



# Cooperation and Coordination:

An evaluation of the Family Court of Australia's Magellan case-management model

Dr Daryl J. Higgins  
Australian Institute of Family Studies



FAMILY COURT OF AUSTRALIA



Australian Government

Australian Institute of Family Studies

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# Family Court of Australia

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# Australian Institute of Family Studies

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# Glossary of terms

<b>Abuse</b>	<p>In the <i>Family Law Act 1975</i> (Cth) abuse in relation to a child, means: “(a) an assault, including a sexual assault, of the child which is an offence under a law, written or unwritten, in force in the State or Territory in which the act constituting the assault occurs; or “(b) a person involving the child in a sexual activity with that person or another person in which the child is used, directly or indirectly, as a sexual object by the first mentioned person or the other person, and where there is unequal power in the relationship between the child and the first-mentioned person.” (Section 4).</p> <p>For an overview of each state/territory’s definitions, see Bromfield &amp; Higgins (2005).</p>
<b>Applicant</b>	<p>The party who lodges the application for parenting Orders.</p>
<b>Child protection department</b>	<p>The state/territory government department that has statutory responsibility for receiving notifications about harm or risk of harm to children, and—where it meets their threshold—to investigate and take action to protect children (referred to as “the department”). Bromfield and Higgins (2005) provided a detailed description of the name of the department, the legislation under which it operates, the mandatory reporting requirements, grounds for intervention, and a general overview of the intake, investigation and case-management procedures operating in each state and territory in Australia.</p>
<b>Consent Order</b>	<p>An order made by Registrars in chambers, or at an interim or final hearing by the Judge, to which the parties agree to the terms and conditions.</p>
<b>Court</b>	<p>Unless otherwise stated, in this report, the term “the Court” or “the Family Court” refers to the Family Court of Australia.</p>
<b>Court events</b>	<p>This refers to any event at the Court that occurs before a judicial or quasi-judicial officer, including a Judge, Judicial Registrar, Registrar or Family Consultant (e.g., Court-aided mediation, pre-trial conference; interim hearings; direction hearings, and trials).</p>
<b>CPA</b>	<p>Child Protection Authority (CPA) refers to the state/territory department with statutory responsibility for the protection of children.</p>
<b>Docket system</b>	<p>A system of case management that has a single Judge responsible for conducting all interlocutory work, including the final hearing for the matter.</p>

- Expert/other report** Reports from external experts (such as psychiatrists, psychologists), and other professionals (e.g., school teachers) about the child that are provided to the Court or the Independent Children’s Lawyer (ICL).
- Family Consultant** One function of the Family Court of Australia’s Mediation Service (now known as Child Dispute Services), is to conduct family assessments and provide mediation services. The counsellor (“Family Consultant”) has experience in working with families whose members no longer all live together. Their role is to help the Judge understand about the family as a whole and to assist in the identification and exploration of issues in dispute, as well as assist parties to reach agreement about future parenting arrangements where possible.
- Family Report** This refers to the report of the Family Court’s Family Consultant (previously known as a mediator), or other external expert. The Family Report assesses the child and the family, but does not necessarily evaluate the veracity of the child abuse allegations.
- Form 4** Form 4 is the Notice of Child Abuse or Family Violence. Any allegations raised on a Form 4 relating to child abuse are the ‘trigger’ for the matter to be considered for inclusion in the Magellan list. Parties’ representatives detail the allegation of sexual abuse or physical abuse of a child in a Form 4.
- Independent Children’s Lawyer (ICL)** Independent Children’s Lawyer (ICL) refers to the independent legal representation of children’s interests. The ICL’s representation of the interests of children in a case is independent of any legal representation of their parents. According to the protocols with the legal aid commissions in each state/territory, the interests of children are to be independently represented by an ICL in all Magellan matters. An ICL in a Magellan case may be either an ‘in-house lawyer’ from the legal aid commission or a private legal practitioner external to the commission, to whom a grant of legal aid is paid by the commission.
- Interlocutory work** Interim hearings, directions hearings and the case-management work of judicial officers that are not intended to be final. It refers to an order/decreed or direction that is made after the commencement of proceedings and prior to final disposition.
- Jurisdiction** The issues over which a particular court has responsibility to hear matters.

**Legal aid**

The legal aid commission in each state/territory provides grants of legal aid and legal representation to people. The Commonwealth Government provides funding to legal aid commissions to make grants of legal aid in family law matters conditional upon an applicant meeting Commonwealth funding guidelines, including matter type, means and merits tests. Guideline 19 (see Appendix 9) provides for a limit (“costs cap”) on the payment of the costs of a matter (case). Usually, for people who qualify, limits are \$12,000 for professionals to represent parties, and an additional \$18,000 for a child’s representative (also called “Independent Children’s Lawyers”). Although the commissions have discretion to increase the costs cap for a particular grant of legal assistance—if in its opinion undue hardship would otherwise be caused to an applicant for assistance or to a child who is the subject of an order for separate representation—it was agreed that for a trial period in Magellan cases, that these caps would be waived. Legal aid commissions also provide some free non-means tested legal services such as legal information, legal advice, duty solicitor services and community legal education, as well as other means tested services such as family dispute resolution.

**Less Adversarial Trial (LAT)**

“LAT” is based on the Children’s Cases Program (CCP) pilot. The primary focus is to achieve better outcomes for children (see Harrison, 2007; Hunter 2006). There was “growing concern that the traditional adversarial system of determining such disputes... had failed to provide the optimal method for determining children’s best interests, which the Court was statutorily required to do” (Harrison, 2007, p. ix). The main ways in which the less adversarial approach varies from a traditional hearing are that the Judge controls the hearing process and its inquiry, not the lawyers; a Family Consultant (previously known as a mediator) is in Court from the first day as an expert adviser to the Judge and parties; and parties can speak directly to the Judge to tell in their own words what the case is about and what they want for their children. The Judge, rather than the parties or their lawyers, decides how the trial is run. Most of the rules of evidence do not apply (e.g., hearsay may be admissible).

**Magellan**

A case-management model implemented by the Family Court of Australia for responding to cases where one (or both) parties have raised serious allegations of sexual abuse or physical abuse of children in a parenting dispute.

***Magellan-like***

Cases in the Family Court where one or both parties have raised serious allegations of sexual abuse or physical abuse of children in a parenting dispute in a registry where Magellan was not operating at the time.

- Magellan Report** In Magellan cases, a specialist report provided by the state/territory’s statutory child protection department, describing the investigations that have been undertaken, and the current concerns regarding the child/children who are the subject of the matter.
- Parenting matters** Disputes between parents who do not live together that, under s 64B (parenting Orders), deal with a number of matters including with whom a child is to live and how much time a child is to spend with each parent (including the circumstances and timing of parental visits). Prior to 1 July 2006, these were known as “contact/residence” disputes (and prior to that, the Family Law Reform Act 1995 replaced the concepts of custody, guardianship and access with the new terminology of parental responsibility, residence and contact). Although the case-management procedures and case-file data evaluated in this report are prior to 1 July 2006, the new terminology has been used for consistency (participants would often use the new terminology, even though they were describing past practices).
- Part VII, Division 12A** This new Division of the *Family Law Act 1975* (Cth) was inserted by the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth). Assented to on 22 May 2006, and commencing 1 July 2006, it describes the principles for conducting child-related proceedings, and the application of the rules of evidence. The new Pt VII, Div 12A of the Act mandates a less adversarial approach to trials in child-related proceedings. The Children’s Cases Pilot Program, run in the Sydney and Parramatta Registries of the Family Court in 2004-2005, provides the template for the Court’s less adversarial approach under Div 12A. It introduces a number of ‘Magellan-style’ concepts into child-related cases (i.e., intervention of Judges and management of cases). However, Magellan is understood to be an exception to the Division 12A relaxation of the rules of evidence. Because of the seriousness of the allegations, in Magellan, matters are heard using the Court’s usual strict evidentiary guidelines and rules (see Attorney-General’s Department, 2007).
- Parties** This refers to the two litigating parents (although other parties may be litigators, such as grandparents or social parents, and the state/territory statutory child protection department can also be joined as a party to a Family Court proceeding).
- Pre-trial conferences** These are conducted in both the Family Court and the Federal Magistrates Court as a case-management tool, to ensure that matters are ready to proceed to trial, and to increase the certainty of trial dates once they are set. Although not the primary purpose, settlements may occur at pre-trial conferences.

<b>Registry</b>	The particular location of the Family Court, covering a defined geographic area. As well as fixed registries, the Family Court of Australia also conducts circuits to regional areas as required.
<b>Respondent</b>	The party responding to an application for parenting orders.
<b>Rolling list</b>	Multiple matters are listed for a particular period (e.g., a week or fortnight). Registrars over-list cases because many matters settle once the date has been set for a trial, but before the matter is heard. In the usual list, there may be intervals before the next scheduled case commences. When this occurs on a rolling list, however, the Judge immediately hears the next matter in the list.
<b>s 60K</b>	Under this section of the <i>Family Law Act 1975</i> (Cth), the Court must take prompt action in relation to allegations of child abuse or family violence and consider what Interim or Procedural Orders to make to obtain relevant evidence and protect the child.
<b>s 69ZW</b>	The section of the <i>Family Law Act 1975</i> (Cth) that deals with evidence relating to child abuse or family violence. It allows the Court to make an order for the state/territory agency to provide the Court with relevant documents (including the focused report or ‘letter’ from the department outlining the activities they have undertaken and a summary of their current concerns about the child; in Magellan cases, these reports are often referred to as the “Magellan Report”).
<b>s 91B</b>	Under this section, the Court can invite (but cannot compel) a statutory child protection department to participate in proceedings (however, this does not happen often).
<b>Subpoena</b>	A subpoena is issued by a court to require a person to produce a document, or to appear at court to give evidence, or both. A subpoena may be issued at the request of a party, or by the court on its own initiative.

## List of abbreviations

<b>FCoA</b>	Family Court of Australia
<b>ICL</b>	Independent Children’s Lawyer
<b>LAT</b>	Less Adversarial Trial
<b>CCP</b>	Children’s Cases Program (piloted in NSW in 2005)
<b>CRP</b>	Child Responsive Program (previously known as the Child Responsive Model)
<b>FMC</b>	Federal Magistrates Court
<b>Cth</b>	Commonwealth
<b>FLC</b>	Family Law Council

## Author biography

**Dr Daryl Higgins** is a General Manager (Research) at the Australian Institute of Family Studies. He has responsibility for overseeing the management of a range of projects at the Institute, including the National Child Protection Clearinghouse, the Australian Centre for the Study of Sexual Assault; and a variety of projects focused on child protection, child care, children and parenting, family life, as well as research utilisation in the child and family welfare sector. He is also responsible for a major study in collaboration with the Australian Government Department of Families, Community Services and Indigenous Affairs, collecting data from 1000 people caring for a family member with a disability. The study explores the physical, emotional, social and financial impact on families of caring for a relative with a disability, including the impact on family relationships and labour force participation—and the role of social networks and supports.



Dr Higgins is a Registered Psychologist. Before joining the Institute in 2004, he was a Senior Lecturer in Psychology at Deakin University. He completed his PhD in 1998 on the topic of ‘multi-type maltreatment’—looking at overlap in the occurrence of the various forms of child abuse and neglect, and their relationship to psychological adjustment problems in the immediate and long-term. He has been the recipient of a number of research grants, and has published widely on topics including child maltreatment, sexuality, family functioning, disability care, and family violence.

Dr Higgins has a strong research background in qualitative and quantitative evaluation. He has recently completed projects evaluating community development initiatives in Indigenous communities; a series of national consultations to examine how to enhance out-of-home care for Indigenous children and young people, as well as examining the child protection systems in Australia, out-of-home care research, child protection research, and organisational risk factors for child maltreatment.

# Acknowledgements

Two people deserve special acknowledgement:

- ▶ **Leisha Lister**—Executive Advisor to the CEO, Family Court of Australia. Ms Lister provided generous assistance at each stage of the project, and was responsible for managing all interactions with the Court (e.g., setting up focus groups, interviews with Judges, feedback on file-review proforma, arranging for collection of file-review data and supplying other administrative data). Her liaison role was essential to this project.
- ▶ **Sharon Thomas**—a Magellan Registrar in the Family Court of Australia. Ms Thomas is owed my deep gratitude, not only for giving critical feedback on the draft file-review template, but particularly for the very time-consuming, yet vital task of reviewing the files, coding and entering the data into the electronic database for all 160 cases on which the quantitative analyses in this report are based. Ms Thomas was patient yet meticulous. She documented any difficulties she had with coding, and completing the file reviews in record time.

It was a pleasure to work with both of them—without whom this project would not have been possible.

I am also indebted to the Family Court of Australia's National Magellan Stakeholder Committee, which was responsible for commissioning the research, and which acted as a steering group for the project throughout. The Committee is chaired by The Honourable Justice Burr, and contains representatives from the Family Court of Australia, the Commonwealth Attorney-General's Department, Victoria Legal Aid, Victoria Department of Human Services, and National Legal Aid.

In addition, the advice, assistance and feedback from the following colleagues at the Australian Institute of Family Studies (AIFS) is gratefully acknowledged:

- ▶ Dr Matthew Gray—Deputy Director (Research). Dr Gray provided helpful suggestions on the evaluation design as well as support and feedback throughout the project.
- ▶ Dean McCorkell and the IT team—for design of the database to record data for the case-file review; and Ren Adams who assisted with converting FileMakerPro data into SPSS ready for analysis.
- ▶ Dr Rae Kaspiew—Senior Research Fellow. Dr Kaspiew, a lawyer and socio-legal researcher, provided valuable advice on the family law system, as well as detailed feedback on an early draft of the report.

Valuable feedback and advice have also been provided by Professor Alan Hayes (Director, AIFS), Dr Leah Bromfield (Manager, National Child Protection Clearinghouse, at AIFS), Dr Zoë Morrison (Coordinator, Australian Centre for the Study of Sexual Assault, at AIFS), Catherine Caruana (a socio-legal researcher at AIFS), and Associate Professor Bruce Smyth (Australian National University; formerly at AIFS).

Much of the methodology for the case-file review (i.e., an electronic database for coding and collating case-level variables) was piloted by AIFS in the recent report on allegations of family violence in family law matters (Moloney et al. 2007).

Dr Jennifer McIntosh (Director, Family Transitions; and Adjunct Associate Professor at La Trobe University School of Public Health) provided detailed and incisive feedback and valuable advice on the penultimate version of the report.

Finally, I am indebted to all the participants in interviews and focus groups, who generously gave of their time and intellect to contribute to this project.

Although this report has been prepared with the help and support of each of the above individuals and organisations, it was an independent evaluation, and the report—and any errors or omissions—is the sole responsibility of the author.

*In family law disputes,  
the importance of Magellan is that it is an  
integrated case-management system  
that works to reduce trauma for children  
and that keenly focuses the evidence-gathering  
and trial processes on ensuring  
the best outcomes  
for children who may have been abused  
or may be at risk of abuse.*

# Family Court of Australia

The Australian Institute of Family Studies' evaluation of the Magellan Project is a tribute to both the foresight of the former Chief Justice Alastair Nicholson and the hard work of both the original Magellan Implementation Committee and the Magellan Pilot Project Team.

The Magellan Project is a significant contribution to providing better outcomes for children involved in Family Court proceedings. It joins the Family Court of Australia's Child Responsive Model and the Less Adversarial Trial as a showpiece of how a modern and innovative jurisdiction deals with some of its most vulnerable clients.



I am personally delighted that the evaluation has found the Magellan case management model to be successful in achieving its objectives. I am also pleased that, as any good evaluation should, it has shown the Court where it can make further improvements. It is my intention to ensure that those recommendations are made and implemented.

I express my thanks to the Australian Institute of Family Studies for its excellent work, in particular to Dr Daryl Higgins who conducted the evaluation and authored this report, the National Magellan Stakeholder Committee, whose members include representatives from National Legal Aid, Victoria Legal Aid, the Department of Human Services Victoria, the Commonwealth Attorney-General's Department, and past and present judges and staff members from the Family Court of Australia who are members on this committee. I would also like to thank those members of the judiciary and the Court staff who have been, and continue to be, involved in the Magellan Project. Their support and continued commitment to the Project enables the Court to deliver better outcomes to this group of clients. I commend the Report to anyone with an interest in this area of law.

## **The Honourable Diana Bryant**

Chief Justice of the Family Court of Australia

## Australian Institute of Family Studies

The Australian Institute of Family Studies was established in 1980 under the *Family Law Act (1975)*. Until recently, however, the Institute's direct involvement with the Family Court of Australia has been limited. This is surprising given the common legislative origins of both organisations and the historical intersection of their interests. I am delighted that the publication of this report presents another tangible sign of the extent to which the Institute now focuses explicitly on the Family Court system and includes research and evaluation of the work of the Family Court of Australia. This is occurring at a time of major reform of the family law system and its operation that is only paralleled by the energy and focus that resulted in the first Family Law Act.



The Magellan Project was an attempt by the Family Court of Australia to recognise the complex and multifaceted nature of the court processes, especially when they involve serious allegations of sexual or physical abuse of children. Complex problems can only be addressed if one resists the temptation to simplify. The report illustrates how with collaboration, cooperation and above all communication, court processes can be both more efficient, but more importantly, more effective in addressing the best interests of children, including their safety and the security of their family relationships. Dr Daryl Higgins is to be congratulated on a report that breaks new ground and casts the light of evidence and reason on a difficult set of issues. It represents a valuable contribution to the contemporary literature that will have implications both within Australia as well as beyond our shores. I congratulate the Chief Justice and the Family Court of Australia for their commitment to an evidence-informed approach to policy and practice within their jurisdiction.

### **Professor Alan Hayes**

Director, Australian Institute of Family Studies

# National Magellan Stakeholder Committee

A significant proportion of the work undertaken by the Family Court throughout Australia relates to parenting disputes in which serious child abuse allegations (both sexual and physical) have been made. In 1997, the Chief Justice of the Family Court, the Honourable Justice Alastair Nicholson AO RFD, established a working party to explore ways of improving case management procedures to deal with those cases.



A pilot project, known as Project Magellan, was run in the Melbourne and Dandenong registries and an evaluation was conducted, the results of which were very encouraging and as a result, Magellan case management commenced nationally in July 2003. Magellan is primarily a case management system, designed to ensure that the cases which are the most resource intensive, involving the most vulnerable children, are dealt with as effectively and efficiently as possible. In order to manage these complex cases, it has been critical that the Court establish and maintain relationships with key external stakeholders.

As a Family Court Judge who has to hear and make determinations in these matters, having a case management system that is effective is critical for me to be able to discharge my duties. It was particularly gratifying for me to have this independent evaluation demonstrate the ways in which this innovative case management pathway has been positively received by those working in this area. Also encouraging was the demonstrated continued improvements in key areas such as the time taken for these serious cases to finalise in the Family Court. As many readers will know, a lengthy delay in resolution of trial proceedings regarding such matters can exacerbate the problem as further allegations are made requiring investigation.

The benefit for the child/ren involved is clear. At times a lengthy and repetitive pre-trial assessment process can amount to a form of institutional abuse of the child/ren. They too will be significant (and perhaps the most important) beneficiaries of the earlier resolution achieved by Magellan.

I have personally found that Magellan case management has assisted me in being able to more easily hear and determine these cases than before as I am now less often faced with the serial allegations and serial reports that I previously received. Negotiating the maze has frequently become less troublesome. I trust that upon reading this report, the reader will understand the complexity of the environment in which issues are being raised and the types of matters being heard and the importance of developing, implementing and sustaining novel approaches to case management such as Magellan. As the Chair of the National Magellan Stakeholder Committee, I would like to thank all who have been involved in this project and to all who contributed to this evaluation.

## **The Honourable Justice Rodney K. Burr AM**

Judge of the Family Court of Australia  
Chair, National Magellan Stakeholder Committee

## Key results—an overview

Magellan is an interagency collaborative model of case management in the Family Court of Australia for cases where serious allegations are raised about sexual or physical abuse of children in post-separation parenting matters. Based on a successful pilot project, Magellan has been rolled-out across the Family Court of Australia's registries since 2003. The aim of the current study was to evaluate Magellan against its intended goal of being an effective mechanism for responding to such allegations.

Case-file data from 80 Magellan cases that had progressed through a Magellan list were compared with 80 *Magellan-like* cases drawn from registries prior to Magellan being implemented there. Results showed that:

- The average Magellan case took 7.3 months to finalise from the date it was included in a Magellan list, which is only slightly longer than the prescribed timeframe of 6 months.
- Generally, the Court and other agencies processed Magellan cases differently from *Magellan-like* cases, in line with the agreed Magellan protocols.
- There were differences among the registries in protocols, case-management procedures, and some of the success indicators (e.g., timelines).
- Magellan cases had greater involvement of the statutory child protection department.
- Magellan cases had an average of 6.2 Court events, compared to 10.9 for *Magellan-like* cases.
- Magellan cases were dealt with by 3.4 different judicial officers on average, compared to 5.7 for *Magellan-like* cases.
- Magellan cases were more likely to settle earlier.

Magellan matters are resolved more quickly:

- The total duration of cases, from the date of application to finalisation was shorter by an average of 4.6 months.
- From the date the Court was advised of the allegations to the case outcome, Magellan cases were resolved 3.4 months faster.

Data from focus groups and interviews with 51 key stakeholders (Magellan Judges, Registrars, mediators, lawyers, police, child protection department, etc.) supported the case-file analysis. The following were identified as key elements of Magellan:

- ▶ cooperation between all the agencies involved (particularly the statutory child protection departments);
- ▶ Court timeliness and prioritisation of Magellan cases;
- ▶ early reports from the child protection department (the “Magellan Report”);
- ▶ good individual case management (Judge-led);
- ▶ a dedicated Magellan Registrar;
- ▶ un-capped legal aid funding;
- ▶ Independent Children’s Lawyers to independently represent the interests of children; and
- ▶ a focus on children’s best interests.

Although there are opportunities for making improvements and assessing the impact on children and families, Magellan is a successful case-management process for responding to allegations of child abuse in parenting matters.

# Executive summary

## Background

Magellan is a case-management pathway in the Family Court of Australia for cases where serious allegations are raised about sexual or physical abuse of children in post-separation parenting matters. In 1997, the Chief Justice of the Family Court, The Honourable Alastair Nicholson, appointed a committee, led by The Honourable Justice Linda Dessau, to develop a new way for the Court to manage these cases. This was done to address the concerns that the Court had about the number of cases involving allegations of child abuse, and the capacity of its case-management procedures to effectively and efficiently respond to these concerns. The pilot Magellan project commenced in 1998.

The Magellan case-management processes are overseen by the Magellan Team, which consists of the Magellan Judge(s), Judicial Associate(s), Magellan Registrar, the Manager of the Child Dispute Services (which provides Court clients with the services of a mediator, now known as a “Family Consultant”), and a Client Services Officer (Case Coordinator). Under the direction of the Magellan Judge(s), the team handles the case from start to finish, with significant resources directed to the case in the early stages, with an aim of resolving the case within six months.

Based on a successful pilot project, Magellan has been rolled-out across the Family Court of Australia’s registries since 2003, under the direction of the Family Court of Australia’s National Magellan Stakeholder Committee. This committee was responsible for commissioning the research, and acted as a steering group for the evaluation throughout. The Committee is chaired by a Family Court Judge (The Honourable Justice Rodney Burr), and contains representatives from organisations involved with and concerned about parenting matters involving serious allegation of child abuse, including the Commonwealth Attorney-General’s Department, Victoria Legal Aid, Victoria Department of Human Services, and National Legal Aid. In August 2006, the Committee called for expressions of interest, and in September, commissioned the Institute to evaluate the implementation of Magellan.

## Aim

The overall aim of the study was to evaluate the Magellan case-management model against its intended goal of being an effective mechanism for responding to serious allegations of sexual abuse or physical abuse of children in post-separation parenting matters before the Family Court of Australia.

## Method

Two methods of data collection were used to explore this core question:

- 1 Quantitative data were extracted from a systematic file review of 80 recently completed Magellan cases (prior to 1 July 2006) that had progressed through a Magellan list in one of three registries (Adelaide, Brisbane and Melbourne), and were compared with 80 *Magellan-like* cases that also contained serious allegations of sexual abuse or physical abuse of children. These cases were retrospectively rated by an experienced Magellan Registrar as meeting the criteria for inclusion in Magellan, but were drawn from two registries where Magellan had not been implemented at the time the case was being processed (Parramatta and Sydney).
- 2 Qualitative data were gathered through interviews and focus groups with 51 key stakeholders from the Family Court of Australia (Judges, Registrars and Family Consultants/Mediators), as well as professionals from related organisations who are involved in parenting disputes where serious allegations of sexual abuse or physical abuse of children are made. These included legal aid, police, the state/territory child protection departments, and private lawyers. The emphasis of the interviews and focus groups was on Magellan as a case-management system and the perspectives of the participants concerning its effectiveness, successful features, barriers to implementation, and limitations. As well as conducting interviews and focus groups with Judges and stakeholders concerning Magellan cases in three registries (Adelaide, Brisbane and Melbourne), Judges recently appointed to hear Magellan cases in two registries (Parramatta and Sydney) were interviewed about *Magellan-like* cases. A focus group of key stakeholders was also held in Sydney concerning *Magellan-like* cases (and their experiences of Magellan since its implementation).

# Key findings

## Quantitative results: case-file analysis

Key differences between Magellan and *Magellan-like* cases were found. Magellan matters:

- ▶ are resolved more quickly (the total length of cases, from the date of application to finalisation is shorter by an average of 4.6 months; from the date the Court was advised of the allegations to the case outcome, Magellan cases were 3.4 months faster);
- ▶ have greater involvement of the statutory child protection department (as demonstrated by the number of investigations, the evidence on file of the department planning to give evidence at trial, and the preparation of a short, focused “Magellan Report” that is presented to the Court early in the matter);
- ▶ have fewer Court events;
- ▶ are dealt with by fewer different judicial officers; and
- ▶ are more likely to settle early.

From the date the case was included in a Magellan list, the average case took 7.3 months, which is only slightly longer than the prescribed timeframe (i.e., 6 months).

Although there were important differences between Magellan and *Magellan-like* cases, differences were also apparent among registries within the two groups, suggesting that other factors may be playing a role in influencing the progress—and outcome—of cases (such as individual practices of Court personnel and other stakeholders, different workloads and Court resources, as well as the degree of ‘model’ fidelity in relation to the Magellan case-management system).

## Qualitative results: key themes from interviews and focus groups with stakeholders

Participants identified the following as key elements of the Magellan model:

- ▶ cooperation between all the agencies involved (particularly the statutory child protection departments);
- ▶ Court timeliness and prioritisation of Magellan cases;
- ▶ early reports from statutory child protection departments (the “Magellan Report”);
- ▶ good individual case management (Judge-led);
- ▶ a dedicated Magellan Registrar;
- ▶ un-capped legal aid funding;

- ▶ Independent Children’s Lawyers to help gather information early, foster discussions and represent the interests of children; and
- ▶ child-focused processes (timely, good quality reports from Family Consultants and other experts).

Consistent with the quantitative data, other themes that emerged from the interviews and focus groups about the success of Magellan included:

- ▶ matters were generally believed to finalise more quickly than before;
- ▶ there was better coordination and consistency of approach through Judge-management (but with a concomitant higher burden and risk of burnout for Judges); and
- ▶ relevant information was available in a timely manner (particularly the focused “Magellan Report” from the statutory child protection department).

A speedy response by the Court was seen as critical to the success of Magellan; however, this relies on good cooperation, and the provision of all relevant information from other agencies. In particular, the importance of receiving a timely summary about the actions taken by the statutory child protection department, their views about the veracity of the allegations and any concerns held about future risk to the child was emphasised. Maintaining knowledge about the roles, interactions and points of contact between agencies—and the goodwill that builds up between participants in the stakeholder committees—is also important, particularly when personnel in the intersecting agencies change.

