhattan it offers ‘Connie’s Closet’, a second-hand clothing storeroom for clients, with winter jackets for children very much the focus when I was there.

Courts concerned with child protection matters also celebrate successes. At least annually the courts hold parties called ‘Reunification Day’ or ‘Adoption Day’ to allow children, parents and agencies to meet with legal practitioners and judges to celebrate successes. I watched in the Denver Juvenile Court as a mother left the court with her children following the court’s discharging of the matter. It was considered a successful reunification of mother and children, and the praising and celebration of the mother’s achievements were moving.

---

95 C Saunders & R Henderson ‘On designing a court for children’, Court Manager Journal, Volume 14, Issue 1, 1999, USA, p.28

96 According to information from the Los Angeles County Superior Court quoted in www.sgvtribune.com/general-news/20120303/rare-look-at-childrens-court-finds-tension-runs-high
Most court facilities I visited were decorated with children’s artwork, and all had noticeboards with practical information about transportation and social services. I was impressed by the way court facilities reflected the fact that they existed to make decisions about children and families. As I observed it, instead of court being a traumatising experience, the children and their families were leaving court on a positive note, with a sense that their contribution had been both welcomed and important.

At least 22 states in the US have open courts, with judicial discretion to close any hearing if the safety of children and families may be jeopardised. Those in favour of the practice say it has led to better accountability and transparency, although there were also concerns expressed that it could be traumatising for children involved in proceedings.

I was able to observe the participation of children in various court settings. The involvement of children was generally underpinned by the purpose of their attendance, which fell into three categories: (1) to obtain the wishes of the child; (2) to ensure that the child is given the opportunity to express their views about the decision that the court is being asked to make; and (3) to provide the judge with information and context about the child. For example, in Denver judges regularly meet with children either in the courtroom or in their chambers, although no official policy exists regarding this practice. One judge said she meets with children aged nine years and over because:

> I have found getting this information directly from the children is much more powerful than obtaining it from professionals as part of their report and recommendations. I have also found that it helps children know who is making the decision and realise that the judge is a person who cares about their outcomes and not just someone who sits in the courtroom and makes people do things. When in chambers, we do not wear our judicial robe.\(^ {97}\)

Most of the courts I visited were able to direct me to guidelines, court rules or policy documents that governed the participation of children. There are advantages to this approach. Importantly, guidelines articulate the purpose of the child’s attendance, but they also guide all the participants, reducing judicial discretion and arguably leading to a greater comfort in the process.

Recently, the National Council of Juvenile and Family Court Judges (NCJFCJ) in the US, the nation’s oldest judicial membership organisation, unanimously adopted the NCJFCJ Children in Court Policy Statement, which states:

> It is the policy of the National Council of Juvenile and Family Court Judges that children of all ages should be present in court and attend each hearing, mediation, pre-trial conference, and settlement conference unless the judge decides it is not safe or appropriate.

The statement also asserts the following:

- Children of all ages should be brought to court, unless the judge decides this is not safe and appropriate based on information provided by case participants.

\(^ {97}\) Judge Laurie Clark, Denver Juvenile Court, email, 25 February 2015
• When children are not brought to court, the judge should ask why the child is not present. If necessary, the judge should order that the child be brought to court.

• Children and youth should receive meaningful notice so they can attend hearings.

• Judges should seek and participate in training sessions on how to best engage children during the hearing process.

• Courts should develop policies and protocols to ensure that children have the opportunity to attend all hearings in dependency cases.

In 2014 in Ontario, the *Guidelines for Judicial Interviews and Meetings with Children in Custody and Access Cases* were introduced. The guidelines were promulgated as a result of a consultation involving the Advocate’s Society, the Association of Family and Conciliation Courts, academics and judicial consultants. Interestingly, the guidelines divide judicial interaction with children into two categories: ‘meetings’ and ‘interviews’. The primary purpose of both, though, is not to gather evidence but to gather information about the child’s views and preferences.  

It is accepted in the UK that judges may meet with children in appropriate circumstances. In 2005, Thorpe LJ famously remarked:

> Unless we in this jurisdiction are to fall out of step with similar societies as they safeguard Article 12 rights, we must, in the case of articulate teenagers, accept that the right to freedom of expression and participation outweighs the paternalistic judgment of welfare.  

In the UK in 2010, the *Guidelines for Judges Meeting Children who are Subject to Family Proceedings* were issued by the Family Justice Council with the approval of the President of the Family Division. These guidelines emphasise that:

> [although] the purpose and proposed content of the meeting are a matter for the discretion of the judge, [it] cannot be stressed too often that the child’s meeting with the judge is not for the purpose of gathering evidence. That is the responsibility of the Cafcass officer. The purpose is to enable the child to gain some understanding of what is going on, and to be reassured that the judge has understood him/her.  

In recent times the UK has experienced drastic reductions in the funding of legal assistance services and the court system. Some commentators have expressed concern that compliance with UNCROC can in many cases only be achieved by judicial meetings and that there may be a greater role for

---

98 Guidelines for Judicial Interviews and Meetings with Children in Custody and Access Cases in Ontario, 36 RFL-ART 489 Reports on Family Law, 2014, Thomas Reuters, Canada

99 Mabon v Mabon [2005] Fam 366, 373 (Thorpe LJ)

judges’ direct involvement with children than previously contemplated.\textsuperscript{101} Arguably, the National Charter for Child Inclusive Family Justice (see Attachment 1) embeds this practice further. But if the politics of resourcing is put to one side, as Bala and Birnbaum conclude:

Regardless of who meets with the child, the child’s voice should be included in the decision-making process. It is no longer whether, or if, children should be heard, but rather when and how.\textsuperscript{102}

The Australian situation

There are many methods that are currently used in Australia to give a voice to children involved in legal proceedings about their lives. These methods operate effectively for most children in the legal system and are not ‘broken’. However, as was eloquently put by one judge:

> careful thought needs to be given to what, in the context of family law, the proper rules for engagement [of children] in family court proceedings should be and that this requires open, informed, reasoned and intelligent debate within the community.\textsuperscript{103}

While there is a range of guidelines in Australia to direct child representatives, these guidelines do not articulate expectations sufficiently. This can result in inconsistent practices. In my opinion, the \textit{National Guidelines for Independent Children’s Lawyers} should be reviewed to ensure they are leading to the appropriate level of participation of children in family law processes.

A court is a sum of many parts – the facility, the legal representatives, the court personnel and the judges – and when (on my visits in the US, Canada and UK) I observed these aspects as a whole, I was consistently impressed by the respect and dignity shown to parties throughout their court experience and the confidence this appeared to instil in the family law and child protection systems as a result. As I walked around registries and sat in courts, I reflected on the different experiences we provide for children and families in Australia. Courts are public facilities and we would benefit from taking some steps in Australia to raise trust in, confidence in and accessibility to courts among members of the public.

Anecdotally, judicial meetings with children in Australia are occurring more frequently than they have in the past. There are cases where judicial meetings with children should be considered as another valuable way of involving them. Some children may feel that they have directly participated in the process, and had their rights and views acknowledged, if they are afforded the opportunity to visit the court and meet the judge. In the US, Canada and the UK, I observed such meetings to be powerful tools for focusing parents on the voice of their child while providing professional insight for others. In Australia, just as these children, when appropriate, would benefit from a system that

\begin{itemize}
  \item \textsuperscript{102} N Bala & R Birnbaum \textit{Hearing the voice of children in the family justice process: The role of judicial interviews} The Family Way, The Canadian Bar Association, April 2013
  \item \textsuperscript{103} Carmody J in Dylan and Dylan [2007] FamCA 842; BC200750499 at 221
\end{itemize}
allows them to participate in a safe, neutral and supportive way, the judges being asked to meet them would benefit from training before doing so.

There are children in Australia who demand to understand the manner in which their views are considered by a judge. Yet, while there is a legislative imperative on a family court to have regard to a child’s views,¹⁰⁴ there is no requirement to address the reasons why orders would be made contrary to those views. Perhaps this should be considered.

In Australia, as overseas, some children involved in legal proceedings will express an overwhelming desire to meet and speak with the decision-maker. Our system cannot call itself ‘child focused’ until we can articulate what approach should be taken when children wish to have this involvement. Furthermore, while each matter must be approached on a case-by-case basis, we all need some direction or agreement, from a process and evidentiary point of view, on the consequences. Our system is mature and sophisticated enough to work on guidelines that will ensure that judicial meetings with children are done in a safe, transparent and child-inclusive manner.

¹⁰⁴ Section 60CC(3)(a) – and subject to other factors such as age and maturity
7. Ensuring quality child legal representation services are delivered

This chapter explores the processes I observed in the US, Canada and the UK for managing the delivery of frontline child representation services.

Panel selection and renewal processes

I examined the practices of a range of agencies responsible for the child representation panel admission and renewal processes. I found that these take place at varying frequency, from a panel always being open to a panel being convened every four years. There are key consistencies in the approaches but variance in the details, with the following being some of the options.105

- **Compulsory eligibility training:** All agencies have a training prerequisite for panel admission. In New York, prospective panel members are required to view a 36-hour set of training DVDs, entitled *Fundamentals of Family Court/Family Law Advocacy*, in order to gain an overview of family law representation.

- **Written application:** A written application must be submitted. These vary in content, but they commonly ask applicants about family law/child protection experience and multidisciplinary background and experience. They usually also include a sample of written work.

- **Referee reports:** These are undertaken in all jurisdictions but requirements vary (e.g. the Attorney for Children Program in New York requires seven referees consisting of two judges, three opposing counsel and two other attorneys, while the OCR requires referees to include two children, two caregivers and two parents from different cases over a three-year period).

Referee reports are generally in a standard form, and referees are asked direct questions such as:

- In what ways do you think this applicant is suitable to provide legal representation for children?
- Do you have any concerns about the applicant’s professional skills or conduct?
- What do you consider to be the applicant’s strengths and weaknesses?
- Do you recommend that this applicant be appointed to the child representation panel, and if so why?

In Ontario, referees are asked to rate the applicant using the following form:

---

105 Except for England and Wales. At the time of visiting their eligibility requirement was the completion of a panel application required completion of the Law Society approved training for those who wish to apply for membership of the Law Society’s Children Law Accreditation Scheme (formerly the Children Panel).
<table>
<thead>
<tr>
<th>ATTRIBUTE</th>
<th>Strong</th>
<th>Average</th>
<th>Weak</th>
<th>Do not know</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Overall professional presentation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Ability to relate to and work with:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. adult clients</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. children</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. other counsel</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. other professionals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Interviewing skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Writing skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Legal knowledge</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Knowledge of and experience in working with separation, divorce and</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>family conflict</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Advocacy skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Dispute resolution skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Reliability</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Organizational and time-management skills</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Professional judgment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Common sense</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Follows direction and consults as necessary</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Taken from Reference in Support of an Applicant, Office of the Children’s Lawyer, Ontario, 2014)

Most agencies I observed reported that their selection criteria allow them to make discreet inquiries among judicial officers and the legal profession to obtain further input.

**Attendance at interview**

I found there is no universal practice of interviewing all applicants, but all jurisdictions reported either a compulsory interview for new panel applicants or interviews for some applicants. For example, in 2013 the OCR interviewed 12 out of the 72 new applicants.¹⁰⁶

**Payments and funding**

A common theme I observed was the way that funding constrains the child representation services delivered. This issue has an impact on various aspects of the system, in that it may result in fewer appointments being made or it may impact on the quality of representation services made available.

---

¹⁰⁶ Interview with Amanda Donnelly, Staff Attorney Office of the Child’s Representative, Colorado, 21 October 2014
• In Colorado, child representatives are “paid US$75 per hour, which is significantly less than $225 per hour corporate rate”.107
• In New York, panel attorneys also earn US$75 per hour.
• In Ontario, panel lawyers are paid CD$95 per hour, which is paid as an annual fee calculated on 30 hours for the first year of a file and 15 hours for the second year (although they send in a claim for hours undertaken at any time).

According to a survey of parents’ lawyers conducted by the American Bar Association, some parents’ lawyers are paid as little as $200 for an entire case, regardless of how many court appearances they make or hours they actually spent on it.108

All jurisdictions appear to assess eligibility for appointment on various financial eligibility criteria. Many have adopted a means test focused on children, so that only children with access to an income stream (e.g. trust fund) would be refused. However, it was clear to me that there are informal practices in most jurisdictions for the appointment of child representatives, in that they are funded directly by the parties.

In New York, the ACP reported that the court rules make provision for situations where the court appoints a child representative at the expense and request of the parties. In these cases the court itself assesses capacity to pay, and the practitioners appointed are required to be on the panel.109 The Director of the 2nd Department’s ACP, Harriet Weinberger, noted that one New York district takes a “philosophical position against it” but that “judges are cautious and fairly savvy about the process, and every assignment is recorded”.

In California, I found that a similar practice is in existence, with the court determining the capacity of the parties to pay and also the amount that the child representative should be paid.110 To be eligible for appointment, the attorney needs to satisfy a number of criteria, including undertaking compulsory training in the role. In reality, the judges making the appointments know who the qualified and competent child representatives are, and appoint them. It was however acknowledged

---

107 Interview with Amanda Donnelly, Staff Attorney Office of the Child’s Representative, Colorado, 21 October 2014
109 Interview with Harriet Weinberger, Director, Attorney for Children Program, 2nd Department, New York City, 10 November 2014; but also refer to Rule 679.11 and Part 36
110 Interview with Judge Trent Thomas Lewis and Leslie Shear in Los Angeles on 15 October 2014. See also www.courts.ca.gov/documents/fl321info.pdf
that there is caution around perceptions of judicial and attorney independence that those in the system are mindful of.  

**Performance standards**

As in Australia, all the jurisdictions I observed have codes or practice standard documents that regulate the performance standards and expectations of child representatives. Many of the agencies with oversight for the delivery of child legal representation schemes also make available to child representatives handbooks and manuals to ensure that expectations are well articulated.

- **The ACP in New York** has prepared the following resources:
  - The *Administrative Handbook*, which includes relevant statutory and regulatory provisions, policy considerations and protocols, relevant forms, sample orders and compensation guidelines. It is 130 pages in length and filled with precedents, forms and procedures.
  - The *Family Court Appellate Handbook*, which contains a complete index of the statutes, rules and procedures used in the court, as well as relevant forms, precedents and orders.
  - A payments guide, which includes instructions for accessing the court’s website, creating a new voucher, producing an attorney assignment report, and conducting an appearance search.

To ensure consistent decision-making and delegation processes, some agencies also publish clear decision-making delegations.

In Ontario the OCL prescribes policies for in-house and panel lawyers which require child representatives to:

- Seek permission from their supervisor before withdrawing from a child protection case
- Obtain police records for each person who has sought or is seeking custody or access or who may be placed in a caretaking role for a child (OCL counsel are also directed to obtain and review police records before taking a position on behalf of a child), and
- Meet with their child clients in person at least three times.

In Colorado, I observed that the OCR takes a similar approach. For example, guidelines on the use of supervised lawyers by child representatives on their panels were cited as a “means of providing mentoring and training to newer attorneys” and it was noted that “the effective use of associates on OCR appointments may additionally enhance the quality of representation provided on individual cases”.

---

111 Interview with Judge Trent Thomas Lewis and Leslie Shear in Los Angeles, 15 October 2014.
112 The OCR Associates Policy can be found at www.coloradochildrep.org/attorney-center/associates-policy
Support mechanisms

Several agencies I observed also make use of mentors to support child representatives, particularly those recently admitted to a panel.

- In Colorado the OCR offers a voluntary mentoring process where experienced attorneys are offered 10 mandatory continuing legal education points for providing mentoring. They also receive a small payment for some of the time spent consulting. Unsurprisingly, they reported that the uptake is very good.113

- The American Bar Association’s Center for Children and the Law has a resource centre, funded by the Children’s Bureau, which provides consultation, training and technical assistance on all legal and judicial aspects of the child welfare system.

- Members of the NACC have access to training and technical assistance.

- Cafcass offers a ‘helpline’ for legal practitioners. Measures such as this are seen as a relatively small ‘investment’ in quality.114

- Other agencies provide practical support measures such as a list of identifiable contact people with expertise as children’s lawyers who are prepared to be contacted by other lawyers or who are prepared to provide supervision to new child representatives.

Monitoring performance

All the agencies charged with overseeing child representation services that I observed have established mechanisms for supervising and monitoring the quality of work undertaken.

- In Ontario, 12 OCL in-house lawyers (referred to as ‘regional supervisors’) supervise the work undertaken by child representatives on their panels, at a ratio of 30 child representatives to each regional supervisor. This equates to the supervision of around 700 files. In addition, regional supervisors also have their own file loads.115 They conduct file reviews once every four months for new appointments, and once every six months for all other child representatives and in-house legal counsel.

Some jurisdictions also require the child representatives on their panels to submit a report at regular intervals.

113 Interview with Amanda Donnelly of OCR, Colorado, 21 October 2014

114 Interview with Anthony Douglas, Chief Executive, Cafcass, London, 27 January 2015

115 Interview with Annemarie Carere, General Supervisor Panel Lawyers, OCR, Toronto, 20 November 2014
• The OCL in Ontario has a six-monthly review process and requires a brief summary of each case to be submitted. The supervisor then evaluates the quality of the work against various criteria, such as:
  • The number of meetings with the child
  • Whether the position taken was appropriate
  • Whether sufficient information was gathered from collateral sources to support the position, and
  • Whether the child representative’s ongoing involvement is required.

Supervisors at the OCL discussed the importance of role modelling around the notion that child representation is more than just attending court and telling the court what the children’s views are.

• The OCR in Colorado has four in-house attorneys who take responsibility for supervising a panel of 230 contracted child representatives. Their role includes responsibility for renewal and application processes, payment approvals, ongoing supervision, monitoring processes (including a six-month review and Affidavit of Compliance\textsuperscript{116}) and responding to issues arising from an annual stakeholder survey.\textsuperscript{117}

Having regular periodic reviews is a common method of overseeing the quality of work being undertaken by child representatives.

**Renewal processes**

I found that renewal processes vary both in frequency and process, depending on the jurisdiction.\textsuperscript{118} There was a difference of opinion over whether the process should be used to monitor performance or not. Common to all renewal processes, though, is the disclosure of information about attendance at training and continuing legal education undertaken in the preceding period, and any adverse professional conduct and disciplinary decisions.

\textsuperscript{116} The Affidavit of Compliance is required to be sworn and submitted each year by every child representative in accordance with the Chief Justice Directive 04-06.

\textsuperscript{117} The stakeholder survey is extensive, with over 1,000 responses received in 2014.

\textsuperscript{118} Every three years in Colorado, every four years in Washington DC
• The OCL in Ontario has a renewal process every three years, although the performance of new panel attorneys engaged by the OCL is reviewed at 18 months. These reviews consist of an evaluation of an agent’s performance based on criteria such as legal or clinical skills, compliance with office policies and procedures, case management, and general administrative skills.

• The ACP in New York conducts a regular renewal process overseen by its Advisory Committee. The committee evaluates applications for appointment and renewal to the panel, reviews complaints and addresses issues arising from the practice of representing children. Each panel member is subject to a yearly evaluation, which is completed by the judges.

• For the OCR in Colorado, the renewal process includes:
  • An activity report on the lawyer’s practice
  • A sample work piece
  • Court observations
  • An interview in which the interviewee’s approach to casework is tested and they are asked questions such as “Is there anything you would have done differently?”
  • References from two children, two caregivers and two parents from different cases.

Interestingly, the Colorado process attempts to deal with some of the common performance issues raised in Australia, such as personal attendance at court events and appropriate use of agents. One question asks: “Is there an associate/contractor in your firm who does not currently have an OCR contract but whom you wish to have qualified by the OCR to appear in court on your cases under these limited circumstances?”

The OCR is also the only agency I visited that uses a court observation process. OCR staff aim to conduct a court observation of every child representative in Colorado each year, and these observations form an integral part of their renewal process. The OCR makes available a webinar to inform child representatives of their expectations for court observations and to outline outcomes of the previous year’s observations. It is a resource-intensive process, and interns are heavily relied upon to undertake the task. This arguably leads to the inclusion of feedback that is objective rather than reliant on professional judgement, such as:

119 Reported as being ‘high profile and people who are well known and from across the legal community i.e. academic, CASA representatives, judicial officers, court administrators, bar association and private lawyers’ (interview with Harriet Weinberger, op cit.)

120 The CJG 04-06 provides that “in exceptional circumstances, another qualified attorney who has sufficient knowledge of the issues and status of the case may substitute for some hearings, with the permission of the court.”