Some opportunities for improvement were noted (such as listing practices, ensuring greater national uniformity, and availability of sufficient judicial time); however, participants still felt that Magellan was a success.

Given that the principal focus of the current evaluation was on procedural issues, opportunities for further evaluation exist, particularly in relation to the cost of Magellan, the views of parents and children, and longer-term outcomes of cases (i.e., whether Magellan is successful in securing the safety of children and, where allegations are not substantiated, in reassuring parents who might otherwise have concerns).

## Conclusions and implications

Magellan sits among a complex set of expectations, at the intersection of a range of agencies and systems involved in responding to issues of child abuse allegations in family law matters. It is important to understand the role of family courts—to resolve private law issues, such as parenting matters, in children’s best interests—and how this differs from the role of police, child protection departments, forensic investigators, Directors of Public Prosecutions, and criminal courts in protecting children, enforcing laws and bringing criminals to justice.

Each of the agencies and systems has overlapping interests, yet distinct responsibilities. It was this “black spot” intersection that necessitated a case-management system to coordinate and bring together information from each of these areas to ensure that private family law disputes are resolved in a timely way that provides for the safety and ongoing best interests of children. Central to ensuring the best interests of children is the need to balance their right to know and have a relationship with both parents, with the paramount need to be protected from harm. Despite research in the social sciences that shows the frequency with which sexual abuse and serious physical abuse of children occurs, significant difficulty exists in proving the occurrence of child abuse, as the private nature of the crimes result in a lack of evidence that meets the requirements of criminal courts.

Participants thought that the Magellan case-management pathway was an excellent one, and that, to the degree that it was implemented faithfully and adequately resourced (particularly with appropriate judicial time, while avoiding the risk of overburdening Judges), it was achieving its aims. Implementation issues were raised about the lack of fidelity to the original model (especially in Queensland), and the need for high quality, timely reports (and oral evidence) from experts.

Magellan matters were believed to be shorter, often resolving without judicial determination. Participants felt that Magellan delivers better outcomes for children and families. A critical element to this is the tight case-management procedures, particularly the role of Magellan Judges and Registrars. The importance placed on Magellan matters by the Court is reflected in the role that Judges play, and this was seen as one of the ways that the process gives parties a sense of procedural fairness. Through the Magellan stakeholder meetings and the protocols outlining the role of the state/territory statutory child protection department in providing the short, focused “Magellan Report”, cooperation with the statutory child protection department was seen as critical to the success of Magellan.

When serious allegations of sexual abuse or physical abuse of children are raised in parenting matters, the Magellan case-management system is a significant improvement to the Family Court’s previous procedures for handling these matters. There are areas for improvement and opportunities to ensure adequate resources (in terms of finance, personnel and ‘corporate history’) for its sustainability. However, the results of this evaluation support the findings of the pilot study, which also showed Magellan’s success—particularly in reducing the length of matters, and the number of Court events, as well as satisfaction of the professional stakeholders involved (Brown, Sheehan, Frederico, & Hewitt, 2001).

Magellan needs to be understood within the broader socio-legal framework that connects child protection with family law dispute resolution. At the individual level, a lack of understanding of how the Family Court interacts with police, child protection departments, juvenile courts and criminal courts sees Magellan often subject to unrealistic expectations by parties.

The Family Court is not a forum for investigating abuse allegations or determining the historical accuracy of one or both parents' allegations. It is not within the current mandate of the Family Court to do so, even within the Magellan case-management model. However, the limitations of the broader child welfare and justice system are such that further detailed forensic information is often needed by the Family Court (i.e., via the "Magellan Report") about not only the past allegations, but views on the safety of the child (a) in the current arrangements; and (b) if there was any alteration to the arrangement. Relying on a statutory child protection department's case outcome of 'substantiated' or 'unsubstantiated' is not sufficient, as this does not necessarily mean the same thing as the child was 'abused' or 'not abused'. Along with the Family Report and other expert opinions, the "Magellan Report" from the statutory child protection department is critical to making appropriate decisions about the child's living arrangement that fully account for all of the risks and what is in their best interests.



# Introduction

Internationally, family courts have not been regarded as an avenue for resolving family violence until recently. Yet it has been increasingly recognised by the Family Court of Australia that this was a key part of the Court's work (Harrison, 2007). In response to this, the Family Court of Australia established the Magellan project to more effectively resolve family disputes and improve the case-management processes for post-separation parenting disputes involving serious allegations of sexual abuse or physical abuse of children. In 1997, the Chief Justice of the Family Court, The Honourable Alastair Nicholson, appointed a committee, led by The Honourable Justice Linda Dessau, to develop a new process for the Court to manage these cases.

The pilot 'Magellan project' commenced in June 1998 and was conducted until December 2000, using 100 cases from the Melbourne and Dandenong Registries in Victoria (Brown, Sheehan, Frederico, & Hewitt, 2001). The Magellan case-management pathway consisted of a team of Judges, Registrars and Mediators (now known as "Family Consultants") who handled these cases from start to finish, with significant resources directed to each case in the early stages; with an aim to resolve each of them within six months (see Box 1.1).

## Box 1.1

### What is Magellan?

Magellan is a world-first experimental project, designed to address the needs of children and families where serious allegations of sexual abuse or physical abuse of children are raised during parenting disputes (previously known as custody and access disputes) in the Family Court of Australia. A consortium of agencies in Victoria developed and implemented the new approach in a pilot project of 100 cases. This was evaluated in 2001 before the case-management approach was progressively rolled out nationally. Like the eponymous Portuguese-born explorer whose voyage became known as the first successful attempt at world circumnavigation, Magellan is about charting new waters and exploring new territory to provide better outcomes for vulnerable children and families.

#### Magellan Team

The Magellan Team consists of the Magellan Judge(s), Judicial Associate(s), Magellan Registrar, the Manager of the Child Dispute Services (which provides Court clients with the services of a mediator, now known as a "Family Consultant"), and a Client Services Officer (Case Coordinator).

## Magellan Steering Committee

In order to establish and maintain critical relationships with external stakeholders (which is a key feature of the Magellan model), each registry has a Magellan Stakeholder Committee, chaired by the Magellan Judge. The committee has representatives from the Family Court's Magellan Team, as well as representatives from that state/territory's legal aid commission, child protection department, and police service.

## Overview of Magellan procedures

As soon as practicable after the Court is aware of the allegations, the Court:

- appoints an Independent Children's Lawyer (ICL);
- considers what (if any) Procedural or Interim Orders should be made to:
- protect the child or any of the parties to the proceeding; and
- enable appropriate evidence to be obtained about the allegation as expeditiously as possible; and
- requests the intervention of an officer of the relevant state/territory child protection authority, and a report on the allegations (referred to as the "Magellan Report").

Throughout the process, the Court is required to deal with the issues raised by the allegation as expeditiously as possible.

On the first return date, the purpose of Magellan is explained to parties. A representative from the Court's Child Dispute Services provides assistance and advice, as requested, to the Magellan Judge and the Magellan Registrar, particularly in relation to whether a Family Report is needed.

## Key events in the case management pathway

The key events and indicative timelines for each stage in the Magellan case management pathway are illustrated in Figure 1.1. As well as showing the sequence of Court events, the timeline identifies the interactions that occur with each of the key agencies external to the Court. This includes appointment of an ICL; notification of the allegation to the statutory child protection department and request for a "Magellan Report" from them about their investigations and their current concerns; ordering the Family Report, as well as other reports from experts. It also highlights that cases should be finalised within 6 months.

**Source:** This summary of Magellan is based principally on the "Magellan Manual" (Family Court of Australia, 2007), with additional information based on the evaluation of the pilot project by Brown, Sheehan, et al. (2001), as well as results of the current evaluation.

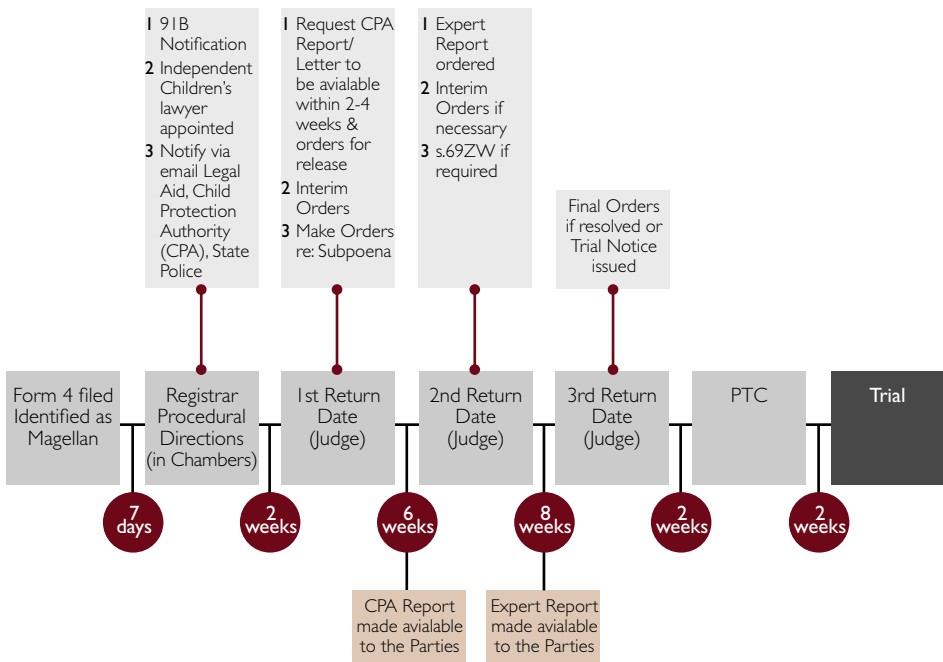
Following the success of the Magellan pilot in Victoria, the Magellan case-management approach was extended nationally. In 2003, the Magellan case-management approach was implemented in all registries except New South Wales (NSW). NSW commenced its own limited pilot in 2003, and expanded its coverage in 2006. The current evaluation of its implementation and whether it has achieved its aims is timely.

In 2003, the Family Court of Australia established a National Magellan Stakeholder Committee to oversee the roll-out of Magellan across all registries. The committee is chaired by The Honourable Justice Burr (a Judge who manages and hears Magellan cases in the Family Court of Australia). It has representatives from organisations involved with, and concerned about, parenting matters involving serious allegations of child abuse. It includes representatives from the Family Court of Australia, the Commonwealth Attorney-General’s Department, Victoria Legal Aid, Victoria Department of Human Services, and National Legal Aid.

In August 2006, the committee called for expressions of interest to conduct an evaluation of the Magellan project. The Australian Institute of Family Studies was commissioned to conduct the evaluation. The Attorney-General’s Department provided the Court with some funding for the evaluation. The Family Court also provided considerable resources in kind, by way of staff to assist in the coordination, management and data-input for the evaluation.

Figure 1.1 provides a quick summary of the major steps in the timeline of the Magellan case-management pathway.

**Figure 1.1 Magellan timeline**



Source: Family Court of Australia (2007)

## Aim of evaluation

The purpose of this evaluation was to examine the effectiveness of the Family Court of Australia's Magellan case-management system for post-separation parenting disputes (i.e., residence and contact) where serious allegations of sexual abuse or physical abuse of children have been raised. The overall aim of the project was to gather feedback from stakeholders—as well as evidence from a systematic case-file review—as to whether the Magellan case-management model is achieving its intended goal of providing a more effective mechanism for responding to these allegations. The case-file review compared cases managed in a Magellan list with comparable cases (containing allegations of sexual abuse or serious physical abuse) from the same time period from other registries in which Magellan was not yet in place.

Before describing the evaluation method, it is important to have a clear understanding of the family law system, as well as the other socio-legal and governmental systems involved in protecting children from serious abuse. The complexity of these intersecting systems presents a particular challenge when allegations of sexual abuse or physical abuse of children are raised in parenting matters before a family law court. When parents cannot agree on the living arrangements of the children, the Court needs to determine where the children live, and who they see (and whether such contact needs to be supervised to ensure children's safety and wellbeing). It is important that all relevant information from each of the agencies responsible is available to the Court when making such decisions.

A comprehensive review of the literature was not part of the scope of the current evaluation. However, in order to understand the context within which Magellan is operating, it is important to provide a brief review of the relevant literature, as well as an overview of the organisations and social systems involved when family law and child protection concerns overlap.

In the following sections, a very brief overview of the social science literature on child sexual and physical abuse is provided. Understanding the factors that affect the prevalence of abuse and the response of adults and other authorities to its disclosure is critical to both the context of why Magellan was needed, as well as understanding the perspectives of stakeholders about its success. A broad overview is then provided of the roles and responsibilities of each agency/system that intersect in Magellan cases: the family law system, state/territory legal aid commissions, state/territory statutory child protection departments, juvenile courts, police and criminal courts. It is because of the overlapping interests, yet distinct responsibilities and areas of jurisdiction, that a coordinated approach was needed. The operation of Magellan is also discussed in the light of recent developments in the family law system in Australia.





# Brief background literature

## Social science expertise on child abuse

In order to understand the context of child abuse allegations in family law matters, it is important to have some background information about child abuse. Since the publication of a report on ‘battered child syndrome’ in the early 1960s (Kempe, Silverman, Steele, Droegemueller, & Silver, 1962), research in the social sciences has developed firstly in the area of physical abuse of children, and then in the area of sexual abuse (which was a major focus in the 1980s and early 1990s). This was followed by examination of the problems of psychological/emotional abuse and neglect, and the impact on children of exposure to family violence (Higgins & McCabe, 2000). Research has been conducted in disciplines such as psychology, sociology, social work and gender studies. There is an extensive body of literature on the nature and extent of child abuse, the factors that affect its prevalence and the response of adults and other authorities to its disclosure. As Magellan cases most commonly involve allegations of sexual abuse and to a lesser extent, physical abuse, this will be the focus of the following discussion.

## Prevalence and incidence

There is little accurate information about the prevalence of child sexual abuse or physical abuse in Australia (i.e., the total number of people who have ever experienced these forms of child abuse). However, the number of reports of suspected child abuse and neglect made to statutory child protection departments in each state/territory do give some indication of the incidence (or numbers) of children who may be abused or neglected in any year. In 2005-06, there were 266,745 reports made to state/territory child protection departments, of which 55,921 were substantiated (AIHW, 2007). The breakdown of maltreatment types is not aggregated across jurisdictions because of differences in definitions and reporting mechanisms. However, in NSW (which is the largest jurisdiction in terms of both population and number of substantiations): of the 29,809 substantiations, sexual abuse accounted for 11.6% of substantiations (3,451), and physical abuse accounted for 19.2% (5,718). The remaining 69.2% of substantiated reports to the NSW Department of Community Services were categorised as emotional abuse or neglect.

Researchers accept, however, that notification and substantiation statistics are likely to seriously underestimate the true extent of child abuse, particularly in relation to sexual abuse. This is because of the private nature of the crime and the difficulties for children in

disclosing and being believed, which arise from the power imbalance inherent in abusive situations that may silence victims (particularly when the offender is a family member).

As discussed in the next chapter, reports to police are also believed to significantly underestimate the true extent of child sexual abuse and physical abuse.

Because of the problems of under-reporting to police or statutory child protection authorities, researchers have used population-based, self-selected or clinical samples of adolescents, young adults, or older adults to understand the frequency with which various types of abuse and neglect are experienced. However, there are many issues that affect the proportion of respondents who indicate they have experienced different types of maltreatment. These issues include:

- ▶ whether maltreatment is defined objectively or subjectively (i.e., whether researchers provide behaviour-specific descriptions of situations that meet their criteria, a pre-determined age discrepancy or whether participants are left to define for themselves whether they believe they were abused);<sup>2</sup>
- ▶ how broadly maltreatment is defined (e.g., whether non-penetrative sexual behaviours are included);
- ▶ characteristics of the research sample and selection process (e.g., whether participants were recruited from a hospital or therapy setting);
- ▶ how maltreatment is measured; and
- ▶ the reporting source (self-report or information provided by another person such as a parent, partner, therapist, or teacher).

Combined with the problem of retrospective reporting and other methodological problems (e.g., response rate to surveys), comparison between the findings of different research studies is difficult. Based on international prevalence studies, together with smaller-scale incidence studies, researchers estimate that up to 1 in 6 boys and 1 in 4 girls experience some form of sexual abuse prior to age 18 (see Dunne et al., 2003; Finkelhor, 1994; Higgins & McCabe, 2000). Some of these studies are briefly reviewed [below](#).

Dunne, Purdie, Cook, Boyle, and Najman (2003) reported on a population-based survey of men and women in Australia which showed that prior to age 16, 33.6% of women and 15.9% of men experienced a non-penetrative act of sexual abuse, and 12% of women and 4% of men described having experienced an unwanted penetrative act.

In a recent nationally representative survey, the ABS Personal Safety Survey 2005, presented retrospective data on sexual assaults experienced before the age of 15. It showed that 12% of women and 4.5% of men had experienced childhood sexual abuse. The survey showed differences in who perpetrates sexual abuse of girls and boys. For girls, the most common perpetrator was a male relative (51.6%): either their father/stepfather (16.5%) or other male relative (35.1%). Other common perpetrators were

family friends (16.5%) and acquaintances or neighbours (15.4%). However, for boys, intrafamilial abuse was less common (21.4%), with fathers/stepfathers making up 5% of perpetrators, and other male relatives 16.4%.<sup>3</sup>

Boys were more commonly abused by a non-family member—either a family friend (15.6%), acquaintance or neighbour (16.2%), or stranger (18.3%) (see Morrison, 2006).

This is consistent with findings from the Australian component of the International Violence Against Women Survey, which showed that 18% of women reported being sexually abused before the age of 16: almost 2% of women identified parents (fathers in all but two cases) as the perpetrators, while a further 16% identified someone other than a parent (ACSSA, 2007).

Physical abuse of children is also difficult to measure because physically abusive parental behaviours occur along a continuum from relatively common forms of physical punishment through to behaviours that cause medical injury and are life threatening or fatal. In a small-scale study of Australian parents, responses showed that according to parent self-report, 30% of children were experiencing physical behaviours that could be classified as ‘abusive’, compared to 10% of children subjected to any form of sexual behaviour (Higgins & McCabe, 1998). However, studies of adults’ retrospective reports of their own childhood experiences show higher rates of child maltreatment than when relying on data from parent reports (Higgins & McCabe 2000).

There is an emerging body of literature on ‘multi-type maltreatment’, which shows the overlap in occurrence of sexual abuse, physical abuse, psychological abuse, neglect and exposure to domestic/family violence (see Higgins & McCabe, 2000). These types of maltreatment exist on a continuum, with effects that range from the relatively benign through to traumatic and even fatal outcomes.

The extensive social science literature, particularly in relation to child sexual abuse, highlights: (a) the frequent occurrence of abuse, including intrafamilial sexual abuse and physical abuse; (b) its occurrence in all manner of family types; and (c) the frequent hidden nature of sexual abuse and therefore evidence of its occurrence (see Cicchetti & Carlson, 1995; Finkelhor, 1994). It is also well documented that child abuse—and in particular, both sexual and physical abuse—has wide-ranging negative effects on children and adult survivors. It is accompanied by overt or subtle psychological pressures to remain silent or deny the experience, because of shame, fear of disbelief, or threats of violence if it is disclosed (McDonald, 1998; Sorensen & Snow, 1991). For a general discussion of the problems of reporting sexual assaults against children and adults, see Neame and Heenan (2003).

## Issues in disclosing sexual abuse

In examining the disclosure process of 116 children interviewed in an outpatient sexual abuse treatment clinic whose allegations were confirmed by medical evidence, a conviction, or a confession/legal plea by the offender, Sorensen and Snow (1991) found that the typical disclosure was a process, not a discrete event. Almost three-quarters (72%) initially denied the event. This was usually followed by a tentative disclosure, before the child finally gave a detailed, coherent account of the abuse. Further, they found that 22% of children recanted their allegations, but of these, 92% later reaffirmed their allegations. Only 11% of these confirmed cases of abuse commenced with an active disclosure.

In a sample of children referred for sexual abuse assessment, Keary and Fitzpatrick (1994) found that only 14% of children who had *not* made prior disclosures made a disclosure of abuse for the first time during a formal assessment by a multi-disciplinary sexual abuse assessment team. Similarly, Hershkowitz, Lanes, and Lamb (2007) found that in children who made disclosures of sexual abuse, more than half of them delayed disclosure, particularly if they predicted or experienced negative reactions. For a discussion of practice issues in responding to children's disclosures of abuse, see Irenyi (2007).

## Child abuse allegations in family law proceedings

Moloney, Smyth, Weston, Richardson, Qu, and Gray (2007) conducted a review of the international literature on child abuse allegations in the context of family law proceedings. They reviewed four small-scale clinical studies of child sexual abuse, three broader clinical studies of child abuse, four studies of child abuse using data from child protective service workers, three studies of child abuse using data from family courts, as well as other studies that looked more broadly at family violence. They also reviewed 13 Australian studies that looked at child abuse alone or child abuse and family violence using data from family courts.<sup>4</sup> They found that methodological issues made comparison of studies and distillation of key messages problematic. However, there were two general issues they concluded from their review that are particularly important to note. Firstly, they found that the proportion of parenting disputes that involve allegations of child sexual abuse varied widely between studies, but usually was low (2-6%), although it was greater in high-conflict cases (up to 23%). Secondly, they found that in the literature they reviewed, allegations considered deliberately false were *not* common (1-2%). Great difficulties arise when there is insufficient evidence to either prove the allegation, or categorically identify the allegation as false.

In Moloney et al.'s case-file analysis of matters filed in the Family Court of Australia and the Federal Magistrates Court in 2003, they addressed the issue of evidentiary material in response to allegations in family law matters. They reviewed 240 files drawn from the total number of parenting matters (general litigant sample), and supplemented this with a separate sample of 60 cases drawn from judicially determined matters. Their analysis showed that for their general litigant sample, 22% of the Family Court cases

they sampled contained child abuse allegations (2.8% were about sexual abuse), but in their sample of cases that had proceeded to judicial determination, 46.4% contained child abuse allegations (10.7% were about sexual abuse). Most child abuse allegations were accompanied by allegations of other forms of family violence.

Moloney et al.'s (2007) analysis also showed that decision making in parenting matters before both the Family Court and the Federal Magistrates Court (FMC) that involve child abuse allegations (and more broadly, family violence) frequently occurs in the context of a lack of evidence to either support or refute the allegations. They noted that:

*"A scarcity of supporting evidentiary material suggests that legal advice and legal decision-making may often be taking place in the context of widespread factual uncertainty"* (p. viii).

The fact that decision making has been taking place in a 'factual vacuum', with most cases having little evidence of high probative value, is consistent with knowledge from the social science literature on the difficulties in producing evidence in child sexual abuse matters that meets the requirements of the legal system (see Breckenridge, 2002).



# Family law and child protection

## A systems perspective

*“The whole thing is necessitated by the risible constitutional problem between state and federal jurisdictions. But we don’t want people ping-ponging between. I’d just have one Court doing the two. Families are caught between the two. It’s a practical resolution. The research showed we were sharing these families: the complex cases had also been in the Children’s Court and the protective agencies—a common cohort of families that were moving through the system. Something was needed to stop forum shopping.”*

Judge

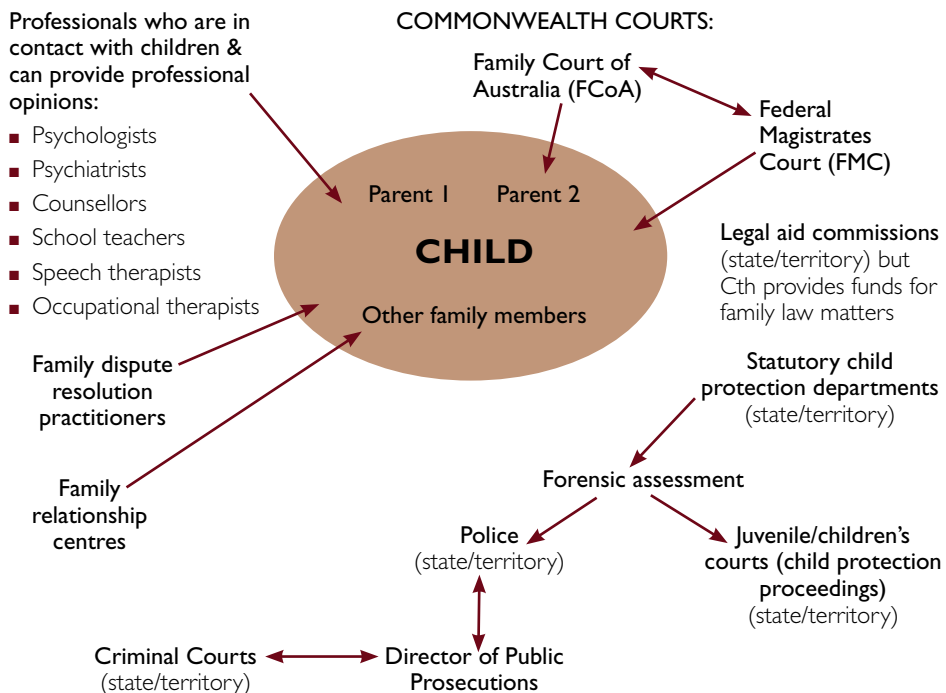
Australia is a federation of six states and two territories. The power to make laws is distributed between three levels of government—the federal government, state and territory governments and local governments. The question of which level of government has the power to make laws concerning particular areas is determined by the Australian Constitution. Some areas of law are reserved for the federal government under the Constitution. These include laws concerning marriage (section xxi) and divorce and ‘matrimonial causes’, including ‘parental rights and the custody and guardianship of infants’ (section xxii). For this reason, the federal government has responsibility for most aspects of private family law disputes, as reflected in the *Family Law Act 1975* (Cth) but its powers are not unlimited. Some facets of family law, including disputes involving children of de facto relationships, could not be dealt with legislatively by the Commonwealth. In order to address the problems this created, all states except Western Australia referred their powers relating to ex-nuptial children to the Commonwealth between 1986 and 1990. Western Australia has a Commonwealth-funded, state family court (the Family Court of Western Australia), which exercises jurisdiction under the *Family Law Act 1975* (Cth) and the *Family Court Act 1997* (WA).<sup>5</sup>

Child protection issues however, also known as ‘public’ family law matters, remain within the legislative power of state and territory governments. Although there is a high degree of similarity between each state/territory in the legislation and processes, as well as the structure and practices of the government agencies responsible for responding to and investigating allegations of child abuse and neglect, there are nonetheless some important differences. (For a list of the departments and their governing legislation that define the grounds for statutory intervention, see Bromfield & Higgins, 2005.) It should also be acknowledged that the issues that arise in both ‘public’ family law matters and private family law disputes are often similar.

As illustrated in Figure 3.1, there is a wide range of agencies and social systems that interconnect in understanding and responding to allegations of child sexual abuse or physical abuse that are raised in private family law proceedings. It is important to have a good understanding of the roles, responsibilities and processes of each of the following: state/territory statutory child protection departments, juvenile courts, police and public prosecutors, criminal courts, courts exercising jurisdiction under the *Family Law Act 1975* (Cth) and legal aid agencies. This is necessary in order to understand first, why the Magellan specialist case-management system was needed; and secondly, to understand some of the limits within which each element of Magellan operates.

As summarised in Table 3.1, each of these agencies and systems has separate but intersecting responsibilities, and because of their particular focus, different types of evidence are needed, with different standards of proof required.