121 See www.coloradochildrep.org/11513-ocrs-court-observation-form-webinar/
• Details identifying case and attorney
• Hearing type
• Issues before the court
• Whether the child was present at court and, if so, whether they were they given the opportunity to address the court (details of the age of the child sought)
• Whether the attorney provided current, independent information about the child to the court, and
• Whether the attorney clearly stated their position as well as the child’s position.\textsuperscript{122}

The OCR conceded that court observations provide only a snapshot of a child representative’s performance and that, for this reason, the process is a small part of overall renewal considerations. The process is also a helpful way for them to gain a sense of child representation practices across the state.\textsuperscript{123}

The OCR process appears to go beyond monitoring to ensuring continuous improvement of the practice standards of child representatives in the jurisdiction. For example, the application includes requirements such as “Describe a significant success in working with a child since your last contract renewal”.\textsuperscript{124}

Feedback mechanisms

Across Australia various formal and informal mechanisms have developed to ensure accountability for the practice standards of child representatives. Lawyers and judicial officers, I would argue, are in the most powerful position to ensure accountability, due to their capacity to observe and assess performance. Presently in Australia there is an assortment of mechanisms, though none of these involve children, who, as the AIFS observes, are “in the weakest position to assess ICL performance and exercise agency through a feedback or complaints mechanism”.\textsuperscript{124}

Various feedback tools are in use in the US, Canada and the UK, and many of these seek the views of children. They include client satisfaction surveys of young people and the use of youth references as a component of panel renewal processes, as referred to earlier. Several agencies reported using an annual survey of service users.\textsuperscript{125}

\textsuperscript{122} Colorado Office of the Child’s Representative Court Observation Form, op cit.
\textsuperscript{123} Interview with Linda Weinerman, Executive Director, OCR, Denver, Colorado, 20 October 2014
\textsuperscript{124} AIFS (2013), op cit, p.163
\textsuperscript{125} Cafcass, UK, and OCR, Colorado
• In Colorado the OCR conducts a generic stakeholder survey to evaluate individual attorney performance. It is completed by:
  • Judicial officers
  • County attorneys (who prosecute cases of dependency and neglect)
  • Respondent parent counsel
  • Volunteers such as CASAs, and
  • Caseworkers.  

Some of the 30 questions posed in the 2014 Annual Stakeholder Survey are as follows:

“Rank extent to which this OCR attorney:
  • Possesses the requisite knowledge to effectively advocate for the child’s best interest
  • Possesses the relevant skills to effectively advocate in court
  • Is familiar with services available in the community for children, youth and families
  • Conducts an initial independent investigation to determine what is in the child’s best interest
  • Informs the court of his or her contacts with the child advises and the child’s position
  • Provides accurate and current information directly to the court
  • Attends all court hearings for the child unless excused by the judge
  • Has a good rapport with the children on his or her cases
  • Is respectful of others involved in the case
  • … Routinely has contact with the following professional(s) in a case: Therapist, Caseworker, Caregiver, Probation Officer, Teacher, and Attorney ...

Provide any suggested areas for further training for this attorney or general comments on competency.”

The OCR report collates over 1,000 responses to the stakeholder survey each year. The results are tabled in an annual report to Parliament, but the results also inform the OCR about the quality of services being provided by child representatives across Colorado.

---

126 See OCR website: www.coloradochildrep.org/attorney-center/applications/
127 OCR 2014 Annual Stakeholder Survey
Two agencies reported using feedback tools with young people.

- The CLC of California has used a short point-in-time survey for child clients consisting of eight questions. To undertake this process they hire former clients to speak to all clients aged eight and over at court. The process is entirely confidential, although the lawyers are identified but not connected to the child. They have reported a 100% participation rate.

- In Alberta, the Office of the Child and Youth Advocate initiated a client feedback process to hear about children’s expectations of their legal representative and how their experiences compared to those expectations. The questions posed included the following:
  - Did you understand your lawyer?
  - Did your lawyer explain what was happening in court?
  - Did your lawyer listen to you?
  - Did your lawyer tell the court what you wanted?
  - Did your lawyer answer your questions?
  - Did your lawyer explain what the judge’s decision means?
  - Were you happy with the legal services you received from your lawyer?  

The OCR did, however, sound a note of caution around the uptake of feedback tools and surveys for young people following one evaluation process:

> Accessing youth for the evaluation proved to be extremely difficult. Researchers found email was not an effective way of reaching youth; one youth completed the on-line survey. Of the 86 surveys mailed to youth, only 6 were returned completed, 14 were returned to sender as incorrect address. 59 youth were contacted by phone but only 6 youth were reached by phone and participated in the survey.

The OCR as a result reviewed its intention to routinely obtain feedback in this way, adding youth references as a component to the attorney contract renewal process.

Cafcass in the UK obtains direct and regular feedback about its services from the Family Justice Young Person’s Board, a board comprising 40 young people who are nominated by Cafcass practitioners for their suitability. The young people receive training and then sit on recruitment panels and attend meetings, training sessions and board meetings. With the assistance of the Board,

---

128 Auditor General Ontario, *op cit*, p.237
130 *ibid*
a National Charter for Child Inclusive Family Justice (see Attachment 1) has been adopted in the UK which provides that every child and young person should have the opportunity to give feedback via email, text, telephone or written form.\textsuperscript{131}

**Implications for Australian practice**

The further I travelled, the more I appreciated how universal the challenges of managing the delivery of frontline child representation services are. This chapter has outlined some interesting and responsive processes adopted in the US, Canada and the UK to ensure better practices in child representation.

The selection of appropriately skilled and trained child representatives is a critical first step to ensuring good practice standards. There is always potential for improving selection processes in order to raise the level of expertise of child representatives. The one area where I observed some more tailor-made and effective approaches was in the obtaining of referee checks. I recommend that agencies responsible for the admission of lawyers onto child representation panels review their reference requirements. It does not seem an unreasonable requirement to ask for referee reports from a broad spectrum of family law professionals, including judges, and, in the case of renewal processes, children and/or their families.

Across Australia, agencies such as Legal Aid have been attempting to incorporate into their approaches better methods for monitoring performance and dealing with complaints. As the AIFS has found: “A shared approach to monitoring performance and maintaining accountability is required. The perspectives of children and young people should be consciously considered in this approach.”\textsuperscript{132}

Some may argue that renewals processes for panels should not be used to monitor performance. Whatever the strategy adopted, I observed the following to be the most effective monitoring processes: seeking feedback from children and judges, targeting the assessment of child representatives’ skills, and checking that meetings with children are taking place.

\textsuperscript{131} Article 7 of the Family Justice Young Person’s Board’s National Charter on Child Inclusive Practice.

\textsuperscript{132} AIFS (2013), \textit{op cit}, p.163
8. Managing children’s law practices

This chapter outlines some of the approaches to child representation I observed in children’s legal practices and makes recommendations about practices that could be adopted in Australia to improve organisational approaches to child representation.

One feature I observed, for example, was social-science-trained experts working alongside legal practitioners. In cases involving children in the family and child protection systems, the insights of these experts on issues such as family dynamics, attachment, social, economic and cultural influences, and the emotional and psychological needs of a child are critical. Many children’s law practices internationally have employed people who are social science trained in order to better represent their child clients.

The American National Association of Child Counsel (NACC) maintains that “one of the best mechanisms for the delivery of high quality legal representation services to children is an institutional structure that allows multiple attorneys to focus their attention on the representation of children”. As a result, many institutional children’s law practices have been established in the US and are successfully providing legal services to children on a large scale.

To guide institutional children’s law practices, the NACC has published Best Practice Guidelines for Organisational Legal Representation of Children. These guidelines were developed as part of a project to improve the delivery of legal services to children by providing technical assistance for legal practices substantially engaged in delivering child representation services.

Multidisciplinary teamed approach

The most interesting and distinguishing feature of the children’s law practices I visited was the ‘multidisciplinary teamed approach’ to delivering legal services for children. Scott Hollander and Jonathon Budd of KidsVoice in Pittsburgh are viewed as pioneers of this unique multidisciplinary approach to child representation, which pairs an attorney with a social worker on each case. In support of the model they argue that:

No single profession, including attorneys, is likely to possess the broad skills and specialized knowledge necessary to advocate for developmentally appropriate and individualized recommendations for each client. To do so requires a sophisticated knowledge of child development, mental health, substance abuse, domestic violence, foster care, regular and special education and physical health and medicine.

---

133 Defined as “an entity organized and operated for the purpose of delivering legal services to children and youth. A CWLO must have substantial involvement/concentration in the practice of child welfare law (abuse, neglect, and dependency). A CWLO must employ a minimum of three (3) full-time staff attorneys with substantial involvement in child welfare law.”

134 NACC Best Practice Guidelines for Organisational Legal Representation of Children, 2006
A child welfare law office should apply a multidisciplinary approach to advocacy – inside and outside the courtroom – that integrates various professional perspectives and expertise. The insight of one professional will enrich, influence and cross-train the other. There is no one way to accomplish this. Some offices employ professional staff who team with attorneys to advocate for children. This may range from having a social service professional on every case to having social service professionals on staff to consult and/or work on selected cases.  

While I found that multidisciplinary approaches to advocacy are common among the agencies I visited, there are different approaches depending upon the agency and its resources.

- At KidsVoice in Pittsburgh, social workers come from a range of backgrounds, including education, child protection, foster care and mental health. KidsVoice aims for this diversity, which is seen as enriching its practice. Teams are also supported by a small pool of support staff and paralegals. The attorney and social worker roles are treated equally, and teams operate on a consensus approach. KidsVoice is the only legal service (of the ones I visited) that aims for a consensus approach. In the other multidisciplinary teamed approaches it is the attorneys who ultimately decide the case focus and legal strategy. KidsVoice says that the strength of this approach is that: “The case team gets to know each child and what that child wants as well as assessing the full range of social, physical, psychological, educational and legal needs of the child. This enables the case team to make tailored recommendations that lead to the best opportunities for each child’s unique situation.”

---

135 S Hollander & J Budd Multidisciplinary Practice in Child Welfare Office Guidebook, op cit, p.50
In Flint, Michigan, as part of the National Quality Improvement Center for Child Representation (QIC-ChildRep), a group of child representatives working under a ‘traditional’ private practice model have been allocated social workers on a ratio of two attorneys to one social worker. The lawyers involved in the QIC-ChildRep project cited a range of benefits:

- They can focus more on court advocacy.
- They can test case theories, bounce ideas off each other and generally know the case better.
- The social workers are useful at assisting with observations of meetings, especially on issues like attachment.
- The social workers ‘speed things up’ – they get children access to services, liaise with schools, do home visits and gather important information that lawyers often don’t have time to get because of court commitments.

The Legal Aid Society’s Juvenile Rights Practice in New York City also operates a multidisciplinary teamed approach model, but the ratios vary depending on the office and the needs of a matter. Teams generally consist of four attorneys, a social worker and a paralegal. Each office also operates with a pool of interns and secretarial support.

I found that in New York paralegals are a common feature of the administrative support team. I spoke to a group of paralegals in the Bronx office of the Legal Aid Society, where they conduct conflict checks at intake, complete required paperwork, access records, and draft and undertake legal research. They also reported undertaking support work as directed, which includes visiting kids and speaking to other services such as schools. Attorneys determine the limits of their involvement and the ones I spoke to said they are best used for follow-up tasks, not for having serious conversations and obtaining instructions. This was confirmed by the paralegals, who indicated that the boundaries are not always articulated well and at times they are allocated work that goes beyond what they consider their scope to be.

Multidisciplinary models are particularly effective for triaging matters when they first come before courts. Often social workers attend court to help the lawyer make an assessment of the needs of the matter moving forward; this was the case with a Cafcass social worker I observed in the Family Court in London.
• A child protection matter involving two children, aged 10 and 14, was filed. The children had been removed from their mother’s care and there were allegations that she was a long-term drug user and was involved in criminal activities to support her habit. It was reported that the mother had been uncooperative with child protection authorities. The maternal grandmother attended court and advised that the children had regularly been in her care since birth, often each weekend. She asked to be assessed as a placement option urgently. With the Cafcass worker’s encouragement, and using the lawyer to negotiate, the local authority agreed to complete an assessment in three days. While the lawyers read the material filed and discussed the most immediate legal issues, the Cafcass worker:

• Developed a plan for the three days which involved visiting the mother at home, visiting the maternal grandmother at home, attending visitation to observe the attachment between children and family, meeting the children, talking to their school, talking to the local authority, and possibly preparing a report for submission to the court

• Spoke at length with the mother and maternal grandmother

• Had discussions with a social worker from the local authority, and

• Instructed the lawyer for the children on the evidentiary matters that might need to be pursued before the matter came back before the court.

Agencies that use multidisciplinary approaches also spoke of the need to measure the value or impact of the services offered. The Cafcass example above indicates the potential advantages and benefits of early proactive social work. The QIC-ChildRep program in Michigan is attempting to do this too.

In 2012, the OCR in Colorado partnered with the University of Denver to evaluate the effectiveness of the multidisciplinary law office as a model of delivering legal services to children. One of the research aims was to understand whether there are any potential cost savings that could flow from multidisciplinary models of practice. The study compared the costs of a multidisciplinary children’s legal practice (including all operating costs) with the remuneration paid to independent attorney contractors. The study found that, under the multidisciplinary models of practice, the team members “consistently spend more time on each case type [but] as the work is conducted by a multi-disciplinary team it is less expensive than if an independent child representative was putting in the same number of hours per case”.136 The report concluded that the model provided cost savings, “because they spend more time on a case and if the same time was spent by an independent contractor it would cost more than the flat fee paid”. The evaluation report was, however, unable to conclude that the model provided more effective representation or that the additional time spent

---

136 Donnelly, op cit.
on a case directly benefited the children represented; this was due to the difficulty in articulating measures for ‘effectiveness’.

At the end of each meeting with the legal directors of the children’s law practices I visited, I posed a question: “If the government gave you an extra $1 million tomorrow, how would you spend it?” The responses were consistent: “more social workers to support our lawyers!”

Having regard to both the research I consulted and the feedback I received, the advantages identified in using a multidisciplinary service model are as follows:

- It helps develop a shared ownership of a client’s case and provides a more comprehensive service to clients.
- It ensures continuity of representation through to the final case resolution (lack of continuity is often a reality of our system in Australia as a result of maternity leave and staff movements).
- It helps increase the quality and amount of out-of-court time spent on cases because there are people available to take responsibility.
- There is enhanced accountability for children across the team.
- It is a more efficient and effective means for delivering legal services to children.

There are, of course, important considerations for any children’s legal practice considering a move towards a multidisciplinary practice model. As Budd and Hollander note:

> It raises questions regarding client confidentiality, privilege, mandated reporting, and the role and duties of the attorney which cannot be assigned to other staff. It is important to thoroughly research and consider those issues in order to develop policies and procedures that are respectful of the different professionals and consistent with the professional codes, ethical principles and licensing requirements of everyone involved.\(^\text{137}\)

In Australia, child representatives work closely with family consultants and other experts who are external to their organisation. However, there are tensions that arise from the fact that these independent experts are also court experts and witnesses. This is acknowledged in the AIFS report, which states that:

> The significance and benefits of cooperation and collaboration between ICLs and family consultants/experts were clear themes emerging in the quantitative and qualitative data from both ICLs and non-legal professionals. However, the project data identified complex dynamics relating to accessible, effective and child-focused communication and consultation between ICLs and family consultants/experts, and to inter-professional understandings of responsibilities and role boundaries.

\(^\text{137}\) Hollander & Budd, op cit, p.51
between these professionals, including uncertainty as to how the relationship should actually be managed.\textsuperscript{138}

**Supervision**

The NACC guidelines recommend that managers should provide consistent supervision for all staff by:

- Setting values and monitoring compliance with practice standards
- Ensuring the provision of competent legal representation, and
- Taking responsibility for staff professional development.\textsuperscript{139}

Most of the agencies I visited have incorporated structured supervision practices into their organisation, with some common themes emerging:

- Supervisor-to-staff ratios vary but are typically set at a ratio of 1:5.
- Supervisors meet with attorneys and teams on a regular basis to review case progress, provide advice and resolve differences of opinion between team members. These meetings appear to occur weekly or fortnightly.
- Supervisors are expected to allocate work, know what is in each attorney’s practice, and know when a lawyer is in danger of burnout.\textsuperscript{140} They are frequently asked to take carriage of files allocated to team members, especially when staff attend training or are on leave.
- Caseload adjustments are made to reflect the importance of supervision. At the CLC in Washington, supervising attorney caseloads were reduced by 50%. At the Legal Aid Society, KidsVoice and CLC in California, supervisors are not required to have their own caseload. In exchange, the general expectation is that supervisors are required to know every case in the practices they supervise and to take responsibility for the decisions made. Supervisors, in the eyes of Judith Sandalow, “are the best source of information on practices and what is happening on the ground.”\textsuperscript{141}
- A range of consistent supervision tools have been adopted, and the larger the organisation, the more formal and articulated these tools are.

---

\textsuperscript{138} Kaspiew et al, \textit{op cit}, p.64

\textsuperscript{139} S Dillard \textit{Leadership and Supervision in Child Welfare Office Guidebook, op cit}, p.20

\textsuperscript{140} Interview with Tammy Steckler, Legal Aid Society of New York, 12 November 2014

\textsuperscript{141} Interview with Judith Sandalow, DC CLC, November 2014
• In New York, the Administration for Child Services (ACS) has a staff of 400, including 250 lawyers. ACS reported using a consistent template to review new cases and outline evidence and witnesses required. Its policies also specify expectations for supervisors as well as delegation of decision-making.142

• The Legal Aid Society of New York reported developing a range of delegations for case decision-making to ensure accountability and appropriate supervision of case-related decisions, especially by juniors. For example, newly admitted attorneys are not allowed to appear in court alone for the first six months, and a supervisor must sit next to them or be present in court observing them.

• KidsVoice in Pittsburgh has developed a ‘roadmap’ to guide and ensure consistent decision-making and case management practices.

Not surprisingly, while the management functions of the leaders of these children’s law practices were well articulated, the manner in which they lead their staff was less well articulated but probably more important: “Leadership is ultimately about creating a way for people to contribute to making something extraordinary happen.”143

Child representation can involve challenging casework and traumatic subject matter, and there are risks of vicarious trauma for children’s lawyers. Each practice leader I met was cognisant of these issues and had a range of strategies in place to create an environment that is both motivating and inspirational:

I aim to find each person’s passion, put it in front of them, steer them in the right direction, and let them evolve on their own. It is the leader’s job to tap into what makes each person tick and to inspire people’s creativity every day. A leader is solely responsible for morale in an office environment. A leader must create an environment where people want to be at work.144

There are many aspects of this leadership function: strategic direction, articulating the organisational purpose, ensuring funding, creating nurturing and supportive environments, motivating staff, and balancing the independence of each child representative with the need for organisational accountability. There were many lessons I learned from these legal practice directors about good leadership in generally under-resourced environments. These included the following:

142 Interview with Alan Sputz, Deputy Commissioner, Family Court Legal Services at Administration for Child Services, New York, 16 November 2014
143 Alan Keith, Lucas Digital
144 Interview with Tammy Steckler, op cit
• Morale – There are many ways to celebrate successes, say ‘thanks’ and recognise good work. Many agencies have peer-driven awards (like ‘attorney of the month’). One practice director commented that “people feel great when recognised by their peers”.145

• Rewarding expertise – An example of this was the use of experienced staff to be mentors or to take on new projects. Experienced staff are also often involved in developing new programs, playing a leadership role in training and the development of programs.

• Communication – Strategies include sending weekly updates, convening focus groups to listen to staff at all levels, scheduling regular meetings and casework reviews, and circulating newsletters.

• Evaluation processes – These are useful for monitoring progress, articulating programs and promoting improvements in services delivered.

Recruitment and induction processes

The NACC guidelines state that child representation legal practices “should strive to achieve staff diversity which reflects its client base”. Cultural competency is a training requirement, and most legal practices also seek to recruit a diverse workforce:

Staff members who are culturally similar to their clients are also more likely to identify cultural cues and to understand the clients’ experience through a particular cultural lens ... Recruiting a staff in which many of these cultural differences are reflected helps create an office atmosphere in which all cultural differences are acknowledged and valued. A diverse staff also brings a range of viewpoints or perspectives to casework and office policy, creating a richer dialogue and more informed decisions.146

The Legal Aid Society of New York has taken active steps in this direction on their employment application form. Diversity in staff is reflected from entry level through to senior management.

Among a range of agencies I visited, great emphasis is placed on novel processes for inducting staff and managing their ongoing training.

145 ibid

146 NACC Best Practice Guidelines for Organisational Legal Representation of Children, 2006
• At the **CLC in California**, new attorneys attend one week of classroom training provided by their training director after a few months on the job.

• At **KidsVoice** in Pittsburgh, induction is done as a group process over a three-week period. Mock files allow them to express their expectations of documentation and rules.

• The **CLC in Washington** hires staff as a class in February each year and does not replace them in between. Each class is built up as a team through a six-week induction course which includes a week-long ‘boot camp’ on basic skills and legal preparation. Induction activities focus on building a culture of help, and this is reinforced by the staff sharing offices and other organised activities, such as a team-building scavenger hunt around the city.

• At the **Legal Aid Society of New York**, recruitment is done in batches, with a ‘recruiting season’ which commences each year after the budget is announced. There is a three-week induction program which is offered three times each year. The Society’s website states that “new attorneys become skilled advocates who provide their clients with high quality, comprehensive professional representation. The combination of excellent initial and ongoing training, broad litigation experience and early client contact has enabled the Legal Aid Society to recruit the best lawyers and retain them on the Society’s staff.”147

• The **Administration for Child Services (ACS)** in New York offers provisional employment of staff for 12 months, with three-monthly reviews. All new staff attend a ‘class induction’ and are brought back for more training two months after this. The training unit monitors induction and calls meetings in each office to ensure consistency of orientation.

---

**Specialised sections and divisions**

Most of the legal practices I visited have specialist units and programs. These reflect both the niche or specialist subject matter of some practices and the advantages of designating subject content expertise to a small group which then resources the larger practice. Specialist practices are used to build and develop expertise in areas needed by their client base; they include the following.

**Appeals units**

The Juvenile Rights Division of the Legal Aid Society has an appeals unit that consists of 15 people (one supervisor, 12 attorneys, one paralegal and one secretary). The unit represents clients throughout the appeals process, with a focus on systemic casework in the Supreme Court. The trial lawyer participates, especially in terms of continuing the relationship with the children, but the appeals unit takes the lead role in terms of doing drafting and leading the litigation team. Director

---

Tammy Steckler reported that the practice derives major benefits from its independence, such as fresh eyes, expertise and support, and that it has built a good reputation for appeals.