**Figure 3.1** Interconnected agencies and social systems in the Magellan web



**Table 3.1 Summary of key aspects of the agencies involved in the Magellan cases**

Agency/system	Jurisdiction responsible	Focus	Evidence/burden of proof
Police	State/territories	Law enforcement	Police are responsible for investigating alleged crimes and making the case to the Director of Public Prosecutions to lay charges if it is believed there is sufficient evidence to mean a conviction is likely.
Criminal courts	State/territories	Criminal justice	Criminal standard of proof (beyond reasonable doubt) applies.
Court of summary jurisdiction (e.g., Magistrates)	State/territories	Protection from family violence	The evidence needed for Orders to be taken out (such as Intervention Orders, Apprehended Violence Orders, or Restraining Orders) is on the balance of probabilities. However, evidence in relation to breaches of such orders must be beyond reasonable doubt. <sup>6</sup>
Child protection departments	State/territories	Protection of children	Risk assessments are conducted to determine whether there is a significant risk of harm (based on a mix of professional judgment and actuarial decision-making frameworks).
Juvenile courts	State/territories	Protection of children	Care and protection matters are determined on the civil standard of proof (balance of probabilities).
Family Court and FMC	Commonwealth	Determination of private family law disputes between parties according to the best-interests of the child	Civil standard of proof (balance of probabilities) applies to whether an allegation is found proven or whether there is unacceptable risk to the child—but with the Briginshaw standard: that if the finding is likely to produce grave consequences, the evidence should be of high probative value. Under the Family Law Act, the test that is applied is the best interests test (the paramount principle that guides all children's cases).
Legal aid commissions	State/territories but applying Commonwealth funding guidelines in Magellan cases	Grants legal aid and provides legal representation	To be eligible for a grant of legal aid, parties must meet both merit and means tests.

## The Family Court of Australia and the Federal Magistrates Court

The Family Court of Australia was established under the *Family Law Act 1975* (Cth). It exercises jurisdiction in parenting matters (relating to both nuptial and ex-nuptial children) in all states and territories, except Western Australia. As well as the Family Court of Australia, which is a superior specialist court that hears the more complex cases (such as those involving allegations of child abuse), the Federal Magistrates Court (FMC), which was established by the *Federal Magistrates Act 1999* (Cth) is also a court of record, but was designed to hear matters that are less involved than those heard by the Family Court. The two courts have different case-management procedures, reflecting the level of complexity of the cases coming before them (see Family Law Council, 2007).

Although the FMC was designed to deal with shorter, simpler matters, it is evident that child abuse allegations are still raised in matters that come before the FMC (e.g., see Maloney et al., 2007). Matters that include abuse issues may start in the FMC with an interim hearing, as it is not always clear that abuse allegations are being raised until after proceedings have commenced. Abuse allegations may not be raised in the original application, but may arise in the responding documents, in oral evidence, or in the course of mediation. The Family Court has a dedicated form (Form 4) and particular procedures in place (under s 60K) to assist in the identification and early response to allegations of abuse/risk of abuse.

The *Family Law Act 1975* (Cth) makes provision for the transfer of matters to the court that is most appropriate (having regard to the complexity of the legal issues involved). However, this raises issues about intake and transfer processes in relation to matters that may be suitable for inclusion in the Magellan list. When the matter has been in the FMC for a significant period before being transferred to the Family Court, a critical issue is to identify possible Magellan cases as quickly as possible, as the benefits of Magellan are about providing a thorough but timely response early in the matter, before positions of the litigants become entrenched.<sup>7</sup>

Parenting matters are brought before either the Family Court of Australia or, for simpler matters, before the Federal Magistrates Court (except in Western Australia, as explained earlier)<sup>8</sup>. In children's cases, under Part VII of the *Family Law Act 1975* (Cth), family courts are guided by specific objects and principles underpinning them. Two of the objects are that children should have the benefit of both parents having a role in their lives, consistent with their best interests and that children should be protected from physical or psychological harm. The overriding consideration is the best interests of the child, which means balancing the need for a continuing relationship with both parents against the need to ensure safety.

In children's cases in the Family Court of Australia—as well as in care and protection matters in the state/territory juvenile courts—the burden of proof is the civil standard (the balance of probabilities). Although the civil standard of proof is less onerous than the criminal standard (where matters have to be proved beyond reasonable doubt), due

to the serious nature of most allegations and the serious consequences of an adverse finding, the civil burden of proof is understood to be subject to the ‘Briginshaw standard’. This is based on the High Court decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, where Justice Dixon said:

*“The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony, or indirect references”* (p. 332).

The Briginshaw standard has since been incorporated into the *Evidence Act 1995* (Cth). It provides that in determining whether the evidence satisfies the balance of probabilities test, that “the gravity of the matters alleged” be taken into consideration (section 142) and that evidence not be admitted “if its probative value is substantially outweighed by the danger that the evidence might: (a) be unfairly prejudicial to a party; or (b) be misleading or confusing; or (c) cause or result in undue waste of time” (section 135). In other words, the evidence needs to have higher probative value if the consequences to a party of a particular finding are grave.

As depicted in Figure 3.1, the investigation and resolution of child abuse allegations in family law proceedings involve a complex interaction between the statutory child protection departments (responsible for investigating whether children are safe), the police (responsible for investigating crimes), the Directors of Public Prosecutions (responsible for bringing charges against perpetrators), and the criminal courts (achieving justice for both victims and alleged perpetrators when criminal charges are laid). However, in family law matters involving children, the mandate of the Family Court and the FMC is to act in the best interests of children. This includes ensuring that children would remain safe under any proposed Orders for them to spend time with either parent.

It is understandable that a common assumption within the community—and indeed even among researchers and professionals working in the field—is that the role of the statutory child protection departments is to work out whether abuse has occurred. However, upon close examination of the legislation in each of the jurisdictions, without exception, the legislative grounds for intervention are not based on whether abuse has occurred, but rather, on whether children/young people are at risk of significant or serious harm. In four jurisdictions (Australian Capital Territory, Northern Territory, Queensland and Victoria), action by the child protection department is restricted to situations where a parent is unable or unwilling to protect the child (Bromfield & Higgins, 2005). Consequently, if a statutory child protection department investigates, and assesses that a child—who may or may not have actually been abused—is at risk of abuse by one parent, as long as the other parent is acting protectively (e.g., if they have separated from the potentially abusive parent or ensure that the child is not left unsupervised), then the state has no grounds for intervention (and therefore, the

notification would be coded as ‘unsubstantiated’). In other words, a statutory child protection department’s case outcome of ‘substantiated’ or ‘unsubstantiated’ does not necessarily equate to ‘abused’ or ‘not abused’.

Similarly, the Family Court’s role is not to determine whether abuse has occurred, but whether the proposed Orders are in the child’s best interests (which includes examining whether the Orders might place a child at risk of harm). This is consistent with the High Court decision in *M and M* (1988) 166 CLR 69. Harrison (2007) summarised the issues succinctly:

*“In M and M, the High Court held that when dealing with such allegations the Family Court is not required to make a finding of whether particular individuals have inflicted abuse or neglect, which is the role of the criminal courts. Its task is to determine whether its orders and particularly orders for residence or for contact create an unacceptable risk for the child. However, it is required to assess the facts before it can consider any risk to the child when making orders for residence and contact, and these risks must be balanced against the desirability of a child maintaining contact with both parents. Throughout this process, the Court depends on appropriate and accurate reports, to assist in it determining what is in the best interests of the child” (p. 22).*

In *M and M*, the High Court emphasised that in fact the Family Court should not make findings about abuse or neglect unless is it impelled by the circumstances of the case to do so. In that instance, it needs to make such findings on the balance of probabilities, with the Briginshaw standard (i.e., matters must be proved to the ‘reasonable satisfaction’ of the Court, and “should not be produced by inexact proofs, indefinite testimony, or indirect references”). In this context, it is accepted that the standard of proof should be at the stricter end of the spectrum of proof required in civil matters. In reality, this means that the Court is rarely going to make findings about past abuse; its focus is going to be on the potential for a child to be at risk in the future. In *M and M*, their Honours Mason, Brennan, Dawson, Toohey and Gaudron JJ concluded:

*“20. But it is a mistake to think that the Family Court is under the same duty to resolve in a definitive way the disputed allegation of sexual abuse as a court exercising criminal jurisdiction would be if it were trying the party for a criminal offence...*

*“21. Viewed in this setting, the resolution of an allegation of sexual abuse against a parent is subservient and ancillary to the court’s determination of what is in the best interests of the child. The Family Court’s consideration of the paramount issue which it is enjoined to decide cannot be diverted by the supposed need to arrive at a definitive conclusion on the allegation of sexual abuse. The Family Court’s wide-ranging discretion to decide what is in the child’s best interests cannot be qualified by requiring the court to try the case as if it were no more than a contest between the parents to be decided solely by reference to the acceptance or rejection of the allegation of sexual abuse on the balance of probabilities.”*

In order to weigh up the competing issues of children's benefit from spending time with both parents and the risks to a child from sexual abuse, their Honours crystallised the test as follows:

*"25. ... To achieve a proper balance, the test is best expressed by saying that a court will not grant custody or access to a parent if that custody or access would expose the child to an unacceptable risk of sexual abuse" (1988) 166 CLR 69.*

The Briginshaw qualification to the balance of probabilities test applies because of the potential severity of the consequences of the decision. Difficulties that Judges face in family law matters regarding the decision that they must arrive at is evident from this extract from an article written by a Judge and a forensic psychologist from the US:

*"In Karen B. v. Clyde M. (1991), a New York court observed, '... a dilemma that often confronts a judge, i.e., experts have rendered diametrically opposing opinions. The consequences of this court's decision to the child are potentially enormous. If she is placed with her mother, and the father is limited or excluded from having contact with her, when in fact he has done no harm, then a tremendous injustice results. If custody is placed with the father, and he has sexually abused her, an equal injustice with a potential for future harm ensues' (p. 270). The judge must carefully weigh the underlying data that support each expert's opinion, and take from the expert that which is relevant and reliable, recognizing that neither the expert nor the court may be able to ascertain whether or not abuse has thus far occurred. Family court judges should keep in mind that there are many reasons why genuine child sexual abuse may begin or first be disclosed at divorce, and why a person undergoing a divorce may make a good faith but mistaken allegation. False allegations may, of course, be based upon overinterpretation or misinterpretation of events and symptoms, or, more rarely, may be deliberately contrived (Faller, 1991). Although deliberately fabricated allegations may be made to influence the custody decision or to hurt an ex-spouse, knowledgeable professionals view these as infrequent events and it is critical that every allegation be treated with the utmost seriousness" (Behnke & Connell, 2005, p. 129).*

The Family Court of Australia's current approach has been criticised by retired Family Court Judge, Justice Fogarty (2006). He argued that the Briginshaw standard of proof has been inappropriately applied to the issue of *future risk*, when in fact the unacceptable risk test in *M and M* was concerned with the level of proof needed when testing allegations of *past abuse*. The very high evidentiary threshold that is set in the Family Court about past abuse means that questions about future risk to children still need to be determined in cases where allegations of past abuse have not been able to be substantiated.<sup>9</sup>

It should also be noted that just because allegations of past abuse have not been substantiated by a statutory child protection department, or seen by the Court as ‘proven’, this does not mean that the abuse did not occur—it just means that there was not sufficient evidence to support the allegation. As McDonald (1998) rightly noted, an *unsubstantiated* allegation is not the same as a *false* allegation.

The fact that many allegations do not subsequently attract sufficient evidence for a statutory child protection department to substantiate harm or risk of harm is not surprising, given the evidence from the social sciences about the difficulties for child victims in disclosing, being believed, and being able to provide substantive evidence for a crime that by its very nature occurs in private, usually without witnesses. Considerable research evidence exists to show that false allegations of child abuse in family law proceedings are the exception, rather than the rule (see McInness, 2003; Moloney et al., 2007). Recent research and reviews (such as Moloney et al., 2007) have focused on false denials by alleged adult perpetrators. However, the social science literature also identifies that there are a number of barriers to children making disclosures, and pressures on them to retract their disclosures (i.e., because of shame, pressure from a parent, or wanting the situation to ‘go away’, children subsequently deny abuse happened, even though it did) (see Sorensen & Snow, 1991).

In his address to the 4th World Congress on Family Law and Children’s Rights, the Honourable Justice Carmody (2005) argued that the Family Court should focus on discretionary judgments about future risks to children (based on all the information available, taken as a whole), rather than adopt a “demanding level of proof in relation to anticipated future as distinct from actual events” (p. 28). He argued this on the basis of the serious consequences of abuse (if it were found to have occurred). However, he also noted the significant consequences of denying contact between a child and a parent suspected of abuse if in fact abuse has not happened, or is not happening.

## Legal aid commissions

Legal aid commissions are independent statutory bodies that operate in each state/territory to provide grants of aid for parties who meet funding guidelines. Eligibility is based on the merit of the case, as well as the person’s means to be able to fund their own representation.

Although the commissions are state or territory instrumentalities, the Commonwealth government provides them with funding for Commonwealth family law matters (including Magellan), subject to Commonwealth funding guidelines. As well as funding representation for parties who meet the merit and means tests, the commissions also provide funding for Independent Children’s Lawyers (ICLs) in children’s matters. Grants of legal aid can be made via the provision of ‘in-house’ ICL practitioners or to fund private practitioners.<sup>10</sup>

## Statutory child protection departments

In each state/territory, there is a single government department with statutory responsibility for receiving, investigating and responding to notifications of harm or risk of harm to children (also referred to as the ‘statutory child protection service’ or ‘the department’). The state/territory department with statutory responsibility for child protection receives notifications and—if the situation meets their criteria for investigation—responds to concerns from mandated notifiers or other members of the community about abuse or neglect of children. Depending on the type/severity of the allegations, investigations may involve forensic interviews by the state/territory police service or other specialist forensic services.

Child protection departments operate on the principle that the best protection for children is within their family. All reasonable steps are taken to strengthen the capacity of the family to protect children. This is supported by the legislative grounds for intervention, which—in many jurisdictions—limit the response of child protection departments to situations where there is no parent able or willing to protect the child (Bromfield & Higgins, 2005).

In relation to protective concerns that may involve a criminal offence (i.e., allegations of sexual or physical abuse), protocols and practice directions for child protection staff usually mean that these matters are also referred to the police. Similarly, where it warrants action by police, the protocols determine how interviews and other investigations are conducted. In order to reduce the trauma to children of multiple interviews by different agencies, the typical protocols involve a joint investigation between departmental child protection workers and police or specialist forensic interviewers—or an arrangement whereby one agency is responsible for conducting the interviews and providing video recordings to the other agencies (in order to avoid traumatising children through repeated interviews).

In some states/territories, there are co-located police officers within the statutory child protection service (e.g., ACT); or a joint service between the statutory child protection authority and the police (e.g., NSW), who are asked to respond only to those notifications that meet particular criteria (i.e., where the case is likely to lead to criminal charges being laid). In South Australia, forensic interviews are conducted by a hospital-based child protection service, with interviews watched by police. Their report is then released to the child protection department. Other states/territories have similar arrangements with police—usually with the designated community policing section, or a specialist sexual assault and child abuse police unit.

As well as improving information sharing between police and the statutory child protection department, one of the main aims of such protocols or joint response teams is to ensure that suitable forensic evidence is gathered, that it is uncontaminated (e.g., that any physical evidence is collected as quickly as possible, and that questioning of children does not use leading questions), and that the burden on victims is minimised (i.e., to avoid repeated interviewing of children). For further detail on a national comparison of the child protection systems in each of the states/territories, see: Bromfield and Higgins (2005).

## Juvenile courts

In each state/territory, there is either a specialist juvenile court (usually called the Children's Court or Youth Court), or a specialist division of the Magistrates Court that is responsible for making Orders under the same Act that establishes and authorises the statutory child protection service in that state/territory. These courts are responsible for making a variety of interim, long-term or permanent Orders in relation to the care and protection of any child/young person, as well as a range of other supervision, guardianship, or assessment Orders. The department initiates such care and protection applications in a juvenile court as a consequence of someone making a report of suspected child abuse (a 'notification') that is substantiated, and where the child is not safe or able to remain in the care of a protective parent. It is only in cases where a delegate of the department has decided that parents or caregivers cannot care for a child safely that the department causes a juvenile court to become involved.

## Police

The state/territory-based police services are responsible for conducting criminal investigations, and laying charges against perpetrators of physical or sexual assaults. This includes conducting forensic interviews with children on referral from the statutory child protection authority. As mentioned previously, most state/territory police services have a specialised unit that focuses on child abuse and/or adult sexual assault cases, or are part of a joint investigative team with staff from the statutory child protection authority. Although the statutory child protection department is the lead agency for responding to the care and protection needs of the children, the police are the lead agency in criminal matters. Where police have conducted an investigation and sufficient evidence has been gathered to support laying charges, it is the responsibility of the Director of Public Prosecutions in that state/territory to lay charges, and on behalf of the community, to prosecute people charged with serious criminal offences in the criminal court system. Where child protection workers have the need to access transcripts and/or video and audiotapes of evidence, protocols will usually allow for them to have such access.

## Criminal courts

As with policing, criminal law is largely a state/territory responsibility. Depending on the particular crime, matters are heard in the Magistrates, County/District, or Supreme Court. In an evidentiary sense, a criminal matter must be proved 'beyond reasonable doubt', and a range of evidence is not admissible. Given the private nature of the crimes involved with sexual abuse or physical abuse of children, such cases are difficult to prosecute. Similarly, evidentiary principles pose particular difficulties in the prosecution of cases involving sexual assault of adults, and in domestic violence cases. The difficulty of providing witnesses—along with a lack of forensic evidence for many types of sexual abuse (particularly if penetration did not take place, or if the abuse was not recent and the police were not called at the time), make it unlikely that many cases will result in charges being laid, let alone lead to successful prosecutions.

As noted, similar issues apply to the prosecution of cases of sexual assault of adults. With respect to child sexual abuse, however, there is the added difficulty of the victim being a minor, and the issues this raises for their ability to give evidence under cross-examination. Consequently, convictions in relation to sexual or physical abuse of children are rare. For example, as well as acknowledging the under-reporting of sexual assaults of children to police, even when reports are made, the Victorian Law Reform Commission (2005) concluded that less than one in seven allegations of penetrative sex offences against children reported to the police result in prosecution.

The following studies are briefly described to illustrate some of the problems in prosecuting child sexual abuse cases. In a case-flow analysis of criminal investigations and prosecutions in 183 child sexual abuse cases in NSW, Parkinson, Shrimpton, Swanston, Toole, and Oates (2002) found that of the 117 cases where the name of the offender was known, 45 reached trial and 32 resulted in a conviction (17% of the original 183 referrals; or 27% of cases where the alleged perpetrator was identified). The reasons they identified were that:

*“the offence was not reported to police; parents wished to protect children, the perpetrator or other family members; evidence was not strong enough to warrant proceeding; the child was too young; the offender threatened the family; or the child was too distressed” (p. 347).*

Although they noted that extrafamilial offenders were more likely to receive a custodial sentence than intrafamilial offenders, they did not analyse whether sexual abuse by a parent (rather than an extrafamilial offender) increased or decreased the likelihood of the matter proceeding to criminal trial.

Similarly, Cashmore (1995) reported that in NSW, conviction rates for sex offences against children were low—and even as the number of prosecutions increased (from 34 cases in 1982 to 143 cases in 1992), the rate of both guilty pleas and convictions dropped. Taylor (2004) has conducted research that identifies some of the characteristics of criminal trials that make it difficult for child victims of sexual violence to receive justice through this means, such as the rules of evidence, and the directions that Judges give to juries. It is well recognised that child sexual assault is one of the most difficult crimes to prosecute (Breckenridge, 2002). A number of authors have documented the obstacles to criminal prosecutions in child sexual abuse cases from the perspective of child complainants (see Cossins, 2003; Eastwood & Patton, 2002). Police also play a significant role in filtering cases. Police take a statement from the child in only approximately half of the cases referred to them, and charging the offender in 32% (Humphreys, 1993; cited in Parkinson et al., 2002).

Criminal prosecutions in child physical abuse cases are also rare, as ‘reasonable force’ can be used as a defence in most jurisdictions. It is only in cases where the behaviours have significantly exceeded the common bounds of ‘reasonable’ physical punishment that cases are likely to proceed. As previously discussed, these difficulties in charging and successfully prosecuting child abuse cases (particularly sexual abuse) may explain, at

least in part, why these issues come to the attention of the family law system as parenting disputes, rather than being determined in the juvenile courts (as a care and protection matter), or in the criminal courts (as a criminal matter).

Another issue is that children's needs are not the focus of criminal investigations. In one study of 63 child complainants from three Australian states, two-thirds said that, given their experience in the criminal justice system, they would not report their experiences again (Eastwood, 2003). Moreover, this finding was not limited to those who did not have successful outcomes: "Two-thirds of children who experienced convictions said that they would not report sexual abuse again." (p. 2). The children raised a number of issues concerning the procedures of the criminal courts and the process of giving evidence, particularly the delay between reporting the matter and the trial being heard; having to see the accused face-to-face; and unacceptable—or even abusive—cross-examination procedures (Eastwood, 2003).

## The need for Magellan

The Magellan case-management model was developed within this broader socio-legal context, in recognition of the difficulty of the different professions working together (Breckenridge, 2002). In particular, the role of the Family Court, as spelt out by the High Court in *M and M*, is to resolve disputes that involve allegations of child abuse to achieve a result that is in the best interests of the child. In recent times, the need to resolve the matter as expeditiously as possible has been given increased emphasis. In order to do this, the Court required maximum interagency cooperation to bring all of the information together that is needed to ensure the best outcome for the child.

In addition, one of the issues that Magellan was set up to address was the prevalent myth within the sector that abuse allegations in family law matters should not be taken seriously. Brown, Frederico, Hewitt, and Sheehan (2001) described this 'child abuse and divorce myth':

*"A view strongly held by families and professionals claims that child abuse allegations against one of the parties during or after a family breakdown need not be taken seriously because they are just another weapon manufactured for use in the marital dispute" (p. 113).*

Brown and her colleagues have noted that it may be in a Family Court proceeding that child sexual abuse is alleged for the first time, or that allegations were made previously, but there was insufficient evidence for action to be taken in another jurisdiction (see Breckenridge, 2002). The need for a more effective way to handle cases in which such issues were raised—and to minimise risk to children—was increasingly recognised.

A number of elements of the adversarial processes were seen to be working against the best interests of children in matters where allegations of child abuse are raised (see Sheehan, 2003). In particular, cases were taking too long, and the process was not child-

focused.<sup>11</sup> In addition, there was recognition that the Court was dealing with multi-problem families (where unemployment, substance abuse, criminal convictions, family violence, or other problems existed), which requires a specialised and child-focused intervention to understand and respond to these issues.

Child abuse allegations in family law proceedings highlight practical issues involved in the separation of powers between the Commonwealth and states/territories and the allocation of responsibility for child protection to states/territories, and private family law to the Commonwealth. This is the essence of the need for a specialist approach to dealing with cases where these two issues intersect (i.e., Magellan).

In 2002, the Family Law Council's Child and Family Services Committee produced a comprehensive report on family law and child protection (FLC, 2002). The Council confirmed the findings of Brown and her colleagues that a considerable proportion of the Family Court's work relates to child protection issues. They provide an excellent overview of the systemic problems that are a consequence—at least in part—of the constitutional division of responsibility between federal and state/territory governments in Australia.

The Council correctly noted that the mission of each state/territory child protection department is tied to their statutory responsibilities, which may not necessarily serve the needs of the Family Court. They stated:

*"Many child abuse concerns raised in family law proceedings will not be investigated by child protection authorities because, although the issues may be of considerable importance in the family law litigation, the information does not indicate that the child is currently at risk of serious harm or because the child can be made safe by Orders under the Family Law Act 1975 (Cth) concerning residence and contact" (FLC, 2002, p. 10).*

The FLC (2002) report's recommendations fell into three broad categories. The first category related to the need for a Federal Child Protection Service to be established to investigate child abuse concerns. The report noted the problem of parents being required to take responsibility for proving the allegation of abuse in private family law matters, whereas in a state/territory juvenile court, if protection action needs to be taken, it is the responsibility of the state/territory child protection department to prove the case. They also discussed the need to improve interactions between state/territory child protection departments, state/territory courts, and the commonwealth family law system. The second issue was the 'One Court' principle, to avoid either duplication or gaps:

*"The One Court principle requires that at the earliest possible point in managing a case, the decision should be taken whether a matter proceeds under state or territory child welfare law or under the Family Law Act 1975. Once that decision has been taken, in all but the most exceptional circumstances, the matter should proceed in the chosen court system and if, for example, a child protection authority is dissatisfied with the outcome of proceedings under the Family Law Act it should address those concerns by way of appeal rather than commencing new proceedings in a different jurisdiction" (FLC, 2002, p. 13).*

The third major issue covered in the FLC report related to the admissibility of evidence, and the problems that emerge when the critical evidence in support of an allegation of abuse falls within an exclusion provision (such as an admission in a mediation session)<sup>12</sup>. The Council concluded: “there is no greater problem in family law today than the problem of adequately addressing child protection concerns in proceedings under the Family Law Act” (p. 15).

State/territory authorities have different concerns from those of the family law system:

*“The question for State or Territory child protection authorities is whether the matter is sufficiently serious to justify protective intervention using the powers of the child protection legislation if necessary. The question in family law proceedings is usually about the competing claims of each parent in relation to residence or their proposals concerning contact arrangements” (FLC, 2002, p. 30).*

In particular, the report highlights the need for all cases to be investigated, and the results of the investigation to be communicated to the Court:

*“The fact that there is not enough information to justify an investigatory response by the State or Territory child protection authority does not mean that the issue is of no consequence to courts exercising jurisdiction under the Family Law Act” (FLC, 2002, p. 31).*

A number of problems they identified (such as differences in thresholds, not all cases being investigated by state authorities, and the lack of information conveyed to the Family Court) are ones that the Magellan protocols attempt to address. At the time of the FLC’s report, the pilot Magellan project of 100 cases had been conducted in Victoria, and the results published in 2001. It showed that provision of detailed reports from the statutory child protection department, the Victorian Department of Human Services, was critical.

However, they expressed scepticism about the likelihood of sustaining the level of cooperation and resource allocation that was required to (a) investigate all allegations of abuse referred by the Family Court, and (b) provide detailed reports of their investigations. Magellan has since been implemented across the Family Court’s registries, with protocols in place with the state/territory departments.

It is important to now evaluate the effectiveness of Magellan, particularly in relation to the change in the work required of the state/territory departments and quality of the information made available to the Court in Magellan cases.

## Other family law changes

Harrison (2007) provided a comprehensive overview of the changes to the *Family Law Act 1975* (Cth) that took effect on 1 July 2006 with the enactment of the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth). Some of the key elements of the reforms include the presumption of equal shared parental responsibility, the requirement that courts consider whether a child spending equal time with both parents is reasonably practical and in the best interests of the child. The key objects guiding the Court's best interests considerations, as outlined in section 60B(1) of the *Family Law Act 1975* (Cth) are the benefit to children of both parents having meaningful involvement in their lives, and protecting them from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence. Section 60CC(2) also outlines factors that the Court uses in arriving at a decision as to what arrangements would be in children's best interests.

A new division of the *Family Law Act* (Division 12A of Part VII) contains principles for conducting child-related proceedings. This represents a significant departure from the traditional adversarial model of conducting proceedings in the Family Court. The Family Court has given effect to the principles contained in Division 12A through the introduction of the Less Adversarial Trial (LAT). Some of the key features of LAT are:

- ▶ to have the optimal procedures to ensure the needs of the child concerned are paramount;
- ▶ the procedures are to be conducted in a way that safeguards children and parties from violence;
- ▶ cooperative and child-focused parenting are promoted; and
- ▶ undue formality and delays in court proceedings are to be avoided (see Harrison, 2007).

Some of the ways these principles are achieved are through:

- ▶ use of Family Consultants ('mediators') to provide advice (e.g., both parties meet with a counsellor before affidavits are filed or any trial documents are issued);<sup>13</sup>
- ▶ greater control of the way evidence is given in Court;
- ▶ the provisions of the *Evidence Act* do not apply unless the Court so determines (i.e., hearsay may be admissible—and given any weight the Court thinks fit—if it is relevant to the welfare of children); and
- ▶ the ability to make an order for a state/territory agency to provide evidence in relation to child abuse or family violence issues.

Like Magellan, the LAT is designed so that the Judge seen by litigants on the first day will see that matter through to completion, so that parties do not need to keep re-telling their story to a new Judge. Although Magellan matters are disputes involving children, and therefore many of the principles outlined in Division 12A apply, not all do. The model is close to LAT, but the difference is that some of the evidentiary tests still apply. Given the

nature and seriousness of the allegations, as well as the seriousness of the consequences of making a positive finding of abuse, Judges have agreed that Magellan matters should be dealt with under strict evidentiary guidelines and rules (i.e., they fall within the exception under Division 12A). In the “Magellan Manual: National Procedures for the Conduct of Magellan Cases” the Family Court of Australia (2007) stated:

*“It is noted that Division 12A applies to Magellan cases filed after 1 July 2006 or conducted by consent however the nature of the evidence of some witnesses may fall within the exception in s 69ZT(3)(a)” (p. 12).*

The difference between Magellan matters and the 1 July 2006 reforms to children’s cases is summarised by Harrison (2007):

*“The Magellan project provided a valuable template for the judicial management of child abuse cases, but it fell short of changing the inherent nature of the trial and a good deal of work and courage were still required to determine the parameters of change [to children’s cases]” (p. 33).*

Two other initiatives that were pilot projects prior to the 1 July 2006 reforms should be noted: the Children’s Cases Program (see Hunter, 2006) and the Melbourne trial of the Child Responsive Program (see McIntosh, 2006). As with Magellan, these new methods of handling children’s matters were developed and trialled because of “growing concern that the traditional adversarial system of determining such disputes... had failed to provide the optimal method for determining children’s best interests, which the Court was statutorily required to do” (Harrison, 2007, p. ix).

Although some of the features of Magellan were also part of both the Children’s Cases Program and the Child Responsive Model (such as the use of a Family Report from a Family Consultant) the key difference is with Magellan, there are clear interagency protocols and communication mechanisms, significant resources, as well as prioritisation for processing and hearing the case (e.g., clear timeline goals and a separate Court list).

## Conclusion

While it was beyond the scope of the current evaluation to conduct a comprehensive review of the literature, the focus was to highlight the issues that have been raised by academics, practitioners and organisations in order to understand the need for Magellan, the factors affecting its implementation and the degree to which it has achieved its aims.

For a detailed review of the Australian and international literature on allegations of child abuse in family law matters, see Moloney et al. (2007). The Family Law Council’s (2002) report provides a comprehensive discussion of the constitutional arrangements in Australia that lead to duplication, gaps, ambiguity and confusion of responsibility for child protection in family law matters (FLC, 2002).

## Key message

Each of the agencies and systems that intersect in Magellan cases—police, criminal courts, the state/territory statutory child protection departments, juvenile courts, and family courts—have overlapping interests, yet distinct responsibilities. It was this intersection that necessitated the Magellan case-management system to provide a coordinated approach to bringing the information from each of these areas together to ensure that private family law disputes are resolved in a way that provides for the best interests of children. Central to ensuring the best interests of children is the need to balance their right to know and have a relationship with both parents with the need to be protected from harm. Research in the social sciences shows the frequency with which sexual abuse and physical abuse of children occurs, as well as the private nature of the alleged behaviours, which often means that it is difficult to produce clear evidence, regardless of the jurisdiction in which the matters are raised—particularly in relation to child sexual abuse. In family law disputes, the importance of Magellan is that it is an integrated case-management system that works to reduce trauma for children and that keenly focuses the evidence-gathering and trial processes on ensuring the best outcomes for children who may have been abused or may be at risk of abuse.



# Evaluation methodology

The overall aim of the evaluation was to assess whether the Family Court of Australia's Magellan case-management system is achieving its goal of being an effective mechanism for responding to serious allegations of sexual abuse or physical abuse of children raised in parenting matters.

This central question was addressed in this study through two types of data collection:

## **Quantitative data: Case-file review**

A case-file review and comparison was conducted of 80 cases managed using the Magellan protocols ("Magellan cases") and 80 comparable cases (i.e., those involving similarly serious allegations of sexual or physical abuse) from NSW, where Magellan had not been rolled out until mid-2006 ("*Magellan-like* cases").<sup>14</sup> The same criteria for identifying matters for listing as Magellan were applied to the cases from NSW. Development of the case-file review template was informed by the preliminary results of the qualitative data analysis (see Section 6).<sup>15</sup>

## **Qualitative data: Interviews and focus groups**

Interviews and focus groups were conducted with key stakeholders to examine how Magellan is being implemented and to evaluate perceptions of its effectiveness across five registries.<sup>16</sup>

A key aspect of the methodology was the opportunity to examine data from a natural experiment that provided an appropriate comparison for Magellan cases. Due to the later implementation of Magellan in NSW, data about processes and outcomes of cases, as well as stakeholders' perceptions of the case-management system could be compared during the same time period with registries where Magellan had been operating since 2003. For the qualitative and quantitative data collection, the focus was on comparison of Magellan and *Magellan-like* cases that commenced prior to the introduction of legislative changes on 1 July 2006 (i.e., the less adversarial approach to child cases in the Family Court).

The Family Court of Australia's National Magellan Stakeholder Committee endorsed the research design for the evaluation. The Australian Institute of Family Studies' Ethics Committee provided ethics clearance, and the Family Court Management Group also approved the project.

## Case-file review

Leisha Lister (Executive Advisor to the CEO, Family Court of Australia) was the principal point of contact with the Court; responsible for coordinating the extraction of two comparison samples from the Court's database of cases, each with 80 parenting matters.

### Magellan cases

A sample of 80 Magellan cases that had been finalised (i.e., Final Orders by Consent, or by judicial determination) was drawn from the Adelaide, Brisbane, and Melbourne Registries. A quota was applied to the number of cases to be sampled from each registry according to the respective size of the Magellan caseload in each of these registries.<sup>17</sup>

A breakdown of the quota for each registry used in the sample selection process is shown in Table 4.1.

**Table 4.1** Summary of case-file review sample size by registry

Registry	Number of Magellan cases	Number of <i>Magellan-like</i> cases
Adelaide	16	
Brisbane	19	
Melbourne	45	
Parramatta		27
Sydney		53
<b>Total</b>	<b>80</b>	<b>80</b>

### *Magellan-like* cases

A comparison sample of 80 finalised *Magellan-like* cases from the same time period as the Magellan cases (July 2003–June 2006) was drawn from Parramatta and Sydney Registries (prior to the implementation of Magellan in NSW in mid-2006). In order to identify cases from Parramatta and Sydney that were equivalent to the Magellan cases, any parenting application where there was an allegation of child abuse noted on 'Casetrack' (the Court's case-management database) was identified. Sampling commenced with the Sydney Registry. Of the parenting matters where allegations of child abuse were noted on Casetrack, 140 were randomly extracted (as it was hoped that this would provide a sufficient pool of cases from which to identify ones that would have met the criteria for inclusion in a Magellan list, had Magellan been operating at the time the case was filed). As with Magellan cases, the *Magellan-like* cases were sampled from the total number of cases that were finalised prior to 30 June 2006.

Selecting these *Magellan-like* files from NSW was a time-consuming process. An experienced Magellan Registrar went through these 140 files and retrospectively identified the cases that would have met the criteria for inclusion in a Magellan list *at that time*.<sup>18</sup> Of the 140 files drawn from the Sydney Registry, 53 met the criteria for Magellan.

To make up the balance of the 80 cases needed for the comparison sample, a further 60 files of finalised cases up to 1 July 2006 were drawn from the list at Parramatta. Then, using the same process as used with files from Sydney, the files were reviewed in order, until 27 cases were found that would have been eligible for inclusion in a Magellan list. Together with the 53 cases from Sydney, the 27 cases from Parramatta are referred to from here onwards as '*Magellan-like*' cases.

Table 4.2 provides a breakdown of the total number of Magellan cases, up to 30 June 2006 for the three registries from which Magellan cases were sampled (Adelaide, Brisbane and Melbourne), as well as the total number of Magellan cases across all registries of the Family Court. The size of the sample drawn from each of the three registries where Magellan was operating is presented, showing that the current study has included approximately 1 in 7 (14.7%) of all Magellan cases nationally, since its inception. Although the sample size is small, it is generally representative of all Magellan cases, as all of the cases finalising up until 30 June 2006 were included in the sampling frame.

**Table 4.2 National Magellan statistics showing current research sample size as a proportion of the total caseload**

	Magellan Operating since July 2003			Total number of Magellan cases (national statistics)*
	Adelaide Registry	Brisbane Registry	Melbourne Registry	
Number of current and finalised Magellan cases as at 30 June 2006	111	77	253	544
Number of Magellan cases in the current study (i.e., sample size)	16	19	45	80
Sample as a percentage of total number of Magellan cases in each registry	<b>14.4%</b>	<b>24.7%</b>	<b>17.8%</b>	<b>14.7%</b>

**Note:** Statistics were calculated by the Family Court of Australia as at 30 June 2006.

\* The 'total' column includes cases from other registries that were not part of the current evaluation; the sample of 80 is presented as a percentage of the total number of Magellan cases nationally.

The number of Magellan cases as a percentage of the total number of family law cases involving parenting Orders has been relatively constant since the roll-out of Magellan commenced in 2003, with approximately 3% of applications for parenting Orders being included on a Magellan list:

- ▶ 1.05% of cases in 2003-04;
- ▶ 3.27% in 2004-05;
- ▶ 2.19% in 2005-06; and
- ▶ 3.23% of cases from July 2006 to April 2007.<sup>19</sup>

For the *Magellan-like* cases, the Magellan Registrar applied the same criteria to assess whether the case was eligible for inclusion in the Magellan list as would have been used had Magellan been operating in NSW when the case was proceeding (i.e., taking into consideration only information on the file that would have been available when the application was lodged, or when the Court was first made aware of the allegations of child abuse). This makes it an appropriate comparison sample with the Magellan cases. However, it should be noted that it is still possible that other registry differences exist, or that there are subtle differences in applying the screening criteria retrospectively to a completed case.

The Magellan Registrar reviewed the files for all 160 cases (80 Magellan and 80 *Magellan-like* cases) and entered the data directly into an electronic database<sup>20</sup>, using a coding frame developed by the Australian Institute of Family Studies in collaboration with the Court (see Appendix 5). File-review data provided by the Court were anonymous, and did not contain information that could identify individuals.

The time it took for the Magellan Registrar to code and enter data for each matter varied from one to nearly two hours per file, depending on the case complexity, and how quickly the matter settled. There were also some registry differences observed. For example, Brisbane matters took longer to code (because of the higher number proceeding to trial, the absence of a short, focused report from the department, and the more frequent use of reports from psychiatrists and school teachers).

## Interviews and focus groups

Interviews and focus groups were conducted with key professionals involved with Magellan to examine how Magellan is being implemented, and the perceptions of these key stakeholders about its effectiveness, the successful features, and barriers to successful implementation. The emphasis of the interviews and focus groups was on Magellan as a *case-management system* and the perspectives of the participants concerning its success or limitations, as well as the factors that are perceived to contribute to this.

Participants in the interviews and focus groups were personnel from the Family Court of Australia (Judges, Registrars and Family Consultants), as well as professionals from other organisations (e.g., legal aid commissions, police, state/territory child protection department, lawyers, etc.) that are involved in parenting disputes in Family Court cases where allegations of serious sexual or physical abuse are made. Leisha Lister (Executive Advisor to the CEO of the Family Court of Australia) was responsible for coordinating the interviews with Judges as well as sending out invitations and managing the logistics for the focus groups in each registry. The author conducted all interviews and focus groups.

Two qualitative data collection techniques were used:

- ▶ **interviews** (open-ended questions based around key themes) with Family Court Judges about Magellan cases (Judges who manage and hear Magellan matters in Adelaide, Brisbane, and Melbourne) and *Magellan-like* cases (with two Judges who now manage and hear Magellan cases in NSW); and
- ▶ **focus groups** of key stakeholders (i.e., the Magellan steering committee in each state/territory) to compare perceptions of those from jurisdictions where Magellan has been operating for some time with those from NSW (where Magellan has only been introduced since 1 July 2006).

A separate focus group was held in each of the three registries from which Magellan cases were sampled (Adelaide, Brisbane, and Melbourne), as well as the Sydney Registry. Representatives of different organisations that interact in the Magellan case-management system (i.e., the steering committee members in each state/territory) were invited to participate.

These included:

- ▶ Independent Children’s Lawyers (in-house lawyers from legal aid commissions, or private practitioners using a grant of aid by the legal aid commission);
- ▶ legal aid (in addition to ICLs, participants from in-house practice/grants sections of the legal aid commission in that state were represented);
- ▶ police;
- ▶ Magellan Registrar or Regional Registry Manager;
- ▶ Family Court mediators (“Family Consultants”); and
- ▶ representatives from the statutory child protection department.

As well as requesting the steering committee members to attend, the Family Court also invited statutory child protection departments to include representatives with front-line experience in undertaking child protection work on cases with families where the matter had come before the Family Court (i.e., Magellan or *Magellan-like* cases).

Participants were provided with a copy of the plain language statement describing the purpose of the study (see Appendix 1). The wording used to obtain oral consent from

participants is also attached (Appendix 2). They were reminded that their responses would not be individually identified unless they explicitly requested to have their response identified (none did).<sup>21</sup>

## Interview topics

Open-ended, unstructured interviews were used to address 12 broad topics. The questions were used to guide discussion, and a conversational style was adopted. If participants had already addressed a topic in their answer to a previous question, then their perspective was quickly summarised and they were invited to add anything in addition to the information they had already provided.

A major focus of the evaluation was the Court's case-management processes, as well as stakeholders' understandings of the particular role of each of these agencies, and how they intersect. The 12 broad questions used to frame the topics under discussion were:

- 1 How long has Magellan been operating here?
- 2 How long have you been involved?
- 3 What is your understanding of the Magellan protocols, roles and expectations of each of the stakeholders?
- 4 Do you think Magellan has been implemented and is operating in the manner in which it was planned?
- 5 What are the obstacles/changes that have occurred along the way?
- 6 What are the key successes of Magellan? (What elements work best, and why)?
- 7 Does it decrease the length of cases?
- 8 Does it lead to better outcomes for children and families? (On what type of evidence do you base your beliefs?)
- 9 Is there anything you would do to improve Magellan?
- 10 Is the process tightly managed?
- 11 What is the nature of the interaction between the Family Court and the statutory child protection department? (Is responsibility towards the children involved in the cases 'hand-balled' between the two?)
- 12 Overall, does Magellan make a difference?

For interviews and focus groups in NSW (where Magellan was expanded beyond a limited pilot in mid-2006), questions centred on the Family Court's standard case-management practices and interagency interactions (pre-Magellan) for parenting cases involving serious allegations of sexual abuse or physical abuse of children—and how participants believe this compares with their understanding of the Magellan process (see Appendix 3).

The analysis of the interview and focus group data involved a comparison of case-management procedures and stakeholders' perceptions of case outcomes of the Magellan model with the Court's standard case-management practices for parenting matters. An additional point of comparison that became apparent was that both groups of stakeholders were able to make their own comparison of their experience before Magellan was implemented in their own registry, as well as comparisons with their knowledge or experience of other registries. Most stakeholders (including the Judges and Registrars assigned to Magellan cases) had experience prior to the introduction of Magellan in their registry of handling parenting disputes where child sexual abuse or serious physical abuse was alleged.

Stakeholders from NSW were also aware of how Magellan had been operating in other registries, and had the benefit of seeing it operate in the limited NSW trial, as well as its recent expansion (it had been operating for approximately six months at the time of data collection). In both instances, stakeholders were making their own comparative evaluations about the processes and their perceptions of what was working well, and areas for improvement.

## Range of people interviewed

Fifteen separate research consultations took place, involving interviews with nine Judges (all of whom were now involved in hearing Magellan cases), and interviews or focus groups with 42 other key stakeholders (total = 51 participants).<sup>22</sup> For an overview of the various roles/positions of the stakeholders consulted, see Table 4.3.

**Table 4.3 Summary of qualitative data collection**

Data collection method	Number of consultations	Total number of participants	Organisations/role(s) represented
One-on-one interview (face-to-face)	6	6	Judges Registrar
Focus group / group interview (face-to-face)	4	34	Regional Registry Managers Legal aid solicitors / managers Magellan Registrars Child protection departments Private barristers and solicitors Family Law Committee, Law Society, Family Court Mediation Service, Law Society (Family Law Section), Police and specialist forensic services
Joint face-to-face interview	1	2	Judges
Individual phone interviews	2	2	Judges
Group phone interview	1	2	Legal aid commission
Group email consultation	1	5	Child protection departments
<b>Total</b>	<b>15</b>	<b>51</b>	

**Table 4.4 Summary of consultations by registry**

Registry	Number of consultations	Total number of participants
Adelaide	4	11
Brisbane	4	9
Melbourne	3	17
Parramatta	1	1
Sydney	3	13
<b>Total</b>	<b>15</b>	<b>51</b>

## Participants' level of experience with Magellan

Many of the Judges, Registrars and other stakeholders interviewed have been involved with Magellan either since the pilot project was developed in Victoria, or since its establishment in their registry.

The report is richer, in particular, from having the benefit of perspectives of people involved in the original committee set up by the then Chief Justice of the Family Court, The Honourable Alastair Nicholson, in response to the report from Professor Thea Brown and her colleagues (Brown et al., 2001). Participants also included Magellan Registrars who have only had a few months' experience with the Magellan model, and one lawyer who as yet had not had a Magellan case. This range of experiences is reflective of the actual nature of the people involved with Magellan. Personnel in each of the agencies involved have changed, therefore it is desirable to reflect this variety in length of experience with Magellan in order to assess how well program aims have been communicated and program fidelity maintained as it has been progressively rolled out across the various registries.



# Case-file review

In this section, results of a rigorous case-file review are described. The key feature is a comparison of cases that have gone through the Magellan process (Magellan cases) with comparable cases (*Magellan-like* cases) that involved similarly serious allegations of sexual or physical abuse of children, but which were not case managed through the Magellan model (i.e., cases from two NSW registries, where Magellan had not been rolled out until mid-2006: Parramatta and Sydney). These comparison cases are referred to as '*Magellan-like*' as they are in every way the same type of case as those included in the Magellan list. The only difference between them is that they were drawn from a registry where Magellan had not yet been implemented (except for a limited trial of cases from selected postcodes).

As will be discussed in the conclusion, it is important to bear in mind the limitations of this study when considering the quantitative data. The data are representative of recent finalised parenting cases involving allegations of sexual or physical abuse of children (filed between approximately July 2003 and 1 July 2006). However, they were drawn from different registries, with cases sampled relative to the size of the total registry caseload of parenting matters with allegations of child abuse. This means that sample sizes are unequal and quite small for some registries (for example, only 16 cases were drawn from Adelaide, compared to 53 from Sydney). Consequently it is difficult to draw firm conclusions about whether differences are a result of systematic registry variations, or reflect error due to the small sample size.

The template for the case-file review was developed by the author, with feedback and input from the Family Court. However, data coding and entry were conducted solely by one of the Family Court's experienced Magellan Registrars. The study is therefore open to two potential sources of bias: (a) that it was a Family Court employee, rather than an external evaluator that conducted the coding; and (b) that it was a Magellan Registrar only that was used, without input from a Registrar from a NSW registry (where Magellan is only now being progressively implemented beyond a very limited trial of selected postcodes). Given the ethical and pragmatic time limitations of the study, it was necessary to use Family Court staff, as it would have taken approximately one day to remove identifying details from each case file in order to allow access to external researchers.<sup>23</sup>

It was decided to use the one Registrar for coding and entering data from the case-file reviews in all five registries for two reasons: it provided a consistent approach to data coding, and using one experienced Magellan Registrar was necessary to be able to identify those cases that in retrospect, would have been eligible for inclusion in a Magellan list, had it been operating in that registry at the time.

## Analytic strategy

The analysis commences with a description of Magellan cases, and a comparison of background characteristics with *Magellan-like* cases to see whether the two groups have comparable case characteristics. Then, the potential indicators of program success are examined. Process and outcome variables are compared for Magellan cases (from Adelaide, Brisbane, and Melbourne Registries) and *Magellan-like* cases (from Parramatta and Sydney Registries). As one of the consistent themes that emerged from the qualitative study was the lack of model fidelity in Brisbane (as outlined in Section 6), some of the key comparisons between Magellan and *Magellan-like* cases are repeated with data from Brisbane excluded. (For an overview of key differences in the implementation of Magellan across the five registries included in this evaluation, see Appendix 7). Finally, where appropriate, registry-by-registry comparisons were also conducted to highlight variability in the way cases are processed, and in the outcomes achieved for those cases (see Appendix 8).

There are two basic types of data that were recorded in the case-file analysis: numeric and categorical:

- ▶ **Numeric** data refers to information from the file that is quantifiable (e.g., number of reports, number of events, number of days between events, etc.). Because these data are numeric, comparisons can be made between groups using the average (mean) for each group.
- ▶ **Categorical** data refers to non-numeric data, where either the Registrar conducting the case-file analysis had to make a judgment, using the coding frame provided (e.g., reason for the matter finalising without judicial determination) or where the information was non-numeric (e.g., yes/no, type of abuse, whether or not there was a departmental report on file, etc.). Categorical data are presented as the percentage of cases in the group that fell within each category.

Data from individual case files are aggregated and presented in two ways:

- ▶ **Case-level** data are presented as the average (mean) per case (e.g., number of different judicial officers involved in each case).
- ▶ **Registry-level** data are presented as the average (mean) for each registry (e.g., we can compare the mean of numeric data, such as the number of different judicial officers; or the number of cases within the registry/registries with a particular outcome on a categorical variable, such as the number of cases where ‘yes’ was recorded to a particular variable).<sup>24</sup>

The lack of information on some files made comparison difficult between Magellan and *Magellan-like* cases on some variables. For example, in relation to the kinds of harm that had been notified to the department, in the *Magellan-like* cases, there was no letter/report on file from the department (i.e., the “Magellan Report”), and although the department’s file was mostly subpoenaed, there was no record at all on the Sydney files of

when subpoenaed documents were received; and the documents were not still available (i.e., they had been sent back to the department once the case was finalised). The Family Report usually did not provide any information about departmental investigations. Therefore, overall, the ‘evidence’ of whether or not the department had investigated the allegations was very slim.<sup>25</sup>

## Comparison of background case characteristics

Before commencing a comparison of Magellan and *Magellan-like* cases, key characteristics of the cases need to be described, in order to see whether the Magellan cases (from Adelaide, Brisbane, and Melbourne Registries) are equivalent to the *Magellan-like* cases (from Parramatta and Sydney Registries).

Tables 5.1 and 5.2 show that on most case characteristics, there was no major difference between Magellan and *Magellan-like* cases, except the degree to which the Magellan case-management protocol meant that additional information was available on Magellan cases (i.e., it is the level of information that differs between the two groups—particularly about the type of abuse notified to the statutory child protection departments).

**Table 5.1 Background characteristics of Magellan and *Magellan-like* cases (numeric variables)**

Average (per case)	Magellan cases (Adelaide, Brisbane, and Melbourne) Mean (SD)	<i>Magellan-like</i> cases (Parramatta and Sydney) Mean (SD)
Number of children who were subject of the proceedings AND subject of the child abuse allegations	1.6 (0.9)	1.6 (0.9)
Number of children who were subject of the proceedings but NOT subject of the child abuse allegations	0.3 (0.7)	0.3 (.7)
Number of children who were subject of the child abuse allegations but were NOT subject of the proceedings	0.1 (0.3)	0.1 (0.2)

**Table 5.2 Background characteristics of Magellan and *Magellan-like* cases (categorical variables)**

Evidence on file of	Magellan cases (Adelaide, Brisbane, and Melbourne) %	Magellan-like cases (Parramatta and Sydney) %
Types of abuse notified to the statutory child protection department:		
Sexual abuse only	27.5%	8.8%
Physical abuse only	28.8%	2.5%
Both sexual and physical abuse	5.0%	0.0%
Neglect	1.3%	0.0%
Emotional abuse	3.8%	0.0%
Neglect and physical abuse	1.3%	0.0%
Missing data	32.5%	88.7%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>
Alleged perpetrator's relationship to child of the proceedings:		
Mother	18.8%	26.3%
Father	65.0%	58.8%
Sibling	1.3%	0.0%
Stepmother	3.8%	0.0%
Stepfather	2.5%	2.5%
Grandmother	1.3%	1.3%
Grandfather	0.0%	1.3%
Other	7.5%	10.0%
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>
Number of <b>separate</b> notifications to the statutory child protection department:		
1	6.3%	1.3%
2	7.5%	0.0%
3	7.5%	1.3%
4	5.0%	0.0%
5 – 9	15.0%	0.0%
10 - 15	2.6%	0.0%
missing data	56.3%	97.4%
Multiple parties or complex family relationships	15.0%	13.8%

## Notifications to the statutory child protection department

One aspect of the case backgrounds that did appear to substantially differ between Magellan and *Magellan-like* cases was the level of detail available on the file about the type of abuse that children were alleged to have suffered, or of which they were believed to be at risk. One-third of Magellan cases did not have data on this issue; however, 89% of *Magellan-like* cases from NSW did not have this data.

For the 54 Magellan cases with data, as expected, either sexual or physical abuse were the most common types, with four cases involving both. However, there were another four cases where the notification to the department involved either neglect or emotional abuse. As the eligibility for entry to the Magellan list applies only to cases involving serious allegations of sexual abuse or physical abuse of children, this suggests that some of the children may be experiencing multiple forms of maltreatment. It is important to note that the same cases contained reports to the statutory department of other forms of maltreatment—either in addition to the physical or sexual abuse, or in the absence of a report about the physical or sexual abuse. Magellan files contained considerably more information about the number of notifications made to the department, with the number of notifications per case ranging from 1 to 15. This information was missing in just over half of the Magellan cases ( $n = 45$ ; 56.3%) and nearly all the *Magellan-like* cases ( $n = 78$ ; 97.4%).

## Against whom are allegations typically raised?

In both groups, the largest group of alleged perpetrators was fathers (in 65% of Magellan and 58.8% of *Magellan-like* cases), followed by mothers (in 18.8% of Magellan and 26.3% of *Magellan-like* cases). Allegations against family members other than the child of the proceeding's biological parents were relatively few (16.2% of Magellan cases, and 15.0% of *Magellan-like* cases).

## Summary

There were no other striking differences between Magellan and the *Magellan-like* cases. The number of children (whether or not they were the subject of the proceedings or the subject of the abuse allegation) did not differ between the two groups. Examination of these background characteristics of cases in the two groups show that Magellan and *Magellan-like* cases are equivalent, in terms of complexity and type of issues that are being resolved. This means that the comparisons that follow of case-management characteristics (i.e., process variables) and outcomes (such as the impact this has on the timing of the case and type of settlement reached) can be attributed to the outcome of the Magellan case-management model with more confidence.

## Comparison of key indicators of success

### Court reports and Independent Children's Lawyers (ICLs)

Table 5.3 shows that Magellan cases have a comparable number of family reports, less psychiatric reports, and more expert/other reports than *Magellan-like* cases. There is also a shorter time-lapse between the Court being aware of the abuse allegation and an order being made for the appointment of an Independent Children's Lawyer (ICL).