*Education advocates*

Most practices I visited have at least one specialist education unit or a position focused on work such as:

- Direct advocacy for children’s special educational needs
- Advice on issues such as homeless students’ rights, uniform policy and charter school applications
- The provision of training
- Systemic advocacy
- Working with area schools on inappropriate discipline policies.

The Juvenile Rights Division of the Legal Aid Society has the largest unit, with 10 staff (five attorneys, three social workers and two paralegals). KidsVoice has four specialist education attorneys and is focused on impact litigation. All the legal practices I visited indicated that education advocate roles are an integral part of their practice.

*Special litigation units*

I observed that most of the legal practices have specialist positions covering various areas of law impacting on children. While having an education advocate was most common, there were other specialist positions dealing with mental health, homeless youth, independent living, administrative law, medical issues and medico-legal partnerships.
Implications for Australian practice

I observed many positive examples of good legal management. However, both in Australia and overseas, there is often little time or opportunity for discourse or guidance on good practice. While at times the material in this chapter may seem to be obvious or just ‘plain good sense’, I have documented elements of effective practice in the administration of child representation schemes in the hope that it will be useful to those in similar positions across Australia. Indeed I would recommend that children’s law practices in Australia ensure the presence of the following best practice elements:

• A consistent and intensive quality induction program for all new staff
• Mechanisms for recognising the work of child representatives
• Recruitment mechanisms aimed at attracting staff from a diverse range of backgrounds
• Supervision processes that ensure uniform and skilled supervision for child representatives
• Reasonable caseload limits to enable child representatives to comply with practice standards, and
• Integration of interns/law students into practice in order to develop good relations with law schools and to encourage good lawyers to engage in child representation work.
9. Training and professional development

Recent studies in Australia have questioned the adequacy of accreditation, training and ongoing professional development for lawyers, particularly those who represent children or deal with complex parenting matters involving allegations of abuse and violence. These studies have identified a need for a stronger focus on preparing child representatives for the role through initial training, accreditation and ongoing professional development.

It has recently been suggested that there is a need to consider in Australia the “development of a national accreditation program, together with the expansion of ICL training to cover areas such as child development, skills in dealing directly with children and young people, and skills in understanding and responding to family violence and child abuse”.

The challenge of ensuring that child representatives have an appropriate skill set and knowledge base to discharge their duties effectively is also a challenge internationally. In the US the modern practice of child welfare law is a relatively recent phenomenon. In 2004 the American Bar Association designated the practice of child welfare law as a formal legal specialty. In the words of one of the founding fathers of the child welfare law discipline in the US, Professor Donald Duquette, “What was once a cause has become a profession for highly trained and skilled attorneys”.

I was fortunate to be able to investigate how children’s law has becomes a profession for highly trained and skilled attorneys in the US, and to view training, professional development and accreditation schemes for child representatives.

**University undergraduate programs**

I visited three university law schools in the US and at each attended a children’s law clinic class and observed public law programs. Class sessions covered a range of topics, including law and procedure; hearing simulations; interviewing clients, especially children; social science; and case and trial preparation, including mock trials. In addition to structured learning, students (under supervision) represent children, parents and other parties in court proceedings as part of their practical coursework component.

The course material at universities includes the seminal ‘Red Book’, written by Don Duquette and Anne Haralambie (a certified family and child law specialist), which I have already mentioned. Interestingly, this text also doubles as the syllabus for the national certifying examination offered by the NACC.

---


150 Child Advocacy Law Clinic at University of Michigan and Child Law and Family Advocacy Clinic, Colombia University, Institute for the Advancement of the American Legal System at Denver University, Colorado.
In the US, law students can, with evidence of law school registration, be certified to appear in court under supervision. The US Department of Justice provides government grants to promote opportunities for non-government organisations to work with universities to enhance service provision. It also provides funding for wages to be paid to interns, and for a supervision structure.

These measures have resulted in more active engagement of law student interns across the legal sector. Most children’s law practices I visited throughout the US said they rely heavily on partnerships with children’s law or public law clinics in universities.

There are many benefits to clients that flow from the useful and structured engagement of interns. The use of interns also reflects positive collaboration with law school clinical programs, which themselves provide a level of structure and support for students. Summer internship programs are also a good source of interns, and most child representation practices I visited had seen an increase in intern numbers over the summer period. Most of the children’s legal services I visited said they conduct their own training and orientation for summer interns.

KidsVoice in Pittsburgh reported operating both a Legal Intern Program for law students and a Child Advocacy Specialist intern role for those studying social work. Both programs are accompanied by a training program designed to ensure that interns have the tools, knowledge and resources to successfully advocate on behalf of clients. The application processes are described as “competitive” and are designed for students who are “seriously considering a career in child advocacy”. Other agencies also have formal programs in place and indeed rely heavily on these resources to undertake ‘core’ work.

There were several challenges reported to me regarding the use of interns:

- Infrastructure is required to support and supervise interns.
- Written policies for engaging volunteers and interns are required, including detailed information about how volunteers will be supervised.
- Volunteers and interns need to be trained and closely supervised, which requires additional staff time.
- Volunteers and interns do not have the in-depth knowledge and experience that staff attorneys do, and managers have to ensure they are not used as a substitute.
- There can be a strong reliance on volunteers, which may ultimately discount legal practices’ contention that children need full-time paid legal specialists to represent them.

All of the agencies I spoke to reported that they target former interns in their recruitment processes for lawyers. The Legal Aid Society said that they view the intern program as part of their recruitment strategy to the extent that, at the end of the internship, all interns are formally evaluated and their evaluations form part of the recruitment process for paid positions at a later stage. Leslie Heimov of the CLC in California saw the intern program as directly feeding into hiring processes, with one-third

---

151 Interview with Scott Hollander, Executive Director, KidsVoice, 31 October 2014
of the CLC’s attorneys being former interns. She commented that they receive “hundreds of résumés” each year, and “the centre is known as the only place to work if you want to represent kids”. 152

It was not unusual to meet child representatives who have chosen children’s law as a career path as a result of their participation in university children’s law clinics or internships. Indeed, most leaders of institutional children’s law practices across the US have completed a children’s law clinic at university and have worked in other states in institutional children’s law practices. Many often return to teach at children’s law clinics in law schools.

• Scott Hollander is the Executive Director of KidsVoice in Pittsburgh. He attended the University of Michigan, where he represented children in abuse, neglect and custody proceedings in the Child Advocacy Law Clinic. He has served as the senior staff attorney and pro bono coordinator at the Rocky Mountain Children’s Law Center in Denver, and taught child advocacy and trial skills as an adjunct professor at the University of Denver and Duquesne University law schools.

The connection between law school clinical programs and child representation legal services creates a climate of engagement and professionalises the subject matter in a way we have not yet achieved in Australia. The integration of law students and interns into child representation legal services has many system-wide benefits. Partnerships between child representation legal services with active litigation practices in child protection and family law have the potential to lead to significant improvements in the performance standards of child representatives in Australia.

In-house induction and training

The institutional providers I visited all reported offering extensive, formal induction processes for new attorneys and other staff.

New employees at Legal Aid New York’s Juvenile Rights Practice spend their first three weeks undertaking core training, an intensive program addressing the key elements of representing children. Once attorneys complete the initial core training, they report to an office. As they begin to build a caseload, formal training is continued by the completion of training modules offered for an hour each morning for seven weeks. The modules cover topics such as working with adolescent clients and clients with special needs, educational advocacy, daily life in foster care, interviewing and counselling child clients, and advanced evidence skills.

At KidsVoice, new employees are inducted according to an ‘advocacy roadmap’ which guides staff through the steps required and the resources available throughout the child representation process. 153

152 Interview with Leslie Heimov, Executive Director, CLC of California, LA, 16 October 2014
**Mandatory training as a prerequisite**

Only a handful of jurisdictions I observed require the completion of a mandatory training program as a prerequisite to undertaking child representation work. This perhaps reflects the ability of attorneys to satisfy the panel requirements via their previous work with institutional providers or professional backgrounds working with children in other contexts.

In the UK, completing training (provided by external for-profit agencies approved by the Law Society) is mandatory for those who wish to apply for membership of the Law Society’s Children Law Accreditation Scheme. The curriculum includes topics such as child development and attachment, risk assessment, communicating with children and parties, confidentiality and privilege, roles and duties, advocacy in children’s cases, the use of experts, case management, legislative provisions government roles and procedures, documents, timetabling and hearings.\(^{154}\) It seems, however, that (similarly to Australia), completion of the three-day training program does not guarantee membership of the scheme or future allocation of work.

Jurisdictions I observed in the US and Canada take a similar approach to prospective panel members as that of the UK.

- The ACP program in New York requires prospective panel members to view a 36-hour set of training DVDs entitled *Fundamentals of Family Court/Family Law Advocacy*, which provides an overview of family law representation.
- In Colorado, as a prerequisite to the OCR panel process, all applicants must complete a webinar on the application process.
- In Canada, the OCL requires that, upon joining the panel, new child representatives must attend a one-day orientation in which they are trained in OCL policies and procedures and learn generally how to conduct the various types of cases they will be assigned.

---

\(^{153}\) KidsVoice Advocacy Roadmap 4.21.14
\(^{154}\) [www.clt.co.uk/Course/Children-Panel-Approved-3-Day-Course/](http://www.clt.co.uk/Course/Children-Panel-Approved-3-Day-Course/)
Ongoing professional development

Once on a panel, most jurisdictions require completion of annual continuing legal education.

- The AFC in New York requires current panel members to attend various continuing legal education programs throughout the year, generally of two days’ duration.
- In Canada, the OCL has two mandatory training sessions for legal and clinical agents each year.
- Child representatives in Colorado are required to attend 10 hours of OCR training each year, and CFIs 15 hours. The Chief Justice’s Directive specifies that: “The mandatory CFI affidavit must contain supporting documentation that demonstrates experience, education or skills as it pertains to ‘relevant areas’ including but not limited to:
  - The effects of divorce, single parenting, and remarriage in children, adults, and families;
  - Dynamics of high conflict divorce;
  - Child development, including cognitive, personality, emotional, and psychological development;
  - Child and adult psychopathology;
  - Family dynamics and dysfunction;
  - Domestic violence;
  - Substance abuse;
  - Child abuse;
  - Parenting capacity;
  - Diversity issues;
  - Available services and resources for the child/ren and parties including medical, mental health, educational, and special needs;
  - The legal standards applicable in each case in which the CFI is appointed; and
  - Interview techniques for interviewing children and others.”

In addition to mandatory training requirements, all the agencies I visited appeared to devote considerable resources to ensuring that ongoing relevant training for child representatives is provided:

---

155 Standard 6

156 Except to some extent the UK. There is no external training offered by Cafcass and I was advised that most MCLE training is run by profit-making bodies.
• Most jurisdictions host a variety of guest speakers and offer system-wide training at least quarterly, often coinciding with court training days and holidays.