**Table 5.3 Comparison of key process variables for Magellan and *Magellan-like* cases**

Average (per case)	Magellan cases Mean	<i>Magellan-like</i> cases Mean
Time lapse between when the abuse allegation was raised to the Court and when the ICL was ordered (days)	16.8	44.9
Number of family reports	1.5	1.3
Number of psychiatric reports	1.7	2.3
Total number of expert/other reports	3.0	1.7

### Case duration

One of the key research questions is whether the Magellan case-management system brings about a quicker resolution of cases. The "Magellan Manual" sets the benchmark for the rapid processing of cases at 6 months from the date the matter was included in the Magellan list until the date of the case outcome (i.e., the date on which the case either: settled before listing for trial; settled after trial listing but prior to evidence; settled with evidence; or proceeded to judicial determination). As shown in Table 5.4, the duration of Magellan cases on average was 7.3 months from the date that matter was included in the Magellan list until finalisation. However, differences between the three registries are apparent. Adelaide was the only registry where the average case was less than 6 months (mean = 5.8 months). For the other two Magellan registries, the average case only exceeded the recommended time frame by approximately two months.

**Table 5.4 Duration from when the matter was included in Magellan list to case outcome**

Registry	Length (days)	Length (months)
Adelaide	179	5.8
Brisbane	244	8.0
Melbourne	246	8.1
<b>TOTAL: Magellan</b>	<b>223</b>	<b>7.3</b>

In order to understand whether achieving (or close to achieving) this recommended timeframe means that cases were processed faster in Magellan than in the former case-management model, a different measure of case duration needs to be used, so that *Magellan-like* cases could be compared.

Table 5.5 shows data from all five registries for the duration of the matter from the date the allegation of child abuse was notified to the Court, to the case outcome. This shows that part of the delay is in identifying the matter as suitable for inclusion in Magellan—hence the difference between the average of 7.3 months (see Table 5.4) and 9.6 months (see Table 5.5)<sup>26</sup>. When comparing Magellan and *Magellan-like* cases, however, it is clear that the Court is processing Magellan cases more quickly than *Magellan-like* cases. On average, *Magellan-like* cases took 13.0 months, which was 3.4 months longer than Magellan cases (the mean for Magellan was 9.6 months).

**Table 5.5** Duration from allegation to case outcome

Registry	Length (days)	Length (months)
<b>Magellan</b>		
Adelaide	220	7.2
Brisbane	339	11.1
Melbourne	301	9.8
<b>TOTAL: Magellan</b>	<b>293</b>	<b>9.6</b>
<b><i>Magellan-like</i></b>		
Parramatta	353	11.6
Sydney	453	14.0
<b>TOTAL: <i>Magellan-like</i></b>	<b>396</b>	<b>13.0</b>

## Total length of matters

As shown in Table 5.6, from the date of first application to the case outcome, the length of Magellan cases (332 days) was an average of 133 days (4.6 months) quicker than *Magellan-like* cases (471 days).

**Table 5.6** Case duration (from date of first application to date of case outcome)

Mean length of Magellan cases (Adelaide, Brisbane, & Melbourne)	Mean length of <i>Magellan-like</i> cases (Parramatta & Sydney)	Mean difference [ <i>Magellan-like</i> minus Magellan]
332 days (10.9 months)	471 days (15.4 months)	139 days (4.6 months)

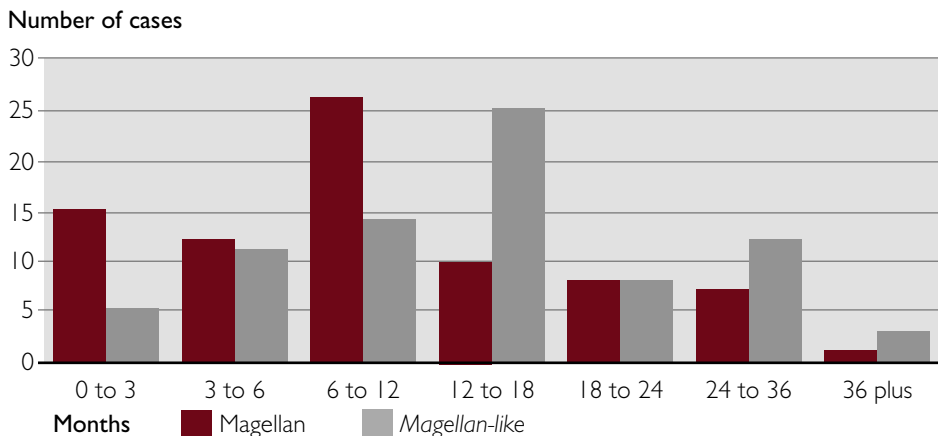
In order to examine the variability within these two groups, and the possibilities that extreme cases are unduly influencing the mean number of days, the spread of case durations was categorised into blocks of time (see Table 5.7). Although Magellan cases were on average shorter than *Magellan-like* cases, the largest proportion of cases still took between 6 and 12 months ( $n = 26$ ; 32.5%), despite the aim being to resolve matters within six months. In contrast, the largest proportion of *Magellan-like* cases took between 12 and 18 months to resolve ( $n = 25$ ; 31.2%), with 15 cases (18.8%) taking longer than two years, compared to only eight Magellan cases (10.0%) taking more than two years. These data are also graphically represented in Figure 5.1, showing the greater proportion of Magellan cases in the shorter time blocks, and the greater proportion of *Magellan-like* cases in the longer time blocks.

**Table 5.7** Grouped case duration (from date of first application to date of case outcome)

Case length (days)	Case length (months)	Magellan cases %	Magellan-like cases %
1-90	0-3	18.8%	6.2%
91-182	3-6	15.0%	13.8%
183-365	6-12	32.5%	17.5%
366-548	12-18	12.5%	31.2%
549-730	18-24	10.0%	10.0%
731-1094	24-36	8.8%	15.0%
>1094 days	> 36 months	1.2%	5.0%
<b>TOTAL</b>		<b>98.8%</b> ( $n = 79$ )	<b>98.8%</b> ( $n = 79$ )

**Note:** Data were missing for two matters (one Magellan and one *Magellan-like* case) where the case had not yet been finalised.

**Figure 5.1** Length of case from date of first application to date of case outcome

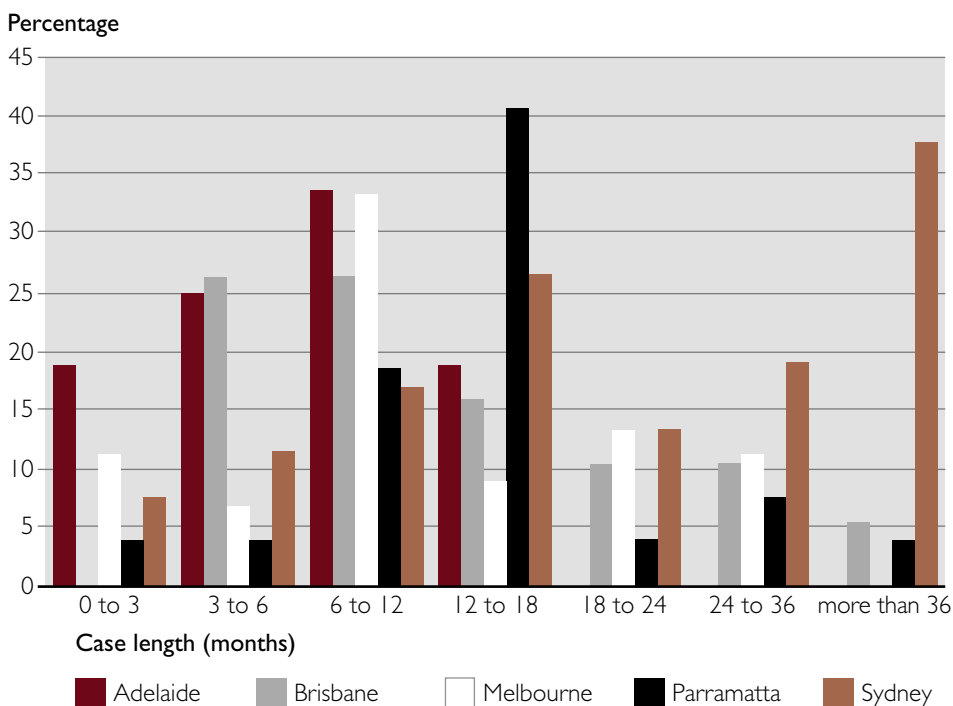


Potential differences between registries in the sample of Magellan cases (i.e., differences between Adelaide, Brisbane, and Melbourne) and the sample of *Magellan-like* cases (i.e., differences between Parramatta and Sydney) need to be explored. Table 5.8 provides a breakdown of case length for each registry, and is graphically represented in Figure 5.2.

**Table 5.8 Total case length (grouped by registry)**

	Case length (months)	Adelaide n (%)	Brisbane n (%)	Melbourne n (%)	Parramatta n (%)	Sydney n (%)
1 to 90	0-3	3 (18.8%)	0	5 (11.1%)	1 (3.7%)	4 (7.5%)
91 to 182	3-6	4 (25.0%)	5 (26.3%)	3 (6.6%)	1 (3.7%)	6 (11.3%)
183 to 365	6-12	6 (37.5%)	5 (26.3%)	15 (33.3%)	5 (18.5%)	9 (17.0%)
366 to 548	12-18	3 (18.8%)	3 (15.8%)	4 (8.8%)	11 (40.7%)	14 (26.4%)
549 to 730	18-24	0	2 (10.5%)	6 (13.3%)	1 (3.7%)	7 (13.2%)
731 to 1094	24-36	0	2 (10.5%)	5 (11.1%)	2 (7.4%)	10 (18.9%)
more than 1094	> 36	0	1 (5.3%)	0	1 (3.7%)	2 (3.8%)
<b>TOTAL</b>		<b>n = 16</b>	<b>n = 19</b>	<b>n = 45</b>	<b>n = 27</b>	<b>n = 53</b>

**Figure 5.2 Length of case from date of first application to date of case outcome (by registry)**



As will be shown in Section 6, many stakeholders identified significant departures in Queensland from what were identified as the key characteristics of Magellan. In order to see whether excluding data from the Brisbane Registry alters the overall picture, the key comparison of the total case duration was repeated, using only Magellan cases from Adelaide and Melbourne. As is shown in Table 5.9, the mean difference between and Magellan and *Magellan-like* cases is even greater (5.5 months) than when Brisbane was included (4.6 months; see Table 5.6). For examples of some further comparisons between Magellan cases that exclude data from Brisbane with *Magellan-like* cases, see Table 8.5 in Appendix 8.

**Table 5.9 Case duration (from date of first application to date of case outcome) for Magellan cases (excluding Brisbane) compared to *Magellan-like* cases**

Mean length of Magellan cases Adelaide & Melbourne only (excludes Brisbane)	Mean length of <i>Magellan-like</i> cases (Parramatta & Sydney)	Mean difference [ <i>Magellan-like</i> minus Magellan]
304 days (10.0 months)	471 days (15.5 months)	167 days (5.5 months)

**Table 5.10 Comparison of process variables for Magellan and *Magellan-like* cases**

	Magellan cases (mean)	<i>Magellan-like</i> cases (mean)
Number of Court events	6.2	10.9
Number of different judicial officers involved	3.4	5.7
Number of expert/other reports in total	3.0	1.7
Number of family reports	1.5	1.3
Length of trial (days)	3.4	3.1
Number of Consent / Partial Consent Orders	1.6	1.9
Court received a specific "Magellan Report"	65.0%	0%
Department investigated the allegations	80.0%	26.3%

Table 5.10 provides a comparison of key process variables for Magellan and *Magellan-like* cases. Magellan cases had fewer separate Court events, and these Court events were conducted before fewer different judicial officers (i.e., they had greater consistency of personnel, such as the Judge or Registrar, processing their cases). Magellan cases also had a greater number of expert reports and evidence of assessments from other professionals than *Magellan-like* cases.

Although it was anticipated that the Magellan case-management procedures might result in a shorter trial (if the matter had not settled prior), this was not evident. The results should be interpreted with caution, however, as few cases proceeded to a trial ( $n = 37$ ; 23.1%). For the 20 Magellan cases that did proceed to trial, the average length of the trial was 3.4 days. For the 17 *Magellan-like* cases that proceeded to trial, the average case length was slightly shorter: 3.1 days.

Magellan cases did have slightly fewer Consent Orders than *Magellan-like* cases, and there was greater evidence of the statutory child protection department having investigated the allegations that were notified to them.

Tables 5.11 and 5.12 provide a comparison of key timing and case finalisation issues for Magellan and *Magellan-like* cases. (For additional comparison data, see Appendix 8).

**Table 5.11 Comparison of timing of key events for Magellan and *Magellan-like* cases**

	Magellan cases (mean)	<i>Magellan-like</i> cases (mean)
Duration from the date the Court made aware of allegation to date of case outcome	293.2	396.1
Duration from the date the child protection departmental file was received to date of case outcome	133.4	217.6
Duration from the date the Court was made aware of allegation to date the order was made to appoint an ICL	16.8	44.9

**Table 5.12 Comparison of case finalisation issues for Magellan and *Magellan-like* cases**

	Magellan cases (mean)	<i>Magellan-like</i> cases (mean)
Settled before listing for trial	62.5%	41.3%
Matter proceeded to judicial determination	8.8%	13.8%
Matter returned to the Family Court within 18 months after Final Orders	7.5%	6.3%
Matter finalised by Consent Order	63.8%	63.8%

## Finalisation before or after trial

As shown in Table 5.12, there were key differences between Magellan and *Magellan-like* cases in the timing of matters finalising. More Magellan matters settled before the matter was listed for trial (62.5%) than *Magellan-like* matters (41.3%). Although slightly more *Magellan-like* cases proceeded through the trial process all the way to judicial determination (13.8%) than Magellan cases (8.8%), the difference is not large.

The number of *Magellan-like* cases that were listed for trial, but did not proceed to judicial determination is large. However, significant costs have already been incurred by the parties and by the legal aid commission in preparing the case and briefing Counsel by this stage, regardless of whether or not the final hearing was conducted, or whether they settled on the day the matter was listed for trial.

## Expert reports and other assessments

For *Magellan-like* cases, the largest group of reports provided to the Court came from professionals or expert witnesses involved in “psychological therapy or counselling” ( $n = 14$ ; 17.5%). This could reflect the greater time period over which *Magellan-like* cases ran, and the greater number of professionals involved who were interviewing children.

## Case outcomes

Across all cases, the number of times that Judges found “unacceptable risk” was very low (1 Magellan case and 3 *Magellan-like* cases; see Appendix 8 Table 8.3). Of the total number of cases proceeding to judicial determination ( $n = 19$ ), only four (i.e., 21.1% of cases proceeding to judicial determination) had a clear indication on file that the Judge found unacceptable risk (14.3% of Magellan cases and 25.0% of *Magellan-like* cases)<sup>28</sup>. As explained in Section 3, the focus of the Judge is to determine whether there is any future risk posed by the parenting order, and what is in the child’s best interests. However, as explained in the Introduction, this may be because the *Briginshaw standard* (which applies a more stringent qualification for evidence in relation to past abuse—i.e., that it should meet the ‘reasonableness’ test) is extended (some would argue inappropriately) to questions of future risk (see Fogarty, 2006; Kaspiew, in press).

## Registry differences

Although the evaluation focused on comparing Magellan cases with comparable parenting disputes before Magellan was implemented (i.e., the *Magellan-like* cases), it was apparent from the qualitative study that there were important registry differences in the way Magellan has been implemented and is now operating (see Section 6). These registry differences were sometimes greater than the differences between Magellan and *Magellan-like* cases (see results of registry comparison in Appendix 8).

## Registry differences in Magellan timelines

Table 5.13 shows some key Magellan timelines. Once a matter has been included in the Magellan list, the average duration of the matter is approximately 7.3 months (mean = 222.7 days). This suggests that some of the delay is occurring before a matter is identified as having serious allegations of sexual or physical abuse of children; and although entire matters are not being processed within the anticipated 6-month period, once matters are identified as Magellan they are processed relatively quickly. There is also variability in the time it takes to receive the statutory child protection department's file (where this is subpoenaed) or to receive the short summary of the department's activities and concerns: the "Magellan Report".

**Table 5.13** Comparison of case-level data in each of the three Magellan registries

Outcome variable (per case)	Adelaide Registry (n = 16) Mean	Brisbane Registry (n = 19) Mean	Melbourne Registry (n = 45) Mean
Duration from listing as Magellan to case outcome (days)	178.88	243.9	246.1
Duration from application to the child protection department's "Magellan Report" (days)	71.1	-	161.5
Duration from the child protection department's "Magellan Report" to case outcome (days)	127.94	-	219.4
Duration from the child protection department's file received to case outcome (days)	203.4	158.1	190.0

**Note:** Data for Brisbane are missing in relation to the "Magellan Report" because, at the time of data collection, the department was not providing the Court with such a "Magellan Report" (instead, the entire departmental file was subpoenaed).

However, registry differences do not account for the broad differences observed between Magellan and *Magellan-like* cases. In particular, the improvement in the time taken for cases to proceed cannot be attributed solely to underlying differences in the registry's capacity to hear and manage matters. Based on administrative data supplied by the Family Court, Table 5.14 shows that for other Family Court cases (not just parenting matters), the Parramatta and Sydney Registries are in fact processing cases faster than other registries. The national data for the Family Court show that three out of four cases that were filed in the Family Court and finalised in the determination phase took up to 24.9 months, whereas the data for both Parramatta and Sydney were quicker than the national average (23.3 and 17.5 months respectively). Hence, the differences found in the current study between Magellan and *Magellan-like* cases can confidently

be attributed to the Magellan case-management approach. The fact that the shorter duration of Magellan cases is occurring in registries where other matters are taking longer highlights the importance of the Magellan protocols, rather than other registry characteristics, in achieving this outcome.

**Table 5.14 Registry differences in Family Court timelines for all matters: 2005-06**

	Adelaide (months)	Brisbane (months)	Melbourne (months)	Parramatta (months)	Sydney (months)	National average for FCoA (months)
Time from filing to finalisation (when disposed in the determination phase), at the 75th percentile (i.e., 3 out of 4 cases were finalised within this timeframe)	23.5	24.2	27.2	17.5	23.2	24.9

**Source:** Data were supplied by Family Court of Australia for 2005-06. The data relate to all matters, not just parenting matters.

## Summary of key findings

There were no major differences between Magellan and *Magellan-like* cases on background characteristics, such as:

- number of children involved in cases;
- complexity of cases; and
- parallel proceedings.

Key differences between Magellan and *Magellan-like* cases were found. Magellan matters:

- were shorter from the time the allegation was raised to case finalisation (by an average of 3.4 months);
- had greater involvement of the statutory child protection department (as demonstrated by the number of investigations and evidence on file of the department planning to give evidence at trial);
- had fewer Court events;
- were dealt with by fewer different judicial officers; and
- more often settled early.

There were no major differences between Magellan and ‘*Magellan-like*’ cases in terms of:

- ▶ number proceeding to judicial determination;
- ▶ rate of cases returning to the Family Court within 18 months of finalising; or
- ▶ judicial finding of ‘unacceptable risk’.

Magellan has largely been implemented as anticipated. The “Magellan Manual” states that the overall timeline for Magellan matters is to be 26 weeks (i.e., 6 months) (Family Court of Australia, 2007). Across the three registries sampled, the average case duration from the time the matter was identified and included on a Magellan list was 7.3 months, indicating that the average case was exceeding the time standard by just 1.3 months. (The quickest registry was Adelaide, with an average of 5.8 months.)

Although not always achieving the ideal, the data show that in almost every respect, Magellan cases had better results than *Magellan-like* cases for the case-management procedures measured. Some notable differences are that Magellan cases had fewer Court events and involved fewer judicial officers. As well as being shorter from the date of application to the date of the case outcome, there was also less time taken from the date the Court was made aware of the allegation (not all cases commence with the allegation being made on application), and less time taken from the time the department’s report or file was received to the date of the case outcome.

Areas of similarity between Magellan and *Magellan-like* cases were the length of trial (for those that proceeded to a trial), the number of Interim Orders, and the number of Family Reports. However, Magellan cases have a greater number of reports from experts and other professionals.

There were a number of registry differences within both Magellan and *Magellan-like* cases, suggesting that the way that cases are managed and heard in each registry is an additional factor influencing the progress and outcome of cases.



# Qualitative data

## 6.1 Key elements of the Magellan protocols

Based on the views expressed by a wide range of participants, Box 6.1 provides a summary of the key elements of Magellan that were identified, and what—according to the staff from the Court and external organisations who participated in this study—makes it successful.

### Box 6.1 Essential elements of the Magellan protocol

#### 1 Cooperation

Cooperation is needed between all the agencies involved with families: courts, police, legal aid, private lawyers, the statutory child protection department, hospitals, private psychologists, community health centres or other counselling agencies. Establishing the Magellan committee in each jurisdiction is essential for communication between agencies. This also allows the Judge to benefit from a multi-disciplinary perspective.

#### 2 Court timeliness & prioritisation

Cooperation enables all the necessary information to be gathered to ensure cases can be processed through the Court more quickly. The aim is to complete cases within six months.

#### 3 Early report from the statutory child protection department

In order to achieve good timelines, timely responses are needed from the state agencies, particularly the statutory child protection department about their involvement and current concerns about the child.

#### 4 Good individual case management (Judge-led)

To achieve this, cases have to be both managed and heard by only one or two Judges per family. Judges need to get to know the families and their circumstances, and provide a sense of continuity between Court events.

#### 5 A dedicated Registrar

The Magellan Registrar is familiar with the details of the case, ensures that everything is coordinated, and that 'nothing falls between the cracks'.

## 6 Un-capped legal aid funding for families

The legal aid component is critical. Families who are entitled to legal aid are able to get it, without the imposition of caps.<sup>29</sup>

## 7 Independent Children’s Lawyers (ICLs)

Having the interests of children who are the subject of the proceedings independently represented is crucial to the process. ICLs can then help gather information early, and foster discussions. (This includes having funding for an early Family Report if the Court’s internal Family Consultants are not used.)

## 8 Children’s best interests

By addressing timeliness and quality of the reports, the Court is able to come to a speedier resolution in the best interest of the child—particularly when the allegations are not supported and the child can resume spending time with the parent.

Of the elements identified in Box 6.1, the critical ones consistently identified by participants were: interagency cooperation; Judge-management (with support from Registrars); and provision of intensive up-front resources.

However, this is not an exhaustive list. Some of the participants identified different critical factors. For example, some legal aid lawyers identified the three most important elements as: the docket system (see Section 6.4), having a Judge managing the case, and fast-tracking.<sup>30</sup> Essentially, they saw Magellan as a case-management tool for fast-tracking cases:

*“Really, it is the way that all cases should be handled in the Family Court and the Magistrates Court. It is about early intervention and a timely bringing together of all the evidence. From the perspective of legal aid—and from practitioners who act for parties—there are not as many hoops to jump through to get additional funding (because of the caps that usually apply being lifted for Magellan). However, a problem exists: Although we spend more, we haven’t been given more funding, so there’s less money available for other cases.”*

Stakeholder

Many stakeholders also identified the lifting of the cap on legal aid funding for Magellan cases that qualify for legal aid as a critical element:<sup>31</sup>

*“The Federal Government realised that they shouldn’t have caps on legal aid, as this would stop children from having the protection that they needed.”*

Judge

## The Magellan case-management process

One Judge provided an example of the introductory comments that Judges give to parties (the litigants in the parenting matter) and to their solicitors on the first day of a Magellan directions hearing. It provides a good overview of the essential elements from the perspective of a Judge, and what is seen to be important about the process from the perspectives of litigants and their representatives:

*“I explain what the Magellan program is by saying that the Court had identified a significant deficit in the way in which cases involving allegations of serious physical and sexual abuse had been handled in our Court system.*

*“One of the deficits was that when an allegation of abuse was raised against one or other parent, then invariably what had happened in the past was that the Court, erring on the side of caution, at a time when there had been no real investigation, tended to make Orders that had the real potential to interfere with the quality of the relationship between the child and the parent that was accused. Regrettably, in the old system, family law cases had always taken a very long time to get to hearing. It is one of the problems, not just with the Family Court, but also with all courts, that there is a delay in getting to a hearing.*

*“The interruption to the relationship between the child and parent would go on for many, many months or years. In many cases, of course not all, but in many cases it was found that those allegations were without basis. And the families were left trying to restore a relationship between a child and a parent that had probably been damaged because of the extended period of time over which the relationship with the accused parent had not been normal. And the ultimate decision, assisted by experts’ reports, etcetera, had found that there had been absolutely no reason for there to be any interruption in the first place.*

*“The raison d’être of Magellan is to see those cases through the system so that in the event that—erring on the side of caution, that Orders need to be made in the first place, and they usually do, so that any disruption in the relationships is going to be over the shortest period of time, so that in the event that it is ultimately determined that there is no reason why there should be any suspension of contact or supervision of contact, it has been interrupted for the shortest period possible.*

*“So, that’s what I say. What I focus on is the difference between the ‘bad old days’ and with Magellan, the speedy response.”*

Judge

Another Judge provided a succinct summary of the main purpose of Magellan:

*“The main idea is to ensure a timely disposal of allegations or suspicions of child sexual abuse where it is a best interest factor, and is likely to affect the outcome of the Orders that are being made; and to ensure that all information that’s needed is available from all sources; and to ensure that matters are properly managed by the Judges making the decision, rather than by somebody else. So there is a coordinated and interdisciplinary approach.”*

Judge

Many talked about the strongest feature of Magellan being the cooperation between all relevant stakeholders; the consequent open lines of communication between all those stakeholders and the Court; and the significant level of trust that has developed between all those stakeholders:

*“The key elements are: cooperative liaison with all of the organisations involved with these families—courts, police, legal aid, child protection department, hospitals, community health centres, etcetera; Judge management; and provision of resources up front, which allows us to get provision of Family Reports earlier. Through those three things, the purpose of Magellan is to target the real issues, and—if they need a judicial determination—to provide that quickly.”*

Judge

There was a general sense that Magellan is an extremely worthwhile project that protects children and resolves matters a lot more promptly and efficiently than ever before. The fact that Magellan cases are both Judge-managed, but supported by a specific Magellan Registrar was seen as important for its success. The importance of a specialist response—and the extent to which it is provided—is evident from this Judge’s summary of how the Magellan list operates:

*“It’s a microcosm of the Court. It’s got its own Judge, Registrar, Registry, counsellor—all the levels are there. Rather than just get who happens to be there that day. We’ve almost set up a second court, within the Court. But it’s a highly resourced list.”*

Judge

For a more detailed view of the ‘typical’ sequence of events for Magellan cases, see “Magellan Manual: National Procedures for the Conduct of Magellan Cases (Family Court of Australia, 2007). Having identified key elements, it is important to look at some of the mechanisms that are critical to achieving this. The most commonly cited one was providing a speedy response, due to the need to balance the protection of children who may be at risk with the procedures of natural justice.