• Most states hold at least one state-wide conference each year (in Colorado these range from two to three days each).

• Publications are produced regularly, with the AFC in New York publishing a digest of every reported case involving issues relevant to attorneys for children, as well as statutory changes, a bibliography of relevant books and articles, essays on topics and issues important to the field, a letters to the editor section, and announcements of important developments and upcoming training sessions every four months.

• The CCAN office in Washington has a regular ‘brown paper bag’ lunch each month which brings child representatives together to discuss a topic. On the day I visited, there was a group of around 20 child representatives discussing how they work with investigators.

Overseas jurisdictions have access to cutting-edge training, and in my opinion they approach the child representation role in a more sophisticated manner than we do in Australia. Whether this is a product of an embedded multidisciplinary approach or a result of training remains to be seen. I did note that in some jurisdictions courts and practitioners agree upon days to be set aside for training, and on those days the court does not sit and cases are not listed. (These were referred to in Los Angeles as ‘dark days.’) Agreement on training days does not necessarily mean that child representatives train with judicial officers but it does better ensure that training opportunities are capitalised on.

Technology is increasingly being used to deliver training. The OCL in Ontario has moved from two face-to-face training days per year to one, with the second being delivered as a webinar. They reported that there are advantages and disadvantages to its use. It has allowed them to deliver a high-quality learning program using the best guest speakers and specialists available, at a much lower cost to their agency. On the other hand, they have observed that people often do not pay attention and instead watch the content while doing other things; in this way the participants are missing the chance to network and develop relationships, and may not be receiving effective skill-based training.157

Some agencies have developed websites to allow better access to training and resources for child representatives. The OCR, for example, circulates a ‘Training Tuesdays’ newsletter which promotes activities and training.

Not surprisingly, many agencies link the frequency and quality of training provided to the resources dedicated to that function. The Legal Aid Society of New York places a heavy emphasis on training, and is an accredited Continuing Legal Education provider. The organisation has a knowledge management person responsible for sending out a summary of law and legal developments every week, and the internal website is also used as a repository of resources. The organisation also employs a training officer who takes responsibility for some of the following initiatives:

157 Interview with Ashlee Jones, OCL, Denver, Colorado, 21 October 2014
• Coordinating a training program which is available to external as well as internal attorneys and social workers
• Developing training manuals and PowerPoint presentations which can be used by judges and attorneys
• Creating presentations on a range of topics, including evidence, immigration, education, working with LGBTQ youth, and representing adolescents in foster care
• Holding intensive week-long training programs in both Delinquency Trial Advocacy (summer) and Child Welfare Trial Advocacy (spring), both of which focus on enhancing client representation and courtroom advocacy skills.

In addition to there being various state-based opportunities, a number of professional associations play an important role in providing training and education via annual conferences. These include the:

• National Parent Attorney Conference (two days) – American Bar Association Center on Children and the Law
• National Conference on Children and the Law (two days) – American Bar Association
• Annual Conference on Children in the Court System (four days) – Association of Family and Conciliation Courts (AFCC)
• Annual Regional Chapter conferences, e.g. 'Do You Hear What I Hear?', ‘Listening to the Voice of the Child’ (four days) – AFCC Ohio, 2015

Specialist accreditation

In Australia, law societies operate schemes to accredit lawyers who have demonstrated proficiency in a particular area of law.

In the US, the NACC is approved by the American Bar Association to certify lawyers as child welfare law specialists.158 The NACC is a multidisciplinary organisation with approximately 575 members, primarily lawyers and judges. There are over 550 NACC-certified child welfare law specialists across the US.159 The accreditation criteria are as follows:

• Three or more years practising in the field
• At least 30% of the lawyer’s practice consisting of child representation work

158 The ABA defines Child Welfare Law as follows: “The practice of law representing children, parents or the government in all child protection proceedings including emergency, temporary custody, adjudication, disposition, foster care, permanency planning, termination, guardianship, and adoption.” Child Welfare Law does not include representation in private child custody and adoption disputes where the state is not a party.
159 www.naccchildlaw.org/?page=About
Thirty-six hours of mandatory continuing legal education over three-year period on topics related to work

Providing a sample of writing

Clear disciplinary record

Six attorney references and two judge references

Passing an open-book exam based on the Red Book.

The recertification process is an annual administrative process. However, every five years each NACC-certified child welfare law specialist must undertake the full process listed above, minus the exam.

It should also be acknowledged that across the US, as in Australia, many state law societies offer specialist accreditation programs. For example, the State Bar of California offers both family law and child welfare law specialisations.

The AIFS recommends developing in Australia a national accreditation program and expanding training for child representatives to cover areas such as child development, skills in dealing directly with children, and skills in understanding and responding to family violence and child abuse. There is no doubt that specialist accreditation processes are one way of improving practice standards and articulating core knowledge, and this has been successfully achieved by child welfare offices across the US. Regarding the New York jurisdiction, for example, where all agencies have adopted consistent management practices, Allan Sputz, Deputy Commissioner for Family Court Legal Services, commented: “The strength and level of practice in New York has grown since 1990 incredibly because we have invested in training, institutional responses to representation and collaboration between all providers.”

However, specialist accreditation will never be the only answer to improving practice standards. The lawyers likely to undertake specialist accreditation are in most cases not those whose practice standards are complained about.

---

160 AIFS (2013), op cit, pp.105–09

161 Interview with Allan Sputz, ACS, New York, November 2015
10. System-wide initiatives to improve the experience and outcomes for children

The principle focus of my enquiry has been the manner in which child representation services are administered in the US, Canada and the UK. The purpose of this chapter is to report on some system-wide initiatives in the US that have allowed the evolution of good practices and led to better experiences for children.

Both Canada and the US face similar challenges to those in Australia, with two fundamentally different legal systems for family law and child protection law. Challenges are increasingly common for children and families with complex needs whose matters overlap between the family law and child protection jurisdictions. There is a current interest in improving responses to these families in Australia, but addressing the needs of these children and families can be complicated or frustrated by the interaction and division of state, territory and federal laws.162

Arguably, the US has made far greater inroads into protecting vulnerable children in their legal systems. As in Australia, principles of constitutional federalism strictly limit the federal government’s authority to directly legislate in child protection (and family law more broadly).163 However, since 1974 a number of national laws have been passed and interstate compacts signed which provide consistency in approach to the protection of children.164 States must comply with these laws in order to secure the significant amounts of funding necessary to provide services to children and families.

About the interplay between state and federal laws in the US, Judge Leonard Edwards says: “The federal law significantly changes the relationships between federal government and state child welfare agencies and between state child welfare agencies and courts.”165 This can be understood better by considering some of the federal laws passed in the US since 1974.

---

162 The Family Law Council of Australia is currently investigating the opportunities for enhancing collaboration and information-sharing between the family courts and relevant services. See www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/FamilyLawCouncilTe rmsofreference.asp

163 V Sankaran ‘Innovation held hostage: Has federal intervention stifled efforts to reform the child welfare system?’ Journal of Law Reform, Vol. 41, Issue 1, Fall, 2007

164 For example, a national child support system and the Child Abuse Prevention and Treatment Act were introduced. Then later Adoption and Safe Families Act, Fostering Connections Act. Six additional pieces of legislation were passed between 1980 and 2001 that dealt with concerns ranging from ending foster care drift to the inclusion of community agencies in protective service delivery.

**Child Abuse Prevention and Treatment Act**\(^{166}\)

The *Child Abuse Prevention and Treatment Act 1974* (CAPTA) was the first national legislation on child maltreatment. CAPTA brought a federal focus to preventing and responding to child abuse and neglect by offering a tied funding approach. Fifty states have accepted CAPTA funding, but in doing so they have committed themselves to a range of actions and services, such as providing an appropriately trained child advocate for children in every case. States must maintain confidential records of child abuse or neglect reports and investigations, which they must be prepared to release to federal, state and other government offices in need of the information.\(^{167}\)

CAPTA funding has allowed the establishment of a national clearinghouse for child abuse information and a 'Child Welfare Information Gateway' containing a wide range of information and statistics on child abuse and neglect.

**Adoption Assistance and Child Welfare Act**

The *Adoption Assistance and Child Welfare Act 1980* established the first federal rules governing child welfare case management. It introduced a doctrine of 'reasonable efforts', which has a goal of prevention and family reunification. Compliance with the reasonable efforts legislation is tied to funding. Another consequence of this legislation is that children in non-permanent settings must come before a court at least every six months. This has led to a much more advanced discourse around continuity of representation for children and the roles of representatives for children during the time they are in non-permanent foster care arrangements.

**Family Preservation and Family Support Services Program**

The Family Preservation and Family Support Services Program was passed in 1993 to provide funding to assist parents whose children are at risk of being removed. This legislation also created the National Court Improvement Program, which enables state courts to improve and assess methods of court performance. Funding is administered by the Children’s Bureau, which is part of the office of the US Administration of Children and Families and sits in the Department of Health and Human Services. It has been argued that, as a result of this legislation, national performance standards for child representatives and courts have been documented and incorporated into practice directions and/or legislation, and that training has been tailored to national models.\(^{168}\) The impact of this funding cannot be overstated, and is dealt with in greater detail later in this chapter.

---

\(^{166}\) Most recently amended by the *CAPTA Reauthorization Act of 2010*


**Child Welfare Waiver Program**

The Child Welfare Waiver Program, established in 1994, enables state agencies to test new approaches to delivering and financing child welfare services. The Children’s Bureau also grants waivers annually to states through its discretionary grants program.

**Strengthening Abuse and Neglect Courts Act**

The *Strengthening Abuse and Neglect Courts Act 2000* allows state courts to apply for federal grants targeted at reducing court backlogs, automating case-tracking and improving data-collection systems.