## Speed: A time-critical response

The following quote from a Judge highlights the view that speed is a key element—but also shows the sub-components of the Magellan case-management system that allow for that speed to occur (particularly collaboration):

*“The legal aid commission, consistent with the object of getting things through quickly, have ensured that on the First Directions day of a Magellan matter, which may be only 2 days after coming into the Registry, because I deal with them instantly (once I’m alerted by the Registrar that there’s a Magellan matter, I’ll look at the first spot I’ve got: it may be early in the morning before I start my normal hearing, or later in the afternoon—so it’s quick), the legal aid commission provide the resources whereby an Independent Children’s Lawyer can be present on that first return date, no matter how quick it occurs.*

*“Knowing that the First Directions hearing is important, that’s when the “Magellan Report” is ordered, and that is when the Court has to make its initial decision about what the contact is going to be whilst we’re waiting for the “Magellan Report”, and the value of an ICL to help negotiate what is usually Consent Orders at that stage, is invaluable. So that’s what legal aid do. They would normally require a number of weeks to be served with material, to appoint an Independent Children’s Lawyer. They would normally take a number of weeks, but they effectively do it instantly if they have to. They’re in it—but they come into it early.*

*“On the First Directions hearing, I order a “Magellan Report”. The department—by agreement with the Court—the department provides a “Magellan Report” to be filed within the Court. I make it for no less than 6 weeks, no more than 7 weeks. The department have never let me down.”*

Judge

One of the reasons for speed that was highlighted in one of the focus groups was in order to facilitate appropriate therapy for children:<sup>32</sup>

*“The purpose of Magellan is to expedite cases where there are allegations of abuse, so that where necessary therapy can start more quickly.”*

Stakeholder

Another reason for the need for a quick determination is so that for cases where it is clear that abuse is not occurring, the child can resume spending time with both parents:

*“Originally, Magellan was seen to be about proving the allegation. But it is also about finding that nothing had occurred, so that relationships can be re-started.”*

Stakeholder

Participants were invited to reflect on how the case-management procedures of Magellan were different from the Court’s case-management procedures prior to the implementation of Magellan. All participants agreed that Magellan has brought significant, fundamental changes to the way in which Family Court parenting cases involving serious allegations of sexual or physical abuse of children are handled. For example:

*“Prior to the introduction of Magellan, it was often difficult for both the Court and the department to identify and target those cases where these issues have arisen. Also, it was not always the case that an Independent Children’s Lawyer would be appointed, so that there may be pressures placed on the department to become a party in cases where its only role was as an information provider rather than as a party actively pursuing particular Orders. In Magellan cases however, there is always an ICL appointed who is able to ensure any information about concerns for the child is able to be put to the Court from an independent perspective. It is still the case that the department has only seen the need to be a party to these proceedings in about 10% of such cases.”*

Stakeholder

A response from the following Judge highlights the common view that Magellan has reduced delays:

*“There was definitely delay. Before Magellan, from the time of filing of an application (it would usually have been an interim application to suspend contact because of allegations of abuse), it would have been unusual to have a hearing within 12 months. A big feature is the decrease in delay. The other thing that’s important is that within six weeks of the case coming before me, is that there is a report from our statutory authority that sets out the involvement of the department... And the department say in their report what their conclusion is in relation to the alleged abuse and they say whether or not they will intervene in the proceedings. And so, six weeks later, everybody knows. Of course,*

*the Magellan Report is not the Family Report. But the Magellan Report tells everyone, within 6 weeks, whether there is going to be support for one position or the other. So early in the piece, he or she making the allegations knows that if this matter proceeds to a hearing, that there is likely to be support from the department for their contention that there has definitely been some sort of abuse.”*

Judge

### **Speed vs. time for comprehensive investigations**

When some participants talked about the importance of speed, it was qualified—either by talking about the need to balance it with taking the time necessary to conduct the appropriate investigations and evaluations (e.g., by the department, police, or to obtain other specialist reports), or by linking the issue of speedy resolution to the best interests of the children concerned. For example:

*“One of the problems that we have in getting our matters disposed of in a timely fashion is if there are ongoing police investigations, for largely the same issues or incidents—or they’ve laid charges... Sometimes the investigation has taken a long while; then it’s taken a long while for the report to filter through to prosecutions; then it takes a long while for somebody to decide whether they’re going to prosecute or not; then it takes a long while for the summons to issue; then it takes an even longer time to get the trial on in our overloaded criminal court systems here. Now the police are on the stakeholder group meeting, it means they have the name of a police officer whose job it is to enquire as to the progress of matters in their system that are Magellan matters in ours. They can put in a phone call, and they can chase it up, and let us know.”*

Judge

Although speed is important, it was emphasised by participants that this should not be at the expense of providing a thorough response. Time may need to be allowed for investigations by police or the statutory child protection authority, as this information is needed before any decision can be made about what Orders will be in the child’s best interests, and will ensure the child’s safety. Getting the “Magellan Report” from the statutory child protection authority is a critical element in the ability of the Court to process the matter quickly, as it provides the Court with a focused summary of what the department has done, what its current concerns are, and what it intends to do. Similarly, obtaining good quality, up-to-date reports on the family (often from the Court’s Child Dispute Service) and from relevant experts (e.g., psychologists and psychiatrists) is also critical to collating all of the information available for the Judge to make a decision.

That fact that timelines were not always being adhered to (in particular, the aim of resolving matters within a 6-month period) was consistently raised as one of the ways in which Magellan was not operating in the manner in which it was planned. This seems in part a function of the type of cases concerned. Despite having all of the protocols in place, Magellan is dealing with the most complex of matters. There was recognition, therefore, that it is not always appropriate to hurry cases. To be driven by the demand to meet timelines may be counterproductive if more time is needed.

### **Early resolution of cases prior to a final hearing**

A common outcome is that families withdraw from the Court process by one party consenting (or partially consenting) to Orders regarding where the child lives and how the child spends time with both parents. Some talked about the timely provision of the statutory child protection department's "Magellan Reports" being critical to this. Parties then know that either the department has substantiated harm, or that it does not have concerns about the child's safety. If harm was not substantiated, and they were reassured by the investigations that the department undertook, the party making the allegation may reach an agreement about the parenting dispute.

Other participants, however, did not see Magellan Reports as being a 'settlement tool' per se, but still an important part of the whole process of gathering together all of the relevant information.

Some stakeholders expressed concern about the large percentage of matters that proceed to a hearing in their registry, compared to other registries. This was particularly evident in NSW:

*"Of greater concern is the high percentage of cases that are presently proceeding to a hearing. It will be an issue both from a resource perspective as well as outcomes for children and families if large numbers of cases are not able to be resolved on the basis of the "Magellan Report". From a resource perspective, this will mean the department will have the additional burden of preparing "Magellan Reports" for the Court without the offset savings in resources from not having to deal with subpoenas for its files or the calling of officers to give evidence in the proceedings."*

Stakeholder

It was not always clear from stakeholders' responses whether or not they saw one of the principal aims of Magellan being to avoid the matter proceeding to trial. Some were clear that this is not the aim per se—but rather, it is to have active judicial case management throughout. Whether matters resolve after the "Magellan Report" or a Family Report has been tabled, or at some other interim hearing, or if it goes to judicial trial, does not matter.

However, it is often only at the point of listing the case for trial that all of the information is available to parties, and they decide to settle without proceeding to trial:

*“And high settlement rates at the point of trial is a contraindication. People may accept that they were wrong about their allegation, so the quicker you investigate, the more likely cases will resolve before their convictions are hardened. That’s why we have a rolling list. To list them for final hearing quickly. To do it the other way, is not possible.”*

Judge

*“I had a recent example of a couple of matters being transferred from the Federal Magistrates Court at a relatively late stage in the file. This has provided somewhat of a hindrance to getting what Magellan hoped to have achieved done, as they are slightly entrenched in their attitudes and positions by that time. So I mentioned it to the Chief Federal Magistrate who again, is very helpful and supportive. So I sent a letter to every Federal Magistrate in Australia indicating that because there’s been so many recent appointments to the Court, they may not be fully aware of the Magellan process, so this is what it’s all about, and how it was important for them as one of the key gatekeepers in identifying the matter that might be Magellan, to send the matter to the Family Court as quickly as possible... So again, a cooperative approach between the two Courts, who in some quarters are seen as being at each other’s throats but in reality they’re not—certainly not with Magellan.”*

Judge

## Eligibility criteria

The task of identifying cases to be included on the Magellan list ultimately rests with the Judge managing the Magellan list. In practice, however, the Registrar dedicated to the Magellan list often plays a ‘gate-keeping’ role. This usually involves the Judge and the Registrar discussing the case and the allegations and deciding whether it meets the criteria:

*“It’s a cooperative process, but the buck stops with the Magellan Judges.  
It’s a big job for the Registrar.”*

Judge

An issue that was raised by some participants was confusion about eligibility criteria:

*“The first step is to work out whether or not the matter needs to be designated as a Magellan matter. Part of that is working out whether the issues that are in dispute—that is, that the allegations that are made are such that they require that level of attention. It should only be for cases where there are fresh allegations that are serious allegations of abuse. Our practical history is that they’ve been matters of sexual abuse. But from the legal profession’s point of view, that’s not abundantly clear. I still get: ‘What goes into Magellan, and what doesn’t?’ Lawyers don’t have a good understanding of what should be a Magellan matter. We haven’t been given the Court’s definitions of what is Magellan.”*

Stakeholder

This suggests that as the project has been progressively rolled out, advice about such a fundamental issue has not been clearly articulated:

*“There’s been an ongoing dispute as to which matters qualify for entry into Magellan. Some Judges act as their own gate-keepers; some use Magellan Registrars to ‘Magellanise’ matters—therefore the criteria will be different, because you have different Judges and different Registrars; although you have a single definition, local interpretations mean you have differences. Some people have taken the view that in order for it to warrant interest, it needs to be sexual assault (in the definition of child sexual abuse in the Act), it has to be of a substantial or serious nature, and does not include psychological abuse. Others take a broader view and would take psychological abuse. Or they would take the view that there is no such thing as a trivial sexual complaint. So maybe there could be a clearer definition, and more consistent application of the definition. Stick to the definition; don’t have your individual application.”*

Judge

Lack of clarity around eligibility, and the absence of participants identifying any standardised training on the issue for Judges, Court staff, and the wider legal profession may link to other factors, such as the perceptions of some people that Magellan is merely about fast-tracking some cases. Therefore, lawyers who want to fast-track their particular cases are wanting to look at all options, including having the case heard through the Magellan process. However, other registries were clear that Magellan was not about queue-jumping—it was not something that solicitors for the parties involved could simply ‘request’ in order to try and get their case on earlier, but rather, it was the responsibility of the designated Magellan Registrar to deem the case to be Magellan as soon as there was evidence that one or both parties were raising allegations of sexual abuse or serious physical abuse of children.

The perception of Magellan being merely about ‘fast-tracking cases’ (rightly or wrongly) was reinforced by a number of stakeholders:

*“But from the point of view of parties [the litigating parents], getting a case into Magellan is just a faster track. If you can get the case in the Magellan project, you can get into the system quicker, rather than be left with unsupervised contact. Which is really disheartening for a lot of people, particularly when there is no finding against the person who is accused, and the Court says there isn’t unacceptable risk, but they have spent two years, seeing their kid for two hours every fortnight... It’s a long period of time.”*

Stakeholder

In relation to the issue of eligibility criteria, there may be differences between the Family Court’s definition or benchmark of serious sexual or physical abuse from that used by the statutory child protection department (see later discussion of the relationship with the statutory child protection department).

One of the issues is that allegations need to be recent (Magellan is designed to respond to current concerns in a timely way, not to dig over old cases or old allegations). In relation to this, some participants criticised the way that Magellan had been implemented in Queensland (see Section 6.3). Stakeholders talked about the importance of not including cases in the Magellan list of allegations that occurred three years ago, or if the other party does not contest the allegations. Identifying the allegations that are being raised early in the proceedings is important (see section on FMC for examples of how delays can compromise the efficacy of Magellan):

*“Magellan has a special armoury of tools—and we only use them when they are needed. Putting them all through Magellan wouldn’t help. You cannot run the system allowing everyone to come. But if you let a bad emotional abuse case come in, you’d have to let most in... It’s about stringently applying the selection criteria. If you give everything priority, nothing gets priority. It’s like triage.”*

Judge

## History and purpose of Magellan: Interagency collaboration

Participants were keen to preface their thoughts about the key elements of the Magellan protocols by reflecting on the history of the project. This was particularly the case for Judges. Below is a typical preface to their response about their understanding of Magellan, which emphasises the history and premise for Magellan coming about:

*“There was the realisation that child abuse was part of the core business of the Family Court, even though traditionally it was seen as something that was dealt with in the state juvenile courts. And what was gleaned from Professor Brown’s research and from our own experience within the Court, was that this particularly vulnerable group of children—vulnerable whether allegations were true or not, as the vulnerability is there either way—that this particularly vulnerable group of children’s needs weren’t being appropriately catered to, in that there are enormous delays, which at least in part came about because of the division between a federal court and state government agencies involved in child abuse. The most important feature, really, was to bring everyone involved with the families to the table to start working out a more cooperative and seamless approach to these children and families.”*

Judge

As discussed in the earlier section on the importance of a speedy response, there are issues about participants’ perspectives on the main outcome that Magellan is trying to deliver. At least in part, it is about speedy processing of cases, because of the vulnerable nature of the children involved, and the potential for the decision to have high impact on the lives of children and their parents:

*“But the whole point of the Magellan project is to get it into the hands of a Judge at the earliest time so that it can be Judge-managed, and the problems that occur as a result of festering can be avoided.”*

Judge

Some participants talked about the high frequency of cases resolving before going to trial. In particular, those from outside Victoria emphasised the success in Victoria of achieving this (referring to the impressive results of the pilot Magellan project), and the difficulties they have had in replicating this result. But it highlights a second issue: the importance of a comprehensive report from the statutory child protection department about their concerns, and any investigations and interventions undertaken (i.e., the “Magellan Report”). These reports can identify cases that in an evidentiary sense are unlikely to ever be proved or supported, or—at the other end of the spectrum—are clear-cut. Obviously there are also those cases in the middle, but participants felt that the Magellan process identifies and leads to quicker resolution for those clear-cut cases in particular.

The most frequently cited element of the Magellan process that stakeholders talked about was to “bring it all together”. They talked about it being a more cooperative and seamless approach. Magellan is about ensuring a shared understanding of the processes:

*“The benefit is that now, three years down the track, there’s a significant understanding by everybody of what the process is. Not too many slip through or get missed.”*

Judge

However, in order for agencies to effectively collaborate, participants talked about the need to have shared understandings and expectations:

*“Why did it work? Was it just the right people at the right time? Yes, but we had different but related expectations. In [name of registry], the expectations became shared expectations very quickly. We wanted to look after those children. An important part of the process was that the department would stop seeing them as ‘our’ [a federal court’s] children, when they are just normal children. And in turn, that we wouldn’t let them languish while we blamed other people.”*

Judge

But it is also about understanding roles. Roles are already defined by each of the stakeholders’ own processes or governing legislation (see Introduction). Based on that understanding, the communication and intersection of those roles can be improved:

*“It’s the interrelationships between the Court and the various bodies that are improved by the protocols.”*

Judge

Some stakeholders pointed out the importance of including police in the Magellan protocols, as a critical part of the interagency collaboration. However, in some jurisdictions, they are absent from the stakeholder steering committee or the formal protocols. Meeting together helps each of the professional groups and their agencies to understand better their respective roles.

The way that Magellan has not only clarified roles, but also improved interagency understanding is exemplified in the following quote from a stakeholder:

*“Judges in the past didn’t display an understanding of the child protection system. But now everyone is much more aware of the system and how it works. It is much more productive if the matter does go to trial. Specialisation of the Judge helps with this. This shows great respect for the professionals. It’s a big improvement over previous Judges. Early stakeholder meetings spent a lot of time discussing roles, and clarifying misunderstandings.”*

Stakeholder

Meeting face-to-face as part of the stakeholder steering committee in each registry improves communication by providing a single point of contact in each agency:

*“With Magellan, there has been an increase in cooperation and liaison between agencies. There are people who are immediately identifiable in agencies as the contact person for the Magellan case. We all have a stakeholder list. Everybody knows who does what at each organisation. This is enormously useful. It also has flow-on effects into ordinary independent children’s lawyer cases, that involve the same players, but aren’t Magellan.”*

Stakeholder

Training and information sharing is essential to this process. In order to develop the significant level of cooperation with all stakeholders (including not just with the department, but other agencies involved with investigating allegations e.g., police, specialist assessment units in hospitals, etc.), Court staff—particularly Judges who manage and hear Magellan cases—have put significant time and energy into developing relationships. Primarily, this happens through the stakeholder steering committee, however, some Judges are also involved with visiting staff from other agencies, and answering their questions or concerns; and having them come to the Court to visit. The Judge is able to provide them with an assurance that they will be treated respectfully when they are giving their evidence:

*“I reassure them... that we are not here to destroy reputations or careers. We have the benefit of hindsight, which they don’t have when they interview these very young children, which has got to be one of the most appallingly difficult tasks you can undertake. They don’t have all the accumulated evidence that we have by the end of the trial. So the fact that we might come to a different conclusion isn’t casting any aspersions on their work. If we’ve identified some errors in their process—in the interview or the technique—we’d be obliged to point it out in our judgment, but it will be in respectful terms. We’re not about destroying people. That’s allayed a lot of their concerns or fears, I think.”*

Judge

As an external evaluator, it was evident that provision of such training and ‘familiarisation’ has achieved more than simply increasing knowledge of stakeholders about the Court’s processes. It has created substantial goodwill, with stakeholders spontaneously identifying the personal qualities of this Judge and the Judge’s willingness to provide this informal training and sharing of information about the Court’s processes and perspectives. And on the basis of that goodwill, cooperative relationships between agencies and individuals within those agencies have been established, which are the grease that keeps the cogs turning in the Magellan machinery.

### **Training and sharing corporate knowledge**

In order to be able to remain faithful to the vision of Magellan, it is important that the underlying philosophy of the approach to case management is shared with people who are new to the process.

*“All the best training is face-to-face, yet this is so expensive and difficult. Training is needed at all levels of judicial officers. But it needs to be repeated, as personnel change. It has to be done again.”*

Judge

In order for the program to continue to operate as it was originally envisaged, the key element is to provide training for individuals who are new to the process—whether that is Court personnel, or staff from the various agencies and key stakeholder groups on whom the process relies (i.e., police, child protection staff, Independent Children’s Lawyers, legal aid, Family Consultants, etc.):

*“Even with changing personnel, there was a good understanding of the purpose of Magellan. There was good corporate knowledge being passed on. That’s not to say that it was always plain sailing. But the key organisations all understood, no matter who was in charge at the time. There was a zeal about all of us at that time.”*

Judge

Providing informal training about the Court and its processes for all of the stakeholders involved is important. One registry in particular was explicit about the importance it placed on this (and perhaps as a consequence, there was a high level of cooperation and positive regard from all of the stakeholders in that registry).

However, the need for wider awareness within child protection departments of Magellan and the protocols of the Family Court was expressed:

*“People we deal with are enthusiastic, but we need for it to spread to all those in the department who are doing the work at the coalface. It’s the same everywhere—they are overworked, and saying, ‘Why are we doing this?’”*

Judge

Speaking about the original aim of Magellan during the Pilot project, one Judge said:

*“What’s the overall philosophy? My suspicion is that people will say: ‘Oh, that’s the way that sexual abuse cases get pushed ahead.’ That’s a facile response. It’s a holistic approach because of it being a troublesome group of cases. Because Magellan has always been isolated from the rest of the work of the Court (it relies on one Registrar and two Judges), others don’t really know. Whenever you have some people doing other things that are ‘special’, others think it is easy or not needed... As more Registrars are trained, you’d hope that the understanding would develop.”*

Judge

## Key message

Each element of the Magellan case-management model identified in Box 4.1 was seen as ‘essential’ by some or all of the participants. A speedy response by the Courts was seen as critical to the success of Magellan; however, this relies on good cooperation, and the provision of all relevant information from other agencies. In particular, the importance of receiving a timely summary about the actions taken by the statutory child protection department, their views about the veracity of the allegations, and any concerns they have about future risk to the child was emphasised. Maintaining ‘corporate knowledge’ and the goodwill that builds up between participants in the stakeholder committees is also important, particularly when personnel in the intersecting agencies change. Opportunities for training in order to achieve greater consistency of interpretation across Judges and registries about key aspects of the protocols—such as the eligibility criteria—were also identified.

## 6.2 Truth and evidence

In this section, participants' views about truth and justice issues are examined in more detail. Although participants were not asked a direct question about the issue, the ability of the Court's Magellan case-management system to provide an appropriate response to the complexity of perceptions and available evidence around the alleged child abuse was a consistent theme that participants raised. In particular, close attention is paid to the comments expressed by participants about the vexed and highly contested issue of the possibility of false allegations made either deliberately, or in good faith, by parties.

A number of participants identified the need to balance the objective of protecting children with the equally important issue of ensuring decisions are made in children's best interests as one of the principal tensions that is evident in Magellan. One of the 'best-interest' factors recognised by the Court is for the child to have and maintain relationships with both parents, where this can occur safely. The act of balancing this tension is carried out within an adversarial framework due to the important interests at stake. This is one of the major reasons for needing to respond to cases in a timely fashion, as the need to balance the safety of children with expeditious outcomes is necessary to ensure that relationships with parents are not irrevocably damaged. In many cases, children are deemed to be able to safely spend time with both parents (this decision is reached either by consent, or by judicial determination). However, this decision needs to be reached quickly, so as not to permanently damage a relationship where risk is subsequently found not to exist.

The complexity of the issues that are apparent in Magellan cases (both in terms of not wanting to deny children the opportunity to spend time with a parent where it is safe to do so, and to not deny accused parents natural justice) are highlighted in the following quote from a Judge:

*“Generally speaking, what is at risk is the father’s future contact with his children, and the stigma of being labelled as often an incestuous, often homosexual, paedophile. It’s a big label. And you don’t do that without compelling evidence.”*

Judge

*“If there is a finding of no sexual abuse, children will have been wrongly deprived of contact. Some of these kids are young, and if you take 18 months out of their lives, it’s a long time.”*

Judge

The following quote from a focus group participant highlights the importance of everyone understanding the role of the Court, and the role of other state/territory agencies (particularly police, statutory child protection agencies, and juvenile courts):

*“Magellan is not primarily about testing false allegations per se, it’s about processes that create safe outcomes for kids. It’s got the best chance of a positive outcome in what is, by definition, a difficult situation—in the quickest time possible.”*

Stakeholder

As this quote from a Judge makes clear, the role of the Family Court is about child wellbeing in a broad sense, not just child protection. This is the responsibility of the statutory child protection departments and police, who where necessary, take action for a protection order in the juvenile court; or charge and prosecute offenders in a criminal court):

*“I try and make this point in any case I do: Child protection is a best-interest factor for us; one of many. It can often be decisive. But we don’t protect the kids. Our Orders don’t protect kids—that’s not our function. Our function is not to put kids at risk, but it’s not to protect them. That’s a state responsibility. Certainly we make sure we don’t put children at risk. But our Orders have to be fashioned for their lifetime. It’s a short-term crisis. We have to say: What’s the best thing for this child’s emotional wellbeing over the long haul? How do they reach their full potential as adults? By having contact with this man that’s accused of this? Or by not having contact? Or having some other sort of contact? Or by living with a mother who has made false allegations of sexual abuse against a father for forensic advantage? Or not? You might say, yes, that’s a bad thing to do, but really there’s no other choice. Dad’s not capable of looking after them, so they’ve got to stay under the influence of this woman. It’s just the ‘least-worse’ option. Then you pick up those kids later on through the system at some other point in time. You get a lot of bouncing in the system. You rarely get resolution. You get contravention, and then you get perpetuation—this cycle within families. The Final Orders break down, or they’re ignored. There’s no real way of enforcing them.”*

Judge

The following Judge refers to the introduction of the ‘less adversarial trial’ approach to children’s cases in the Family Court in 2006:

*“It’s the nature of the inquiry that could do with some reform as well. We do now—with the amendments to the Act—we do have a more inquisitorial approach, which governs Magellan as much as any other cases. I’m just not sure how well trained we are to use that new tool. We’re used to being adjudicators in an adversarial framework; we’re now becoming investigators. They’re different disciplines. In the right hands, it’s a better tool. In the wrong hands, it’s useless.”*

Judge

Although this particular Judge felt that the 2006 amendments to the *Family Law Act 1975* (Cth) extended to Magellan, other Judges noted that Magellan was an exemption to some parts of the Act (such as the setting aside of the strict rules of evidence). This suggests that some confusion exists about Magellan, and to what degree it sits within the new ‘Less Adversarial Trial’ system—particularly in relation to investigatory powers and rules of evidence.

So in this web of overlapping roles, Judges were at pains to point out the limits of the Court’s role, particularly in relation to the competing demands of ‘finding truth’ versus deciding in the best interest of children; and whether there is unacceptable risk of abuse:

*“The Court can’t ever say that [there was no harm or risk of harm], of course. The best you can say is that, on the evidence, we can’t make a finding that there has been abuse, or even unacceptable risk in some cases. It doesn’t mean it didn’t happen. It just can’t be proved to any decent level of satisfaction.”*

Judge

They emphasised that it is not the role of the Family Court to work out whether abuse happened, but to consider whether there is any risk to the child under the proposed Orders:

*“With Magellan, the resources that are directed early at the case will assist to either make it clear that dad’s a paedophile, or satisfy mum that he isn’t. Then there’s the middle ground, where the objective evidence doesn’t point to an unacceptable risk, but the mother can’t shift her perception. She just wants the Judge to say that it’s okay to send her child on a contact visit.”*

Judge

## False allegations

In family law cases, one of the areas of concern that many people have (including the general public, experts, litigants and interest groups) is the likelihood of false allegations of abuse being raised in the context of parenting disputes (see Moloney, Smyth, Weston, Richardson, Qu, & Gray, 2007).

Box 6.2 provides a lengthy excerpt from a transcript (verbatim) of an interview with a Judge, to demonstrate the kinds of views that they expressed about false allegations.

This lengthy transcript is included for a number of reasons: to demonstrate the concern that Judges have about both false allegations (either malicious or in good faith), as well as their understanding about the probability of some stories of abuse, and the nature of paedophilia (and how it relates to the evidence from social science about the prevalence of sexual abuse, particularly within families). It also demonstrates the kinds of language that are used to frame the discussion.

From this interview, it could be argued that the Judge has framed abuse as ‘unlikely’, something that does not happen in ‘normal families’. This would appear to stand in contrast to the psychological and social work literature on child abuse generally—and sexual abuse in particular—which highlights: (a) the extensive prevalence of abuse; (b) its occurrence in all manner of family types; and (c) the frequent hidden nature of abuse and therefore of the evidence for its occurrence (see Finkelhor, 1994; Cicchetti & Carlson, 1995).

However, family law cases involving sexual abuse are usually allegations of intrafamilial sexual abuse by one of the parents (usually the father). Hence, this is a much narrower subset of experiences than are usually discussed in the literature.

Although it would be easy to therefore question the Judge’s understanding of the nature of abuse and commitment to ensuring the safety of children, even this extensive transcription must be taken in context. Taking the interview as a whole, the level of concern about children’s welfare and the need to take a holistic view of children’s welfare (which includes maintaining relationships with both parents, where it is safe to do so) was clearly evident. Because of their acute awareness of the limitations of their role (assessing likelihood of unacceptable risk of abuse, rather than conducting a criminal investigation of the alleged perpetrator) Judges were focused on balancing this tension.

The other underlying message that was evident in this example—and was replayed in interviews with other Judges and in many of the focus groups with other stakeholders—was that mothers were framed as usually having genuine concerns, even if they were often unfounded.

“By far, there are rare cases of deliberate falsity. It’s a gutsy thing to do, and I think few people have that sort of personality: to go on oath, in the witness box. It’s a pretty gruelling process. You don’t do it unless you really think you’ve got a grievance, because the odds are you are going to get caught out. You’ve got people cross-examining you, you’ve got Independent Children’s Lawyers checking it out, you’ve got a Judge—who’s usually fairly experienced—making assessments. You’re running a real risk.

I also think that a lot of people are deterred from making a false allegation because of the mere fact: How could they have been so wrong in partnering somebody who could do that? Mostly people have a genuine belief, but it does not have a reasonable basis, or is delusional. So it’s either irrational or unreasonable, I suppose. It’s not properly thought through. They don’t think of the ramifications of what they say—for the child or for the other parent.

Some people can be quite reckless in the accusations they make. But they’re quite happy for that consequence, because they’ll be the beneficiary of it. They might not deliberately make it up, but they’ll be quite happy to be wilfully loose with the truth, if you like.

What does happen more often than is acknowledged, is there might be a germ of a complaint. The child might have done something or said something that raises genuine suspicion. But then the lily’s gilded, and they become prosecutor, and interrogator and detective and everything else. And then they become obsessed. And by the time you get them to trial, you can’t tell fact from fiction, and neither can they. But worst of all, neither can the child.