**Interstate compacts**

An alternative approach in the US is the creation of reciprocal contractual compacts between states. Compacts are used to reach agreement about the laws that might apply, for example, to a family that has moved between states, especially when there are domestic violence or child protection issues involved. Some argue that interstate compacts should be preferred over uniform laws, because states can adopt uniform legislation and then change its laws, or because courts in different states may over time interpret the provision of uniform laws differently, with no way of reconciling divergent views.\(^{169}\) Whatever the arguments, interstate compacts have proven popular. The Interstate Compact on the Placement of Children, for example, has been adopted by all 50 states across the US with the intention of establishing uniform legal and administrative procedures governing the interstate placement of foster children.\(^ {170}\)

These measures have had a profound impact on the development of a national approach to children involved in the child protection system. As Professor Donald Duquette, one of the founding fathers of this movement towards a national model of practice, says:

> While child welfare law technically remains the province of state law, it is heavily influenced by federal policy. What was once a local practice, varying considerably from state to state, has increasingly become a national model of practice. The benefit of these developments is an increasing uniformity of the legal representation of children.\(^ {171}\)

There are downsides to this approach, however. Professor Vivek Sankaran of the University of Michigan argues that, despite 30 years of federalising child welfare law, the outcomes for children still remain unacceptably poor. He is disappointed that a consequence of this has been a stifling of vigorous debate on the substance of child welfare policy, and that demonstrating compliance is incredibly costly and has taken away resources from the child protection system:

\(^{169}\) Council of State Governments – National Centre for Interstate Compacts

Understanding Interstate Compacts,

http://csg.org/media/1313/understanding_interstate_compacts-csgncic.pdf

\(^{170}\) A Haralambie ‘Interstate and international issues’ in Duquette & Haralambie, *op cit*, p.367

\(^{171}\) *ibid*, p.xxxv
Caseworkers are forced to spend hours completing meaningless paperwork which takes them away from families. And the ‘reasonable efforts’ requirement, which seems great, has produced very little tangible benefit to families. Courts and agencies collude to ensure that the right box on court orders are checked because courts don’t want to lose federal funding.\textsuperscript{172}

Notwithstanding Sankaran’s cautions, there is no doubt that the Children’s Bureau funding has enabled major research and collaboration and has led to the trialling and implementation of innovative methods of improving court performance.

The Children’s Bureau\textsuperscript{173} administers funding of $8 billion per year aimed at projects and initiatives to improve the overall health and wellbeing of children. This funding has had a profound effect across the family law and child protection systems and is a mechanism for better resourcing and educating lawyers on best practice approaches to child representation. This tied funding has seen the establishment of the following:

- \textit{11 National Resource Centres, each with a specific technical focus area:} For example, the National Resource Centre on Legal and Judicial Issues provides expertise to courts, attorneys, Court Improvement Projects and state and tribal agencies on legal and judicial aspects of child welfare.

- \textit{Three National Quality Improvement Centres, which generate and disseminate research and knowledge in specific focus areas:} One of these forms of funding (to the tune of around $6 million) was awarded to the University of Michigan to establish QIC-ChildRep. This program has reported on methods of representing children across America, conducted pilot projects to evaluate and promote consensus on the role of the child’s legal representative, and will shortly conclude its empirically based analysis of how legal representation for the child might best be delivered.

- \textit{Research and resourcing for peak agencies:} For example, $1 million is spent annually to fund a partnership with the National Council for Juvenile and Family State Courts, National Center for State Courts (NCSC) and the Centre for Children and the Law at the American Bar Association. This partnership allows the provision of technical expertise and a national court improvement project to design tests, evaluations and training programs. Howard Davidson, Director of the Centre for Children and the Law, says: “This partnership is critical because it is with well-respected agencies with good leadership and they address issues across the country.”

A National Court Improvement Program allows for the appointment of a coordinator to manage the court improvement process in each state. A multidisciplinary group meets to decide how to prioritise the funds and develop a work plan for the state.

\textsuperscript{172} Interview with Vivek Sankaran, and Sankaran article, \textit{op cit}, p.281

\textsuperscript{173} In Washington DC I met with David Kelly, Child Welfare Program Specialist for Court Improvement, Children’s Bureau, Administration for Children and Families, US Department of Health and Human Services, and some of this information was obtained during that interview.
• In Colorado, an annual grant of $420,000 was used to improve the handling of court cases. This is allocated across 29 best practice teams in the court registries across the state. The mandatory 40 hours of training for CFIs was provided via this funding and it also assists 12 problem-solving courts.

The grant also allows for:

• A range of other training and collaborative activities for lawyers, judicial officers, legal managers and court administration – especially activities designed to improve collaboration such as annual meetings of all stakeholders

• The development of resources – for example, many states had developed Family Court calendars and parent handbooks

• Funding for the development of bench books, practitioner guides, the establishment of national guidelines and practice standards – for example, the American Bar Association’s Center for Children and the Law uses the funding to provide technical assistance, training and research programs addressing a broad spectrum of law and court-related topics affecting children, and in recent times the Association has adopted national standards of practice for child representatives and parent attorneys in both child protection and family law matters.

Implications for Australia

The constant rounds of legislative change and reform in the Australian child protection law and family law systems is indicative of our desire to improve our responses to children and families in the legal system. Addressing the needs of these children and families, however, can be complicated or frustrated by the interaction between state and federal laws. This jurisdictional tension has been addressed in the US by the passage of national laws that provide federal statutory direction to states on the protection of children. But collaborative practices focused on improving the experiences of children and families in the legal system have also come about as a result of funding to encourage it. This funding has also led to the establishment of innovative practices. This approach, if adopted in Australia, might yield better outcomes for the children and families that go between the two systems.
11. Conclusion

Throughout my investigation of the administration and delivery of, and current innovations in, legal representation schemes for children internationally, I sought new ideas about and fresh approaches to child representation practices. Based on my observations, I have made nine broad long-term recommendations of system reforms that might be considered to improve a child’s journey through legal processes in Australia (see Chapter 2: Recommendations).

In Australia we are appointing more child representatives in family law matters than in any of the countries I visited. Even still, funding for the appointment of child representatives in the family law system is a resource that is spread thinly over an ever-increasing number of matters. While undesirable and unacceptable, a lowering of quality as a result of poor funding levels is not surprising.

International practice suggests that structural changes in how we allocate resources could result in the availability of better information at an early stage that will allow courts to make well-informed decisions about children. A review of our intake and allocation processes would allow us to consider whether we are getting the best impact from the resources being allocated. This has the potential to be cost neutral.

We also need to continue to find ways to engage child representatives in a common understanding of the importance of their engagement with the children they represent. But a review of the National Guidelines for Independent Children’s Lawyers might first be necessary to ensure that the guidelines lead to an appropriate level of participation for children in family law processes. Such a review would need to consider the currency of the notion of ‘systems abuse’ as well as whether any legislative amendments are required to ensure an appropriate level of participation of children in family law processes.

Seeking better feedback from children and professionals across the family law system is another step we could take to strengthen our practices. A shared approach to monitoring performance and maintaining accountability for children’s lawyers is required. Such processes should seek feedback across the system and include children and judges.

In the international community there is healthy controversy about the role that lawyers should play in legal proceedings and about models of representation. The debate between client-directed and best interests representation invoked passionate debate wherever I went, and generally one of the first questions I was asked was about our model of representation. I note with interest that many researchers and academics in Australia also contribute to the debate about models, possibly in the hope that a change to the current model may improve the practices of child representatives. I am not as confident. I had the fortune to watch child representatives ply their craft in different counties and with different models, and it left me with a sense that a model is not the panacea to child-inclusive practice. A well-trained, thoughtful, prepared and well-supported child representative is generally able to apply their skills to the most difficult of matters and find a way to ensure that the voice of the child is heard, regardless of the model.
The multidisciplinary teamed approaches I observed have many strengths: they lead to better accountability across legal practices for the services delivered, they ensure that organisational resources are used appropriately and constructively to support the delivery of legal services, and they support a continuity of representation for the child. A trial of multidisciplinary approaches to child representation in Australia would allow us to test whether there are benefits that children could derive from these approaches, and whether they have the potential to be as cost effective as traditional methods of legal service delivery.

In my observations, the most effective legal services for children were those delivered by specialist institutional child representation practices. In Australia, most specialist child representation practices are small arms of much larger organisations. As such the desire to promote best practice in the delivery of legal services to children can at times be subsumed by a broader agenda. Establishing a single-focus agency to take a national leadership role on the representation of children might lead to better oversight and national consistency.

In line with international practice it is time the Australian family law and child protection systems developed principles to guide decision-making about the participation of children in legal processes, including judicial interactions with children. While the extent of a child’s participation in court processes should be determined on a case-by-case basis, guidelines need to be developed to inform decision-making. Such guidelines should articulate appropriate processes and procedures to ensure that, when they occur, judicial meetings are conducted in a safe, transparent and child-inclusive manner.

Appropriate resourcing of child representation schemes, particularly of positions focused on monitoring and supporting the delivery of quality child representation legal services, is critical. The very best agencies internationally dedicate resources to training, monitoring and supervising child representatives on their panels. Arguably, this is an investment that yields good outcomes in terms of the quality of child representation services delivered. There can be no doubt, too, that there is a direct link between reasonable caseloads and effective legal representation of children.

The practice of child representation in the context of family and child protection law could dramatically impact on the lives of thousands of children and families in Australia each year. It is an increasingly complex and specialised field that has in many jurisdictions been recognised as a formal legal specialty. As I travelled through each country, I became increasingly aware of some unexplored partnerships in Australia between universities and the providers of child representation services. Furthermore, partnerships between various children’s legal services with active litigation practices in child protection and family law could potentially offer a range of benefits in Australia, and so should be investigated.

Throughout this report I have referred to findings from the AIFS report. I hope they will be seen in time as a ‘benchmarking’ of perhaps a low point in the quality of child representation services in Australia. By the time I had departed from Australia to undertake my professional journey, the landscape was already changing: we had just concluded the first national conference for child representatives; a national website to provide resources, support and mentoring for child
representatives was under development; new national resources for children and parents to better explain the role of a child representatives were about to be launched; a national stakeholder group on child representation had been convened to discuss system-wide improvements to our child representation processes, with similar state forums were also underway; and processes for panel selections and renewals were under review.

It is in the context that I have undertaken the Churchill Fellowship. It has provided me with a unique opportunity to spend time with people and agencies that have shaped child representation practices across the world. I have returned armed with enthusiasm and a commitment to drive better practice. In reality the journey has only just begun, but I hope that it will ultimately result in improvements across our family law and child protection systems, for the children, families and professionals involved. The appetite for change, and the desire to improve, continues.
12. References


Bala, N & Birnbaum, R Hearing the voice of children in the family justice process: The role of judicial interviews The Family Way, The Canadian Bar Association, April 2013


Fernando, M ‘Children’s direct participation and the views of Australian Judges’, Family Matters, 2013, Australia, Number 92 page 41 - 47


Jackson, J ‘Bridging the gaps between family law and child protection: Is a unified family court the key to improving services for children and their families in the family law system?’, Australian Family Lawyer, Volume 22, Issue 3, Winter 2012 pages 6 - 20

Judge Leonard Edwards Reasonable Efforts: A Judicial Perspective, Centre for Families, Children and the Courts, 2014, USA


Legal Aid NSW Submission to the Productivity Commission *Inquiry into Access to Justice Arrangements*, October 2013

McSweeney, L & Leach, C *Children’s participation in family law decision-making: Considerations for striking the balance*, presented to Ontario Association of Family Mediators, Ontario, Canada, 2011

Moses, M & Townsend, B *Parenting Coordinators: The Good, the Bad and the Ugly – The Role of the Parenting Coordinator*, Tennessee Bar Association, USA, 2012


Ofsted Report *Inspection of Cafcass as a national organisation* 2014, United Kingdom, 2014

Roy, A *Survey of young people on family court processes*, ACT Children’s Commissioner, Canberra, Australia, 2013


13. Attachment 1

1. Children and young people should be at the centre of all proceedings.
   - The child or young person should feel that their needs, wishes and feelings have been considered in the court process.
   - Each decision should be assessed on its impact on the child.