What parents do is that they impose their own desires on the children...

You need to be able to say to the child: ‘What do you want? The fact that you were abused by this man—what does that mean for your relationship with him?’ And I would suspect that a lot of children would say that they still want to have a relationship with him. But I suspect that the other parent would say, ‘You can’t have a relationship with that sort of person.’

Of course they don’t mind getting in their own opportunity to kick someone when they’re down either. They might want to get rid of the person from their lives, once and for all. They don’t really think about what it means: You’re saying the father of your child, the one you married, loved and lived with for years, is capable of doing this. So that means you’re saying they are an incestuous paedophile. There are opportunistic offenders, but they have different characteristics. But the pederast is quite a small group. They are quite a small group in the world. There’s not a lot of them around.

People rely on the most highly improbable stories told by children as evidence of abuse. They take them literally. You wouldn’t believe it...

I’d say: ‘Let’s have a look at it. Did you ever pick up anything like this about him while you were living with him, in the 10 years you were married to him? Did you have any suspicions about him at all?’”

Judge

One of the Judges also raised concerns about creating or supporting false beliefs in children:

*“At times, with all of our well-meaning intentions, the child may have ended up believing they were abused, even if they haven’t. I mean—if there are this many important people asking me about it, it must be significant. And maybe I should toe the line, and agree. I think even adults—all of us can be convinced something has happened if we hear it often enough.”*

Judge

Here is another example of the difficulties that Judges face when making decisions about parenting matters when there is not sufficient evidence in relation to child abuse allegations (i.e., there probably would not be sufficient evidence for criminal charges by police, or for the statutory child protection authority to substantiate the abuse that was notified):

*“It’s a very demanding and relentless role when you are deciding whether a father has abused his own children. Because the finding can have long-lasting and serious consequences for everybody concerned. A wrong result can ruin the life of a child; or a timid response can ruin the life of a father. An innocent father can be excluded from the life of a child because nobody has got the backbone to say: ‘This is a false allegation. Listen, youngster, whatever you think you’ve been told, you have not been abused by this man.’ Now, that’s a big call too. Sometimes you are faced with the dilemma: You are faced with a child who genuinely believes they have been abused with their abuser. Do you force them to have contact with someone who they think has abused them, even for their own good?”*

Judge

Usually, the stakeholders were referring to false allegations. Although, there was a sense, particularly from one stakeholder that it could be deterring people who have genuine concerns:

*“If they are getting advice about the process, it can weed out additional false allegations from being made once they are already in the system. But sometimes the parties will see how hard it is, and they withdraw the allegation, or leave the matter. It’s hard for people to go through.”*

Stakeholder

However, stakeholders in the same focus group emphasised the importance of getting the statutory child protection authority to investigate concerns as early as possible, as this means that where the department does not have concerns, families can be satisfied with the explanation, and withdraw the allegations. When this happens, either Consent Orders are made, or where parties still cannot agree, the case continues to judicial determination, but is ‘de-Magellanised’.

Here is another example of a Judge’s view of the likelihood of Magellan matters dealing with cases that, upon investigation by the statutory child protection department, do not have the abuse or ‘unacceptable risk’ confirmed:

*“I have a sense that in the overwhelming majority of cases, abuse is not confirmed. And probably in not many cases is there found to be an unacceptable risk. I don’t have the stats, so it’s probably silly of me to quote stats, but I’m talking of probably upwards of 70 or 80% where the relationship with the father is restored. Which in itself is a worry if that is true. Why are so few being confirmed? Is it mum—usually—using it as a weapon to get dad out of the kid’s life? Is it mum misidentifying the signals and then not accepting professional advice as to what it might really mean? Is it that there has been abuse, but the proof is inadequate for there to be the findings?”*

Judge

Although the above quote illustrates the range of reasons for unacceptable risk not being confirmed, it was not clear from the interviews and focus groups whether Judges are always taking into account that a lack of evidence from a statutory child protection department does not mean that abuse has not occurred. A departmental outcome of ‘unsubstantiated’ does not mean that abuse did not occur and that the notifier’s allegation was false, but rather, that evidence was not sufficient to be able to substantiate the allegation; or that the notification did not fall within the statutory grounds for intervention in that state/territory.

Although participants admitted that deliberate false allegations happen, this was not seen as the major issue. Instead, they thought that the usual situation was either (a) a parent misidentifying signals from the child, (i.e., making the allegation based on a genuine belief, which turned out to be false—or at least, not supported by the evidence); or (b) that abuse had in fact occurred, but that through the department’s investigations and the Court’s processes, a safe environment had been created, so that the child/young person is now no longer at risk.

*“In a high proportion of cases, it is unlikely that abuse has occurred, but the mother is bona fide in her beliefs. Usually the clear-cut cases are obvious. It is pretty obvious when it is malicious by the mother, or where there is real sexual abuse. But the majority fall in the middle. They take longer.”*

Judge

The issue of needing to resolve the cases that are not ‘clear-cut’ defines Magellan’s critical role. Stakeholders talked about Magellan being better able to separate out false allegations from those that are likely to be true. Because existing allegations are dealt with so comprehensively, parties are diverted from making further allegations unless they have strong merit in doing so. As one Judge put it, “With Magellan, the resources thrown at it make it clear that dad’s a paedophile, or satisfy mum that he isn’t”. The same Judge talked about the role being played by Magellan in maintenance and restoration of relationships between children and their fathers—and saw this as just as significant a role as that of drawing thorough conclusions on the allegations.

## Different roles and expectations of Magellan

In general, there was a common understanding of the purpose of Magellan (particularly among Judges). However, there was also a recognition that expectations about how Magellan would operate, what it should achieve, and how those benefits should be achieved were different, according to the role that particular people played—particularly for the parties (the two litigating parents).

One Judge noted the expectations from fathers that they would be “vindicated”:

*“The father looks to be vindicated—but we rarely offer that service. The only relevant thing we can do is consider if there has been abuse in the past, and whether that is a risk indicator for the future. Or if we can’t decide if there has definitely been abuse in the past, whether the possibility of abuse in the past—together with other constellation of worrying events would suggest a future risk of some sort of harm, whether it was physical abuse or it might be emotional abuse or mental harm.”*

Judge

In contrast, the expectations of statutory child protection departments are that they will provide the necessary information to assist the Court make its decision, but that their involvement will not contribute to unnecessary workload:

*“The expectation of departments is that we will involve them only to the extent necessary, and that we won’t impose on them any costs or time-consuming obligations in providing information that we are not going to need.”*

Stakeholder

*“It is expected that the involvement of the department in these matters assists the Family Court to come to a faster resolution of the matter. It is also expected that the matter is listed, mentioned and heard before the one Justice, who is a Magellan Justice.”*

Stakeholder

This was particularly the case in Brisbane, where the department does not provide a focused “Magellan Report”, but the ICL is responsible for subpoenaing their entire file:

*“We need to know what we want, and to only ask for what we are going to need. And not expect them to go through their whole file and just produce it, without it ever being referred to in the trial.”*

Stakeholder

A critical issue about which it was evident that some participants had different expectations of Magellan was the degree to which the Court and other agencies play a role in investigating allegations (e.g., asking whether abuse happened, and whether children are at risk) versus adjudicating between parents in conflict over appropriate parenting arrangements (and whether the proposed Orders would alter the circumstances that are necessary to ensure the ongoing safety and wellbeing of children). For further discussion of this tension, and the roles and responsibilities of the key players, see Introduction, (section 1), as well as the section on Relationship with statutory child protection department.

Throughout the evaluation, it was evident that there were myriad unstated as well as overt expectations about Magellan and what it can or should deliver. There were some clear misunderstandings about the roles of various state and Commonwealth agencies that interact in the protection and wellbeing of children.

Even in Magellan (where the importance of having each of these agencies represented so as to clarify roles and responsibilities is emphasised), there still exists some confusion—and some inadequacy in the interagency understanding of roles and their communication with each other. This is particularly evident in relation to the police.

However, this confusion is not unique to the Family Court or to the Magellan project in particular. As outlined in the Introduction, similar confusion exists about state/territory child protection departments, and what they are expected to do, and to find.

As one Judge pointed out in an interview:

*“Anecdotally, the actual rate of making Orders that you’d consider ‘adverse’ against an alleged perpetrator is not as high as you’d expect. I’ve put the words ‘sexual abuse’ into the Court’s database of cases. If you scroll through, you’ll find a high proportion of cases that have gone through to judicial determination don’t have unacceptable risk.”*

Judge

Although this raises the issue of the value (or otherwise) of pursuing criminal charges against alleged perpetrators of intrafamilial child abuse—the more immediate issue is whether all stakeholders involved in Magellan know the roles—and the limits—of each of the agencies. For example, parties need to be reminded of what the Court can deliver (a determination of where it is in the child’s best interests to reside and with whom the child should spend time), and what it cannot deliver (guilt or innocence of a parent accused of abuse).

As one Judge noted:

*“You’ll always get people who want something else: ‘I didn’t come to Court to get custody; but to get the father charged.’”*

Judge

This quote underlines the extent of confusion among parties about how a parent who has a safety concern about their child should respond—whether to raise allegations with the police (to investigate as a criminal matter), or with the statutory child protection department (to investigate as a child protection matter), and what the purpose of the consequent investigations would be—and how this is different to the Court’s role in looking more broadly at children’s best interests.

The role of the police is one that was rarely mentioned by participants in the study. Police were noticeably absent from some of the stakeholder committees. However, this is consistent with their role in child protection issues, regardless of family law proceedings. Of all the notifications to statutory child protection departments in each state/territory that are substantiated across Australia (approximately 1 in 5 notifications are substantiated; see AIHW, 2007), very few involve criminal charges being laid, or alleged offenders being successfully convicted. Such instances are usually restricted to the most serious cases of sexual or physical abuse—and often in circumstances where the offender is not the parent.

In other words, criminal charges are not the norm for child protection matters. And yet there appears to be a different expectation placed on the Family Court. Based on analysis of the interviews with participants, it was clear that they believe clients have unrealistic expectations (e.g., that parents against whom allegations are raised want ‘justice’, yet the Family Court is not a criminal jurisdiction, and therefore the focus is not on testing the veracity of the allegations in order to prove guilt or innocence, but only in so far as to work out whether children are likely to be at risk from the proposed arrangements). In any event, litigating parties will often transfer these expectations onto the Family Court.

## Key message

Magellan sits among a complex set of expectations, at the intersection of a range of agencies and systems involved in responding to issues of child abuse allegations in family law matters. It is important to understand the role of family courts—to resolve private law issues, such as parenting matters, in children’s best interests—and how this differs from the role of police, child protection departments, forensic investigators, Directors of Public Prosecutions, and criminal courts in protecting children, enforcing laws and bringing criminals to justice.

## 6.3 Implementation issues

### Program diffusion and model fidelity

An important aim of the evaluation was to uncover participants' views about how Magellan has been transplanted and 'translated' into other registries in other states/territories after the success of the Victorian pilot (1998–2001). In particular, a focus of the evaluation was the degree to which it has remained 'faithful' to the model as it was originally envisaged, and the extent to which alterations to the model represent a productive evolution of the program. (For a table summarising some of the key differences observed, see Appendix 7).

In rolling out Magellan nationally, some participants described the difficulties that were experienced in trying to get Magellan up and running in some registries as "extraordinarily frustrating":

*"We had meetings with ministers, advisers, secretaries of departments...  
but never quite getting there."*

Judge

Interestingly, there were mixed views about the extent to which inter-registry differences exist. Some participants emphasised their view that the roll-out of Magellan has largely been uniform. One Judge spoke of the national strategy having achieved "nearly 100 percent consistency, which is quite remarkable in any federal court"; however, many others did not share this view. Many participants were critical of the lack of fidelity to the 'original Melbourne model' that they observe in their own registry (particularly Judges and stakeholders in Brisbane), or of the differences they perceive in other registries—sometimes to the extent of questioning whether the different implementation means it is still "really" Magellan:

*"You will always get differences between Judges, and between registries.  
Some of it is structural, and some of it is personal. Some Judges didn't  
want to do the interlocutory work. They have a number of Judicial  
Registrars. That completely cuts across the great strength of Magellan—  
having Judges do the work... If they don't do interim work, don't have  
departmental reports... is it really Magellan?"*

Judge

One of the difficulties faced in extending the original pilot program nationally was the issue of differences between the registries, including the different state/territory contexts that this entails:

*“Those shared expectations [between stakeholders] developed quite quickly. However, this has not been replicated as quickly in other areas. In part, it was that there were the right people at the right time. It’s hard to replicate it exactly. This is an age-old issue for a federal court—how precisely do you replicate something? You want to keep the core aspects, but you do need to take into account local jurisdictional differences.”*

Stakeholder

Speaking about one particular registry, a Judge from another registry said:

*“They never quite got it. I just don’t think they ever quite understood what Magellan was supposed to be. They thought it was one way of pushing some cases forward ahead of others. They didn’t see it was an integrated management approach, but just that cases were deliberately being put on ahead because of the vulnerability of the children involved. However, this is simplistic. They didn’t understand the integration of the processes. They thought it was something you did from hearing the final case, not something you developed from managing the cases and working them through. This was evidenced by them snatching cases for Magellan from the existing list, rather than starting with new cases and giving them proper attention, right from the start.”*

Judge

The above quote highlights the extent to which diverse interpretations of Magellan exist, and the opportunities that this presents for clarification, training and ongoing monitoring to ensure that key processes are followed—but, equally important, that the rationale for these are clearly understood by all stakeholders involved.

The participants from Queensland were clear that the implementation of Magellan there was quite different from how it was intended—and from how it was being implemented in other registries. There were some key differences they identified:

- ▶ They were not receiving a focused report as early as possible from the department about their concerns/activities (the “Magellan Report”).
- ▶ ICLs choose the independent experts.
- ▶ Representatives from the state police department are not included in the Magellan protocol.

Another issue raised in relation to the early stages of implementation was the choice by the Brisbane Registry to draw cases into the Magellan list that included ‘old’ allegations. Some Judges were critical of this, emphasising that the strength of Magellan is working with new cases from the beginning, to bring together the information as quickly as possible.

### “Magellan Report”

One participant described the way Magellan is operating in Queensland as a ‘hybrid’ between Magellan and the ‘old system’. The most significant difference was the absence of the departmental report early on in the process. Some participants from Queensland saw the “Magellan Report” from the department as an important tool that was not available to them:

*“In Victoria, the Magellan model included early intervention, but also the department reviewing their involvement and producing a report, which together with other family reports, are useful in focusing attention and resolving the case—or better managing it. In Queensland, we never have received these comprehensive reports from the department. They just produce files, on the eve of the trial.”*

Queensland

A number of stakeholders and judicial officers believed that this explains the difference they perceived between Queensland (where many of the Magellan cases still proceed to trial) compared to Victoria, where there is a higher rate of early resolution. The difference is that in Queensland, the Court is not provided with a brief letter directly to the Court describing the past and/or current investigations and/or interventions of the department (i.e., the “Magellan Report”). Departmental representatives from the state child protection department who attended the Brisbane focus group identified an obstacle in the current case reporting database system in place in Queensland. They acknowledged that with the current system, it was difficult to print-off a case summary that gives an adequate picture. They did note, however, that the department is soon moving to a ‘real-time’ client management system that they hoped would address this issue, due to its greater flexibility in data input and data extraction capacity.

### Legal representation

The quality of the legal representation is an important issue. One participant noted a consequence of some parties not being represented, and questioned how a mother could prosecute a case of sexual abuse where she is required to cross-examine the perpetrator and gather the appropriate evidence, or how a father could defend himself. For this reason, the participant felt strongly that everyone should be represented by the best barristers and solicitors available. This participant also felt that part of ensuring good quality legal representation included adequate funding for legal aid, allowing for appropriate rates that enabled the services of the best legal practitioners to be obtained for these difficult and time-consuming cases.

The role of Independent Children’s Lawyers (previously called Children’s Representatives) also varied between registries. For example, it was clear from participants that, in Queensland, one of the primary roles of ICLs is to assist in collating information and presenting it to the Court in as full a form as possible, to ensure that the Court has all the evidence. Their role is to liaise with the statutory child protection department, as well as review all relevant departmental, police, health and psychiatric reports and records. They usually do that by subpoenaing them all and extracting any relevant documents:

*“In Queensland, it is different, because the Independent Children’s Lawyer chooses the independent experts. But in other states, it is the Court counsellors—the “Family Court Consultants”—who do that work. This gives us more flexibility in Queensland to choose the expert that is most appropriate for the case. We are better able to match up characteristics of the child and family. This isn’t a Magellan-specific way to do it—but we do it this way in Queensland.”*

Queensland

According to one Judge, the Court has recently been given the power to make a direct Court order in addition to the subpoena process for a department or person to produce any relevant information not already obtained.<sup>33</sup> A Judge described this as “an auxiliary forensic mechanism”:

*“If they don’t produce what we think is the entirety of the evidence, we make direct Orders ourselves and gather that information. That doesn’t happen very often.”*

Judge

*“The legal aid commission provides the resources whereby an Independent Children’s Lawyer can be present on that first return date, no matter how quick it occurs.”*

Judge

In most registries, it is the ICL who will approach the panel of various experts and liaise with each of the parties to ensure there is no opposition to a particular expert (see comparison table—Appendix 7). Their responsibility is to find out if the experts are available to do the assessment, can do it in the timeframe, and are available to appear in Court. The ICL is responsible for providing to the expert copies of any subpoenaed documents that will be of assistance. Documents are only provided to the expert with the consent of each parent (e.g., medical records, mental health records, police records, etc.).<sup>34</sup>

## Docket system

The use of a “docket system” (i.e., the practice of assigning a Magellan case to a designated Judge for case management and/or determination) is not consistent across registries (see Appendix 7). The issue of listing practices and whether Judge management extends to hearing the matter if it proceeds to trial is discussed later (see section on Judge management).

## Expert witnesses

One Judge talked about the importance of having quality written reports and oral testimony from appropriate and well-trained experts who are aware of the responsibilities of the Court, as well as the limits of its role:

*“We are well-served by the quality of professional witnesses that are engaged by the solicitors: we get good reports from private practitioners. We have a cross-section of approaches from witnesses.”*

Judge

Participants—particularly Judges—talked about how the quality of evidence from experts has improved with Magellan. Cooperative processes with the Family Court’s mediation section have ensured high quality Family Reports in those registries where they are used (see Appendix 7). In particular, Judges talked about the outstanding work done by the report writers, and how important they are in the process:

*“And we get outstanding service from our Child Dispute Services—our mediation section here at the Family Court. They almost always meet the timelines for delivery of the Family Report. They are of high quality. I think that’s been one of the other benefits of Magellan, which is the improved standards of Family Reports, because there have been so many that are being done—because of the number that have gone to trial. Or because, in a couple of instances, when the matter is finalised, I’ve had a chat with the report writer and made a few suggestions about how they might approach it differently—answered any queries they’ve got if they have any uncertainties.*

*“But that’s become less and less necessary [to provide feedback]. As they’ve all gained experience in the process, the reports are now of an exceptionally high quality. And that itself must have led to significant savings in cost to the parties and the legal services commission. Because pre-Magellan, so many of these reports were undertaken by the private psychology profession... and they all had to be paid for. And Magellan—in probably almost every matter*

*where reports had to be written—unless there was something already in train by the time they were identified as Magellan, they’ve been done in-house, at no cost to legal aid or to the parties. And this means that we’ve got control over it as well in terms of timelines—and we’ve got quality control.*

*So all of that’s an enormous benefit.”*

Judge

The way in which a high quality Family Report can assist the Magellan process by getting a speedy resolution is evident from this Judge’s comment:

*“Sometimes a matter’s resolved before judgment, but after a few days of trial. And sometimes that’s been after the Family Report writer has given their evidence. And that will occasionally lead to a situation where then I can express with some confidence a preliminary view as to what I might do before final addresses by barristers—just to give the parties an opportunity to come to not necessarily an amicable result, but a settled outcome. So they can say to their kids in years to come: ‘Finally we sorted it ourselves; we didn’t need a Judge in the end to tell us what to do’.*

*And a number of those resolve.”*

Judge

Sometimes Family Court Consultants also play a role beyond writing a Family Report and giving evidence. One Judge said:

*“I’ve asked them to stay back after they’ve given their evidence, and after I’ve given my preliminary indication and I’ve asked them to work with the parties to help them negotiate. And we’ve done that very successfully. They’ve made themselves available for hours, and assisted in the negotiation process. So I think customers get a very good service.”*

Judge

Different views were expressed about the role of experts, the quality of their work, and whether they should be offering their expert views (or as some Judges suggested, ‘opinions’) about (a) whether abuse occurred; or (b) whether the proposed parenting Orders will place the child at risk; and/or (c) what they think is in the child’s best interests:

*“Some shy away from whether abuse has or hasn’t occurred, but limit themselves to observations of children’s relationships. Others offer opinions on the likelihood of abuse. I’ve found that helpful. In my judgments, I’ve never said, ‘I’ve found sexual abuse because Dr X found it to have occurred.’ But sometimes they will alert me to something that*

*I might otherwise have overlooked... I'm interested in their perspective, but won't be overborne by it... Some are very savvy, and say: 'If you find this—then you might want to be concerned about this.' It's all useful information."*

Judge

The following excerpt is an example of how one Judge viewed the role of experts, and the difficulty of finding appropriate experts who are able to give evidence in the trial. It highlights the frustration of the judiciary (and probably the legal profession generally) in obtaining access to appropriate social science experts in cases where their expertise can be admitted as evidence, rather than having experts make comments in the media, which cannot be used in a trial:

*"What was interesting was that the experts in the field—they're experts, but they are also commentators and opinion-givers—start talking about what Judges don't know about paedophiles and what Judges don't know about abuse... Those so-called experts operate on the basis that we should know what they know, and should apply those in the case. That completely misunderstands the trial process. We rely on information given to us. So if experts want to help us reach a decision, what they need to do is get into the witness box in the Court case, not in the media. Because we can't act on what we know privately, like they can. We can't have the luxury of expressing opinions based on personal knowledge. We can only go on the evidence presented that reaches a certain standard of proof. If I've got no expert telling me that what for all the world looks like an orange is really an apple, then I'm going to think it's an orange. That's my point about experts: You rarely find them when you need them. And that's largely the function of lawyers: they don't know them, and they don't go and find them, and don't give them to you. And I think that's what we have to start doing more of. I think we need to ask: Is this a trait of paedophiles if you do this? Let's track it down, and find out who knows."*

Judge

This Judge also talked about the lack of research, and the difficulties in knowing who are the appropriate experts (particularly local experts), the difficulty in applying research knowledge in practice, and the difference between evidence-based expert opinion and personal bias:

*"With research, it depends on your sample, on your researchers, all those sorts of things. I want to know all those things before I acted on it. Social scientists don't necessarily need the same level of persuasion that we do*

*to reach a conclusion. Because it's one thing to hold an opinion about a person—it's another thing to make a finding about someone. That finding will determine what happens in relation to that person's children.*

*“There is a lot of disjunction between lawyers and experts, and Judges and experts, and Judges and expert evidence. One of the ongoing debates has been whether there is a field of expertise that allows expert witnesses in child abuse to say, ‘Well, you know when a child doesn't disclose—that might be more indicative of abuse than non-abuse’—which is counter-intuitive. Because it is counter-intuitive, it almost makes it, you know, unreliable. Because well, if that's counter-intuitive, then the intuitive might actually also be right in this case. This one might be true to type, but that one might be contrary to expectations. What's normal? Nothing's normal, because it's about a particular child.*

*“That's the dilemma that you always have. That's why we don't use experts, because where are the lines of expertise? Where does expertise finish and primed opinion and personal bias begin?”*

Judge

## Overcoming obstacles

Some of the obstacles—such as risk of burnout (see next section) —are important, but underlying issues. Most of the practical obstacles identified by participants were seen as small, and were easily fixed by having regular discussion. This included organisational obstacles, such as cynicism or envy from people not involved in the project, commitment to prioritisation and resourcing of these cases. One of the reasons that the obstacles were overcome was the reality that for the department, the cases involving the Family Court were among the hardest, yet experience showed that early and thorough attention created better outcomes.

One stakeholder gave another example of how the process of meeting together as a stakeholder committee and talking about issues helped resolve a difficulty. Early on, there were problems in one registry with police not wanting to send tapes of interviews with children to the Court. But through the stakeholder committee, the Court was able to assure them that they were just as protective of the privacy of the child/young person. They were also able to realise that it would save time and lead to a more informed outcome—as they would otherwise have to send an officer under subpoena on the day, and everyone would lose an hour or two of Court time while lawyers accessed the tapes.

The stakeholders in one registry also identified another example of positive relationships leading to information sharing. The police were able to say how much material they have in their database, and could get the children's lawyers to subpoena some of this material, "but it was only by police telling us about it that we could ask for it" (Stakeholder).

Some were clear that there were no major obstacles, but still identified improvements that have occurred along the way, or hiccoughs that have been overcome.

One Judge identified a small (but potentially significant) change to the Magellan procedures that occurred along the way:

*"There are some lessons learned, because there will always be a litigant who's ahead of you. For example, I always made a blanket Order enabling the parties and the Independent Children's Lawyer to inspect and copy all documents produced under subpoena. I've now changed that to exclude from that blanket permission, audio or videotaped interviews with the children. That came about because one of the fathers took his own little hand-held camcorder with him, played the videotape of the police and [forensic child protection service] interview of the child on the screen, as he was permitted to do, and then filmed the screen of that interview and then took it home with him. And the next time he had the kid, he played the video and harangued the child about it and why did the child say all those things to the police and got daddy into trouble. So we quickly changed it. Only Independent Children's Lawyers get to view those or listen to those, and can take a copy. But no one else can view or take a copy without permission of me. And then it would be with significant safeguards in place... So you might say they can view, but not copy. Or the solicitor can copy, but not provide a copy to the parties. So there are minor changes we've made to the procedures."*

Judge

This raises issues of how such knowledge and practice-refinement is disseminated. It is not clear as to how such knowledge and improvements to practice are transmitted to other registries, and what the process might be for including such issues in future revisions to the Court's "Magellan Manual" (Family Court of Australia, 2007).

Below is another example of an obstacle that can occur:

*"Sometimes there's been a minor problem with the [legal] profession not being ready. An allocation is made, they get to the pre-trial conference and they haven't filed their affidavits and sometimes even when you start the trial, there are late applications for new witnesses to be called."*

*All of those things should have been done before that. But they are in the minor category. This is more of an issue where people are representing themselves. Thanks to the Attorney's agreement, because if you qualify for legal aid, there's no cap—so there are fewer unrepresented litigants. But there's still the odd one. All alleged abusers are not poor. Some choose to represent themselves. But they are blessedly few and far between. The issues are too complex and the stakes too high to do that kind of thing.”*

Judge

## Risk of burnout

Without exception, the Judges in various ways emphasised the gruelling nature of the work. Although they did not necessarily refer to the concept, it was clear that they were talking about the risk of ‘burnout’. This is consistent with research on the impact on other professionals in the field of human services who deal with cases of child abuse or adult violence (see Stevens & Higgins, 2002; Morrison, 2007). The need for greater understanding of the stress on judicial staff, as well as other stakeholders involved in Magellan cases—and their potential for vicarious traumatisation—was a theme that a number of participants raised:

*“It wears you down. They're dysfunctional families. It's 'life and death' issues. On the one hand, the father may never see kids again; on the other—the kids could be at risk. I don't believe it is feasible for the same person to do this every day. It started to take its toll on me. A trial can take five or ten days. It's the grind of these abused children and dysfunctional people—and the big judgment calls that are required—about which I have reservations. I would like to see the workload being shared more equitably between Judges.”*

Judge

There is also an inherent challenge between ‘sharing the load’ and developing specialist expertise. Some participants talked about the importance of retaining the current system of relying on Judges to ‘volunteer’ to become involved in Magellan:

*“If you don't have a leaning to it, it's not good for the Judge, the process or the families. I heard the cases for years and it didn't worry me. I loved the opportunity to do it. I became more confident in the process. If some people are disinclined towards it, they shouldn't do it. Some people believe in specialisation; others do not. It's particularly sensitive and gruelling work. If you have someone who hates it, you're not managing*

*the Judge as best you could, and probably not doing the best for the family either. One Judge, after having started on Magellan cases, very quickly said to me: 'Well, you couldn't expect us to do many of these cases.' They are not pleasant cases. They take their toll.'*

Judge

Overall, there seemed to be greater support for the specialist approach, based on volunteering, if possible. This presents a potential conflict: most participants talked about the importance of the personal qualities of the Judge being a critical factor in the success of Magellan, but with Judges highlighting the burden this places on them, and the importance of sharing the load.