2. Children and young people should be kept safe. They should feel safe and be safe.

3. Every child should be respected and treated as an individual.

4. Children and young people should be informed of their rights.

5. Children and young people should be given the opportunity to meet and communicate with the professionals involved with their case including Cafcass workers, social workers, judiciary and legal representatives.
   - Every child over the age of sufficient age and ability should have the opportunity of meeting with a member of the judiciary overseeing their case.
   - Every child should have sufficient time to build a relationship with their Cafcass worker.
   - Every child should have clear contact details for their social worker/Cafcass worker including office address, telephone number, email address.
   - Every child should have the opportunity through the Cafcass worker/social worker of submitting their views directly to the judge in writing.
   - All children should be able to communicate their wishes and feelings with a judge.
   - Every child (age dependant) should have the opportunity of viewing or being informed about the social worker/Cafcass worker’s report.
   - The child or young person should be consulted about the timing and venue for meetings.

6. Children and young people should be kept informed about the court proceedings in an age appropriate manner.
   - Do not use jargon.
   - Making language clear, understandable and age appropriate.
   - Use methods of communication that children and young people are in touch with.
   - Children and young people should be kept informed as to what stage in proceedings their case is at.
   - The child or young people should be contacted prior to the first hearing.
   - A follow up visit should be made by the Cafcass worker at the end of proceedings to share the judgement, enable understanding and signpost for the future.

7. Every child and young person should have the opportunity of giving feedback through email, text, telephone or written form.

8. Children and young people should be involved in all developments in family justice.
   - Inspection by young people of the family justice services.
   - Involvement in training of all professionals in family justice.
## 14. Schedule of consultations

<table>
<thead>
<tr>
<th>CITY</th>
<th>ORGANISATION</th>
<th>EXPERT</th>
<th>DATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles, California, USA</td>
<td>Los Angeles Superior Court</td>
<td>Judge Trent Thomas Lewis</td>
<td>15 October 2014</td>
</tr>
<tr>
<td></td>
<td>Law Offices of Leslie Ellen Shear</td>
<td>Leslie Shear</td>
<td>15 October 2014</td>
</tr>
<tr>
<td></td>
<td>Children’s Law Centre of California</td>
<td>Leslie Heimov, Julie McCormack</td>
<td>16 October 2014</td>
</tr>
<tr>
<td>Denver, Colorado, USA</td>
<td>Office of the Child’s Representative</td>
<td>Amanda Donnelly, Staff Attorney Ashlee Jones, Training Co-ordinator Linda Weinerman, Executive Director Sheri Danz, Deputy Director</td>
<td>21 October 2014</td>
</tr>
<tr>
<td></td>
<td>Colorado State Court Administrator Services, Court Services Division, Colorado Courts</td>
<td>William DeLisio, Family Law Program Manager</td>
<td>22 October 2014</td>
</tr>
<tr>
<td></td>
<td>Institute for the Advancement of the American Legal System</td>
<td>Rebecca Love Kourlis, Director</td>
<td>22 October 2014</td>
</tr>
<tr>
<td></td>
<td>Denver Juvenile Court</td>
<td>Barbara Bosley, Family Court Facilitator Judge Laurie Clark Magistrate Howard Bartlett</td>
<td>23 October 2014</td>
</tr>
<tr>
<td></td>
<td>National Association of Counsel for Children</td>
<td>Kendall Marlowe, Executive Director Daniel Trujillo, Certification Director</td>
<td>24 October 2014</td>
</tr>
<tr>
<td>Ann Arbor, Michigan, USA</td>
<td>University of Michigan, Child Advocacy Law Clinic</td>
<td>Professor Donald Duquette Professor Vivek Sankaran</td>
<td>26–27 October 2014</td>
</tr>
<tr>
<td>Flint and Detroit, Michigan, USA</td>
<td>National Quality Improvement Center for the Representation of Children in Child Welfare Project</td>
<td>Robbin Pott, Executive Director and Assistant Director for the Detroit Center for Family Advocacy</td>
<td>28 October 2014</td>
</tr>
<tr>
<td>CITY</td>
<td>ORGANISATION</td>
<td>EXPERT</td>
<td>DATES</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>---------------------------</td>
<td>---------------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Flint, Michigan, USA</td>
<td>Flint Courthouse</td>
<td>Judge Gadda</td>
<td>28 October 2014</td>
</tr>
<tr>
<td></td>
<td>Child Advocacy Team – Flint</td>
<td>Terina Carte, CW Law Specialist</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Teresa Holifield, Staff Attorney</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Justin Harper, Case Services Specialist</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cathy Mitchell, Case Services Specialist</td>
<td></td>
</tr>
<tr>
<td>Detroit, Michigan, USA</td>
<td>Detroit Centre for Family Advocacy</td>
<td>Tracey Green, Legal Director</td>
<td>28 October 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shannon Urbon, Staff Attorney/Intern Co-ordinator</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nancy Vivoda, Family Advocate</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jamila Weathers, Social Worker</td>
<td></td>
</tr>
<tr>
<td>Pittsburgh, Pennsylvania, USA</td>
<td>KidsVoice</td>
<td>Scott Hollander, Executive Director</td>
<td>30–31 October 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Jonathan Budd, Associate ED</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ben Cook, Child Advocacy Specialist</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Supervisors (Jen Staley McCrady, Leah Cullen, Steve Dittmer, Jennifer McGarrity)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>North team (Sara Johnson Steeves, Sharon Broker, Tom Welshonce, Theresa Nichol)</td>
<td></td>
</tr>
<tr>
<td>Pittsburgh, Pennsylvania, USA</td>
<td>Allegheny Court, Pittsburgh</td>
<td>Judge Mulligan</td>
<td>31 October 2014</td>
</tr>
<tr>
<td>CITY</td>
<td>ORGANISATION</td>
<td>EXPERT</td>
<td>DATES</td>
</tr>
<tr>
<td>---------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td></td>
<td>American Bar Association Centre for Children and the Law</td>
<td>Howard Davidson, Director</td>
<td>4 November 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sally Inada, Marketing Director</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Scott Trowbridge, Staff Attorney</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Kathleen McNaught, Assistant Staff Director</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Office of Juvenile Justice, US Department of Justice</td>
<td>Julie Grasso, Director</td>
<td>4 November 2014</td>
</tr>
<tr>
<td></td>
<td>First Star and Child Advocacy Institute</td>
<td>Amy C Harfeld, National Policy Director and Senior Staff Attorney</td>
<td>4 November 2014</td>
</tr>
<tr>
<td></td>
<td>Family Court of the District of Colombia, Washington</td>
<td>Wilma Brier, Counsel for Child Abuse and Neglect Office</td>
<td>5 November 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Magistrate Judge Noel Johnson</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Judge Carol Dalton</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sharon Singh, Attorney and GAL</td>
<td></td>
</tr>
<tr>
<td></td>
<td>DC Children’s Law Centre</td>
<td>Judith Sandalow, Executive Director</td>
<td>6 November 2014</td>
</tr>
<tr>
<td>CITY</td>
<td>ORGANISATION</td>
<td>EXPERT</td>
<td>DATES</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>------------------------------</td>
</tr>
</tbody>
</table>
| New York State, USA      | New York State Unified Court Division – Appellate Division | Harriet Weinberger, Director, Attorney for Children Program, 2nd Department  
                           |                                                        | Nancy Guss Matles, Support Services Coordinator, Attorney for Children Program, 2nd Department | 10 November 2014 |
|                          | Legal Aid Society of New York – Juvenile Rights Practice | Tamara Steckler, Attorney in Charge, Juvenile Rights Practice  
                           |                                                        | Dodd Terry, Director  
                           |                                                        | Dawne Mitchell, Director  
                           |                                                        | Marty Feinman, Director  
                           |                                                        | Jonathan Roman, Attorney  
                           |                                                        | Barbara Stock, Attorney  
                           |                                                        | Meridith Sopher, Director Training  
                           |                                                        | Carolyn Kalos, Supervising Attorney | 11, 12 and 14 November 2014 |
|                          | New York Family Court – Manhattan                      | Judge Clark Richardson                                               | 12 November 2014 |
|                          | New York Family Court – The Bronx                      | Judge Eric Pitchal                                                   | 18 November 2014 |
|                          | Colombia University Law School                         | Professor Jane Spinak                                               | 15 November 2014 |
|                          | Administration for Child Services, New York City      | Alan Sputz, Deputy Commissioner, Family Court Legal Services  
                           |                                                        | Ray Kimmelman, Director of Legal Compliance, Family Court Legal Services | 16 November 2014 |
|                          | Center for Family Representation, New York City       | Susan Jacobs, Executive Director, CFR  
                           |                                                        | Maura Keating, Litigation Co-Director  
<pre><code>                       |                                                        | Jill Cohen, Head Social Work | 17 November 2014 |
</code></pre>
<table>
<thead>
<tr>
<th>CITY</th>
<th>ORGANISATION</th>
<th>EXPERT</th>
<th>DATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toronto, Ontario, Canada</td>
<td>Office of the Children’s Lawyer</td>
<td>Lucy McSweeney, Children’s Lawyer for Ontario</td>
<td>20, 21, 24 November 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Linda Feldman, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Martha Heder, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Caterina Tempesta, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Shuah Roskies, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Annemarie Carere, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Elizabeth McCarty, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dan Goldberg, General Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lei Wu, Executive Assistant</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sheila Pabal-Baulieu, Team Leader, Intake</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pam Ciccarelli, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Carolyn Leach, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Martha Heder, Counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sheena Lessard, Articling Student</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Justice for Children and Youth</td>
<td>Mary Birdsell, Executive Director</td>
<td>25 November 2014</td>
</tr>
<tr>
<td></td>
<td>The Child and Family Services Review Board (CFSRB)</td>
<td>Suzanne Gilbert, Chair</td>
<td>25 November 2014</td>
</tr>
<tr>
<td></td>
<td>Office of the Provincial Advocate for Children and Youth</td>
<td>Dianne Cooke, Director</td>
<td>25 November 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Laura Arndt, Director of Strategic Development</td>
<td></td>
</tr>
<tr>
<td>London, UK</td>
<td>Cafcass</td>
<td>Ana Popovici, Assistant Director</td>
<td>1 &amp; 2 December 2014, 27 January 2015</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Steve Diver, Enhanced FCA, SEC Team</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Rachael Wilkinson, Enhanced Family Court Adviser, North London Private Law Team</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family Court, London</td>
<td>Melinda Cassel, Enhanced FCA</td>
<td>2 December 2014</td>
</tr>
<tr>
<td></td>
<td>Cafcass</td>
<td>Anthony Douglas, Chief Executive</td>
<td>27 January 2015</td>
</tr>
</tbody>
</table>