*"For one Judge to manage and then hear every case is enormously personally demanding. An exclusive diet of cases in which there are allegations of exceedingly nasty behaviour with low settlement rates so they have to run to judgment is very wearing, if you do it full time."*

Judge

One Judge articulated a paradox. This Judge suggested that all Judges are capable of and should take on Magellan cases. However, the particular skills and sensitivities that some Judges bring to the task (and the importance of this for the parties) was also recognised:

*"I'm not comfortable with the notion of some Judges being more capable. All Judges should do these cases. Is it about the Judge? They require a fair bit of discipline. You need to apply much more forensic skill to these calls. Some of them are very finely balanced calls. Sometimes you find the answer in an unexpected place. Like in any profession, there are some people who are better placed at applying that discipline to themselves and the process. I'd have to acknowledge from the customer's point of view, they probably have the prospect of a more thorough view from some Judges. When the stakes are high, they are probably entitled to this."*

Judge

The reason behind the paradox probably lies in recognising the need to balance out competing issues. In the Magellan model, Judges need to be both good case managers (requiring high level organisational skills), as well as good decision-makers (requiring legal acumen and expert judgment). Similarly, the benefit to parties of having continuity between Court events when all are heard before the one judicial officer (i.e., a docket system) needs to be balanced against the difficulty of scheduling all events before the one Judge (and the possibility of this factor alone leading to delays because of his/

her unavailability). Finally, the benefit of having expertise and experience developed in one or two Judges in each registry for whom Magellan is their specialty needs to be balanced against the risk of burnout—and the risk of other parts of the Family Court or the broader legal system seeing Magellan as being something done by only a few (and therefore not important, or not their business).

## Key message

Participants thought that the Magellan model was an excellent one, and that to the degree that it was implemented faithfully and adequately resourced (particularly with appropriate judicial time, while avoiding the risk of overburdening Judges), it was achieving its aims. Implementation issues were raised about the lack of fidelity to the original model (especially in Queensland), the importance of the “Magellan Report” from the department, and the need for high quality, timely reports (and oral evidence) from experts.

## 6.4 Key successes of Magellan

Participants were keen to refer back to the core elements of the Magellan protocol when describing what they saw as the success of the program. They reiterated either one or all of the eight points mentioned in Box 6.1 (see p. 77). Participants also talked about elements of the Magellan process that are good for families, such as keeping people calmer: because they know that action is being taken, and that their concerns are being dealt with seriously. This is critical, given that the stakes are so high: legal intervention risks putting a vulnerable child into a dangerous situation, unnecessarily interrupting relationships, or stopping young children from forging relationships. For example, if the Interim Order did not allow for the child to spend time with one parent, Judges and lawyers were able to assure the parent that this is an interim measure while all the evidence is gathered, and that the matter will be coming before the Judge again soon, when a decision will be made. Participants emphasised that these steps and timelines were reassuring, and that litigants usually responded better once they knew about them.

As the Court does not have an investigatory function, but relies on evidence brought to it from others, the timing and quality of information available to Judges is critical:

*“These are cases where the more information you gather early,  
the better.”*

Judge

Below is a good summary of why particular key elements of the process are believed to be what makes Magellan successful:

*“I think it’s the Judges who do them. It’s the quality of the Independent Children’s Lawyers who tend to specialise in the area. I think it’s also the resources that are applied to it, so that you do get psychiatric evidence; because the legal aid cap is lifted, you get all parties well represented; and you get good expert evidence from experienced, forensic psychiatrists, and not just a suburban psychologist.”*

Judge

### Length of cases

In relation to the impact of Magellan’s case-management practices on the time it takes for matters to be processed by the Court, participants made some important distinctions between (a) the overall length of matters; (b) the length of trials if the matter goes to judicial determination; and (c) the ability to settle early before judicial determination.

Inability to meet the target timelines was a consistent obstacle to the effective implementation of Magellan that participants identified. In the following example, a

departmental representative talks about appropriate delays that can be caused by the need to conduct further investigations when new allegations are raised:

*“In some cases, there have been issues about the need to seek further time for the preparation of the “Magellan Report” (including because of new allegations being raised whilst the report was under preparation).*

*Occasionally this has caused tensions with the Court in its attempt to maintain timetables for matters in order to keep their priority for allocated hearing dates. However in most cases there has been sufficient flexibility for this to be addressed.”*

Stakeholder

### **Overall length of matters**

The model was aiming to complete cases within a 6-month timeframe. Judges and stakeholders alike emphasised the ‘need for speed’ in responding to abuse matters—as 12 or 18 months where time spent with the child has been severely restricted or denied could make or break the relationship between a child and a parent. Most felt that Magellan was successful in reducing the overall duration of matters:

*“It’s like asking how can we make Judges cost-efficient. We can’t. It’s hard to measure. My sense of it would be: it does work, and it does keep things within timeframes. We have fewer Court events, and a shorter time period, so that everyone’s, you know, got the ruler on them. Basically, it’s given priority by everybody.”*

Judge

Participants were asked their views on whether Magellan is successful in decreasing the overall length of cases. Most participants in Adelaide and Melbourne gave a similar response: “Definitely”.

*“It just has to, because we are looking after things in an orderly way. What it does achieve is that cases resolve earlier. If you get full information as early as possible, there are a couple of alternatives. If it becomes so clear that the allegations are true, people will make decisions on that basis. Or the alternative happens: Parents who have genuine fears, but see the reports and realise that their fears were unfounded will settle. If you have more information early... you can then try other things. If a child is uncertain about seeing parents, but if you can put things in place, you can try things, and the answer will begin to suggest itself (e.g., using supervised contact in a children’s contact centre).”*

Judge

Views were somewhat mixed between registries, as well as within registries. For example, in NSW, the department was keen to point out that although they thought that in general, matters have proceeded more quickly under Magellan than was previously the case (previously it was not uncommon for matters to take in excess of 18 months to be completed, and this is still the case in some matters being dealt with outside Magellan), not all departmental representatives agreed that Magellan resulted in cases being processed more quickly.

Although most participants acknowledged that Magellan has been effective in reducing the time, many also acknowledged that it was still far from ideal, and that the target of six months for resolving matters was routinely not being met (at least in two registries):

*“My concern is that it’s not working as it was hoped it would work. But there are reasons for that. There are too many interim hearings in most matters. That wasn’t intended. It was intended that there should only be a limited number. So we are using a lot of judicial time to attend to these matters. There is no indication that we are meeting the time standard, which is six months. It’s just not happening. It’s nowhere near possible. One reason is because families don’t want the matter to come on, because they are trialling something else, such as supervised contact. But there are some that don’t fall into that category.”*

Judge

In Queensland, there was an acknowledgement that they are not meeting the 6-month target, with some admitting that it is going to get worse, because of the lack of judicial resources.

Another piece of evidence to support participants’ belief that Magellan leads to a significant decrease in the total length of matters is that legal aid has a funding cap. However, by agreement with legal aid, the cap is waived for Magellan matters. Despite this, few matters have exceeded the old cap. Stakeholders contrasted this with their experience prior to Magellan, where they noted that cases involving sexual or physical abuse of children would have had difficulty in getting sufficient legal aid funding to take the matter to its conclusion. Consequently, by focusing resources early in the matter, stakeholders felt that Magellan must in fact be saving money as it often meant there were fewer hearings before a judicial officer (which is a major cost for the Court, as well as for the parties being represented).

## Length of trials

Participants were also asked if they thought that Magellan reduces the length of trials when matters proceed to judicial determination. Most felt it did:

*“Yes, I do. Well, they’re never short. By definition, they’re going to be complicated. They go between five and ten days, or more—but I think they’d go longer if you didn’t have the Magellan process.”*

Judge

*“The difference is marked. I did a 31-day trial early on. Now, with Magellan, it might have gone seven or ten days.”*

Judge

*“Yes [it does decrease the length of cases]. I’ve had the experience pre- and post-Magellan. And it’s because there are less notifications, less serial allegations, less interim hearings, less complexity and confusion, less interviews of the child, so less interviews to unpick your way through the trial; less witnesses to be called; less therapists involved (sometimes conflicting), and a significantly better understanding by the Court and by the [legal] profession as to what people like [the statutory body for interviewing children subject to child protection concerns] do. And so there isn’t wasteful cross-examination, because of a misunderstanding of what that person’s role was. For example, they have—it’s more than this, but let’s just simplify it—two classes of social worker: they have one that interviews the child and makes that determination as to whether or not there was abuse in their view; then if they’ve formed the view that abuse has occurred and the department confirms that, they send the child off to another social worker who provides therapy on protective behaviours or how to deal with the abuse that they are of the view that the child has suffered. The barristers used to cross-examine that second social worker endlessly about how dare they counsel a child or provide it with therapy on the assumption that abuse has occurred. But that is all that their role has ever been. They’re not making any judgment about whether abuse has occurred. That was done by somebody else. And their job then is just to help the child on the basis of how it was referred to them. So I think we’ve saved most of that. So yes, the trials are shorter, for those, and probably many other reasons—and because nearly always they are legally represented, thanks to lifting the cap on legal aid funding. And the way to have a long trial is to have a litigant in person [i.e., self-represented].”*

Judge

However, some participants emphasised that the focus (and the success) of Magellan was in reducing the overall length of the matter, not the number of days it takes for a final judicial hearing.

### **Ability to settle early**

As well as emphasising the success of Magellan in terms of achieving shorter trials, one Judge focused on greater settlement rates:

*“I think we’ve had a somewhat astonishing success here, in terms of resolution of matters without them going to Judgment: there are only three or four that have gone to Judgment over the three years, which is quite extraordinary.”*

Judge

Some participants expressed the view that some Magellan cases do not need to proceed to a judicial hearing, but they can settle quickly and Court resources can be used for the cases that need it:

*“In any case, the worst thing you can have is them taking up all the resources of the Court, right up to the door. You want the ‘settle-able’ ones to settle early.”*

Judge

Other stakeholders were not so sure whether the focus of Magellan should be to have matters resolve early without going to a final hearing. Many participants identified this as being one of the original aims of Magellan, but not one that can always be achieved. For example:

*“National figures would suggest that approximately 90% are able to be resolved without going to final hearing, however to date this has not been the experience in NSW.”*

Stakeholder

Many talked about the importance of having a Magellan ‘mention day’ in assisting matters resolving without going to trial. Although it has the positive outcome of higher settlement rates, it may have the unintended consequence (as was evident in some registries) of various stakeholders perceiving Magellan to mostly be about speed, and quickly moving to listing the case for the final hearing, rather than carefully (yet expeditiously) managing cases.

### Injecting resources early

In sum, the dominant view was that Magellan has reduced the time it takes to process matters, but that once through to judicial determination, length of hearings was not substantially different.

*“If you’re talking about the duration from filing to case closure—yes. If you’re talking about the length of the trial itself—it will not necessarily be any shorter. In some cases, the trial may be shorter. But the length of the case overall is shorter, if the allegations are properly identified early on in the case so it is made a Magellan matter.”*

Judge

The issue of timing is linked intrinsically to the issue of ‘front-end’ resourcing: all of the stakeholders put more money, time and effort early into these cases. The Attorney General’s Department commits financial support through the legal aid system, including lifting the cap on costs (one participant described this as “a leap of faith, without which Magellan could not have happened”). The Family Court similarly put resources in the front: Judges’ time to case manage, as well as conduct interim and final hearings, the provision of Registrars, Family Consultants and other Court staff; as well as prioritisation of cases with special mention days, or a ‘blitz’ if back-logs appear on the Magellan list.

The purpose of putting resources in early in these matters is to flush out cases that ‘shouldn’t be here’, that are able to settle without a judicial hearing, as both parties are able to agree, or have their concerns allayed. State/territory statutory child protection departments also put in resources early, in agreeing to produce their special report to the Court. All of this ‘front-end’ resourcing was based on recognition that unless each of the agencies did this, these cases were the ones that would keep causing difficulties.

*“It fast-tracks the difficult cases that can be heard straight away—that’s the key to it.”*

Stakeholder

The experience of delays (and therefore beliefs around what might be the reasons for this) varied between registries. Some of the reasons for not always achieving the desired result (i.e., finalisation within six months) included transfer of files from the Federal Magistrates Court; long waiting times (due to lack of judicial resources to hear interim and final cases); trials not ending up being any shorter than before Magellan (not only does it take longer, but it is also harder to schedule a spot for a 10-day trial than a three or four day trial):

*“If they were five days or less, it would be easier. And then when the Judge makes time available, they settle, and then you may get ‘down time’.”*

Judge

## Achieving better outcomes for children and families

As noted, the current evaluation methodology did not allow for the views of children and families to be assessed. However, many of the stakeholders interviewed were in a position to be able to provide their views on whether it was good for children and families. For example, stakeholders said things like:

*“Parents thank me as the Child Rep [i.e., ICL] at the end.”*

Stakeholder

*“Litigant satisfaction is high, compared to lots of frustration prior to Magellan. Both sides say this. They are satisfied that they’ve been dealt with, with respect. It’s better coming to Court and having the same judicial officers, not being put off. The fact that the Judge is doing it raises the performance level of everyone. When clients have different Registrars, Judges, and so on, clients complain. When litigants have had previous non-Magellan experience, they notice the difference. It’s important to maintain the same judicial officer. Also, having the particular Judge. Justice [name] deals with people very respectfully. The personal qualities of the Judge are crucial. [Judge] wants to see that people understand. It allows for ongoing dialogue with the parents from hearing to hearing.”*

Stakeholder

Most participants asserted their belief that compared to the Family Court’s traditional case-management approach, Magellan delivers better outcomes for children and families:

*“Yes. [It] doesn’t lead to perfect outcomes—but you don’t get perfect outcomes for dysfunctional families. After years in Court, I don’t kid myself that I’m the architect of wonderful outcomes. But it’s a better outcome: the sooner you make the finding of abuse and set in place protections, the better. In findings where there is no abuse, it is better to put them aside sooner. For the majority of cases, where you’re not sure—which is the majority—and are assessing whether there is an unacceptable risk, it is better to get an answer, rather than no answer. Better for families to get to the end of the cases. In some cases, the quality of the outcome is better. Particularly for those cases that settle or come out of the system early. For those that go through to a hearing, not sure the outcome is better, but the process is better, because it is faster.”*

Judge

The vast majority of participants answered with reference to the positive impact of speedy—yet careful—consideration of the issues that Magellan attempts to create:

*“It must be achieving good things. You get the early reports in. Then the parties can come to an acceptable agreement about what’s in the best interests of the children promptly. The fact that the decisions are being made on proper supporting evidence, and you have the cooperation of the various people involved: police, the [child protection department] and the Court. That’s got to work in children’s favour. The sharing of information. They’re not getting caught up in unnecessary bureaucratic quagmire. I have not seen the children, but I’m just making this on the assumption that speedy resolution of matters in relation to children has got to be in the children’s best interests. I can’t imagine anyone who thinks involving a family in Court proceedings for three years is good for kids.”*

Judge

Another Judge was emphatic in responding that there was no question that it provides better outcomes for children and families. This Judge’s answer documents some of the things that Magellan achieves, and the evidence for the positive outcomes attributed to Magellan:

*“Restoration of relationships with all the significant family members at an earlier date, if that is the outcome. And in some instances, where you would never restore the relationship—even though the result might have been the same. You get a result out of Magellan, quite early—you’ve got time to repair the relationships. In the past, you got the same result, two-and-a-half years later on—frequently too late to repair the relationships. And of course, you’re not just talking parents—extended relationships as well. Dad’s parents are frequently excluded until it’s sorted out: aunts, uncles, cousins. There’s perhaps a naturally over-protective result from the parent who’s got the care of the child. And also we have less interviews; less interventions with the child; less therapists; less reports; less involvement with the department, and social workers, and counsellors.”*

Judge

Participants also acknowledged that apart from the Magellan case-management system, other changes are occurring to the Family Court’s processes that are delivering better outcomes for children and families (e.g., the new Less Adversarial Trial system since 1 July 2006; McIntosh, 2006). Also, some stakeholders were reluctant to offer opinions

on the issue, suggesting that this is a topic for further research. Some were clear that this was because they were not in a position to know (children, young people and their parents would need to be asked).

One stakeholder summarised some of the opportunities that still exist to gather the necessary information to answer this question:

*“Without opportunity to consider and review the matters currently responded to and their outcomes, it is not possible to answer this question. It is only possible to postulate considered outcomes which would demonstrate a level of effectiveness of this program. Magellan would make a difference should we see a significant decrease in matters habitually reported. The effectiveness of Magellan would also be seen in cases where children are not subjected to ongoing dispute and verbal conflict between the parties, reducing their overall experience of psychological harm.”*

Stakeholder

In comparing Magellan to the Court’s usual processes for child cases, stakeholders were clear that Magellan is a fairer system, with benefits for children:

*“Particularly for younger children, there’s a lot of damage to attachment if normal parenting can’t be implemented. This is the greatest problem with the system pre-Magellan. There was a risk of systems abuse: the longer it goes on, the more the children are at risk of themselves forming the view that it had happened. The more opportunity there is that the parent with whom the child normally lives to be fortified in their view that it happened.”*

Judge

Judges were consistent in their perception that parents (and their advisers) are happier with Magellan, based on the assumption that they would be grateful that the matter is being dealt with quickly. However, they also noted that it does depend on what the outcome is. One Judge said:

*“If, for instance, the mother makes an allegation of sexual abuse against the father and she is able to establish that something happened, the sooner that [the case can be heard], the better. If she is not able to establish it, well then the child goes back to spending time with the father under normal circumstances sooner rather than later. She might not like that, but the father might. So you just can’t generalise. It depends. If you get a disappointing outcome, I don’t suppose it matters*

*if it's sooner rather than later. If you get the outcome you want, you'd be pretty pleased about it. But we are looking from the point of view of the child, of course, not the parent. It must be better being quicker. There'd be nothing worse than going through it. Delay in the courts can absolutely wreck families."*

Judge

(See section on Procedural fairness – p. 134 – for a discussion of the way that Judges and stakeholders perceived the impact of Magellan on those parents against whom allegations are made. Also see Counselling section – p. 165 – for discussion of the impact on children.)

Further evidence of participants' views about why Magellan (at least in theory, if not in practice) has all of the characteristics of a system designed in the best interest of children:

*"What else do I like about Magellan? Certainly, the perception that the children are being abused less by the process. As I understand it, there are significantly less interviews of the children; probably significantly less notifications in relation to these same children; probably less repeat business. So all of that's good for the children. Particularly in matters where abuse is not confirmed, it is important for children to maintain relationships with all the adults in their lives, particularly parents. So, very much, the principal beneficiary is the children, which is a nice thing to be able to say."*

Judge

Other evidence that participants put forward to support their belief that Magellan 'must be good for children and families' is that fewer cases are coming back to the Court. For example, a participant in one jurisdiction said that in three years, only one Magellan matter has come back into the system.<sup>35</sup> The following quote from a Judge highlights the major theme that emerged from participants—that although they do not have evidence, to the best of their knowledge, it is a system that should deliver benefits for children and families because it provides timely, workable, lasting solutions:

*"You have to rely on research for that. You don't see the family again, unless it falls apart. We don't have many that come back—mainly because we don't force settlements on people. If you do that, they'll be back. It's called 'stickability'. If you feel pressured into agreeing to contact even though there's been sex abuse—six months later they're back. You have to be very careful with these cases. That's not to say you wouldn't explore options along the way, but apart from that. Thea Brown's research suggested families and children are much better off."*

*You get a quick trial where the best interests of the child are paramount... You'd hope so. It's faster. Children are not repeatedly interviewed. Every now and again, you get a letter from someone saying the kids are doing well. It's a process that does the least harm. Quick justice is justice that perpetrates least harm."*

Judge

Finally, it should be noted that the factors that are seen as critical to the Magellan *process* are also critical to the *outcomes*: consistent contact with the Judge provides a feeling of personal contact and reassurance; a speedy response allows restoration of relationships where appropriate; and the rigorous process (getting thorough reports on investigations early) gives parties confidence in having the best chance of the right outcome and feeling heard and respected.

However, it is important to consider the impact of Court process, such as Magellan, on post-Court parenting. In her evaluation of the Children's Cases Program (CCP), McIntosh (2006) showed that although fewer parents in the CCP found the impact of the Court process to be overwhelmingly negative than in mainstream cases—there was still a substantial proportion for whom this was the case (28%). Consequently, it is likely that although Magellan may be an improvement on the Court's case-management processes, the consequences of Court involvement are still considerable for children and families.

## Tight case-management procedures

Having cases tightly managed is critical to the success of Magellan. As well as being Judge-led, it is a multi-disciplinary team approach within the Court, including Registrars and Client Service Officers (case managers), and across all of the stakeholders. Ensuring that the matter proceeds in a timely way avoids a problem that was identified in pre-Magellan handling of abuse cases: expert reports may be out-of-date by the time the case is finally heard. Judges and stakeholders talked about the team approach to case management being effective in ensuring that there were no unnecessary delays, and that things did not 'fall through the cracks':

*"Yes, I think it's tightly managed. The combination of the Magellan Registrar, a Magellan Judge and there's a client services person in the registry, I believe, one person who does all the Magellan matters."*

Judge

*"The support offered by the Magellan Registrar is also very important. We have been blessed with good Registrars. Both of us sit with a Registrar. They deliver trial notices, while we get on with more important things. The model began with the Registrar sitting with the Judge. But I'm not confident that this happens elsewhere."*

Judge

The relationship between the Judge and the Registrar managing the Magellan list is critical to ensuring that they bring complementary skills to the process. One Judge said:

*“The people to whom most credit should go are the Magellan Registrars. They are intelligent: good lawyers, good managers. It’s hard to find people who are both. And they are passionate about going out of their way to make sure it works. I know this, because I have worked closely with three or four—and I’d say it for each of them.”*

Judge

The general view was that cases are tightly managed. However, one Judge who had concerns about how timelines were not being met in their registry qualified this:

*“Tightly managed? I don’t know. They seem to have more events than were anticipated. And are taking longer to come on. But I don’t know what’s causing it.”*

Judge

*“And that’s the Judge’s function: to make sure everyone does what they’re supposed to do in the time that’s allocated to do it—and that they don’t wander in the system and get lost in the process. I know my Magellan cases, where they’re at, and when I don’t see a Family Report coming in on a matter within 6 weeks I say ‘Why not?’ I’ll find out. Whereas with other cases, I won’t even know that it’s been lost in the ether.”*

Judge

However, it is more than just good management, or effective team management. It is—at least in part—about **who** manages. This is consistent with the findings from the CCP pilot (Hunter, 2006; McIntosh, 2006). Stakeholders also emphasised the importance of it being Judge-led, and the message that this sends to all parties:

*“The benefit of hands-on management by a Judge in the early stage means that the parent with a genuine concern and the person against whom allegations are made both have the benefit of their circumstances being taken seriously. Previously, it would go into a black hole for six or nine months. Fathers—typically deprived of contact with their children — would be understandably disgruntled. And, although the outcome might be the same (such as supervised contact), the process is quicker, allowing restoration of relationships between children and parents, where appropriate.”*

Judge

Having the Judge responsible for leading the case-management process trickles down through other elements. All of the other stakeholders—the ICL, lawyers for the parties, Family Consultant, and other expert witnesses—are all under the direction of the Judge. This carries more weight than under the direction of the Registrar. Judges felt that because of this, compliance is higher:

*“With Magellan, I haven’t experienced as much of the avoidable delays as in other litigations. The authority of the Judge enhances the process.”*

Judge

Another Judge emphasised the importance to parties of perceiving the process as being Judge-led, and that in many ways it is not about delivering different outcomes, but about improving the processes by which those outcomes are delivered:

*“Having the matter assigned to Judges is more likely to give the case the attention it deserves. It enables people to live with the decision, because it was given the appropriate attention. They are able to say: ‘He listened to me.’ With some now-retired Judges [pre-Magellan], you got abrupt and cranky conclusions. It stands to reason that you’re more upset if you are told on Day 1 that you’ll never see your kids again, than if you are given a 10-day hearing and a 30-page judgment.”*

Judge

This Judge noticed a difference between these cases and *Magellan-like* cases prior to the introduction of Magellan; however, there was also an acknowledgement that professionals involved in child sexual assault cases prior to the implementation of Magellan were always careful. The Judge talked about Magellan as not something completely ‘new’, but a way of formalising and ensuring that what you would hope had always been best practice was consistently implemented, and supported by appropriate resources.

It was not just the Judges who thought that tight judicial management of cases was crucial to the success of Magellan:

*“Having a Judge who is really involved in all of the cases has the opportunity to get to know the people involved, and the situations that come into child abuse allegations.”*

Stakeholder

*“I think if the case is managed well by the Judge, it can reduce the time. You get to the point quickly, because everybody is focused. We’re not dealing with ambit claims. We’re focused on what the real issues are. If it is not managed well, it can be a waste of time, money and effort.”*

Stakeholder

Within the Australian legal system, having the most senior official of the Court—a Judge—take hands-on responsibility for the task of managing something that you would not ordinarily see them doing is a reflection of the Court’s endorsement of the process and of the importance placed on the issues. It gives a sense of authority about the Orders that are made, about the words that are said, about the outcomes that are being sought. As one Judge said:

*“I’m still able to remember how important it was to my clients and to me as a lawyer, to hear what the Judge had to say or think about a particular matter. If the Court thought this was important enough to be dealt with at interim stages by a Judge, it is an important or significant project.”*

Judge

Having a single Judge responsible for managing a case also means that there is a consistency of approach, which provides greater confidence for the legal profession in predicting how things will go, and builds trust between the stakeholders and the Court:

*“They basically know how Justice ‘A’ is going to approach it, because Justice ‘A’ always does these ones. They’ve got a level of understanding, perhaps even a level of comfort about where it’s going to go. That probably assists the matter in transition through the process, as there’s that level of understanding.”*

Judge

One Judge likened this to other cases where there are judicial settlement conferences. Judicial settlement conferences achieve an extremely high settlement rate where none of the other mediation, negotiation, or resolution processes have worked. The reason for this is presumably that the litigant is finally getting the answer from the person that is ultimately responsible within the Australian legal framework to make that decision. Short of going to a full appeal, the Judge’s decision is final, and is the highest opinion about the appropriate arrangements for children that a parent can receive. This means that if a Judge says, ‘You’re wasting your time, and that’s the settlement that you ought to be thinking of’, litigants are more likely to accept the outcome, and feel that they have taken every possible step to explore the best option for them.

## Docket system

The Magellan pilot was originally developed as a ‘docket’ system, to ensure continuity for cases. A docket system means that at a particular point in the litigation pathway, the case gets assigned to a Judge, and that same Judge sees the case through to the end:

*“Effectively, Magellan is a ‘docket’ system. It means that when you come into Court on the very first occasion as parents, the Judge you see who is going to order the “Magellan Report”, deal with the issues of interim contact, order the expert reports, hear the arguments for and against those particular experts, is exactly the same Judge that will do your hearing at the end. You don’t get moved from Judge to Judge.”*

Judge

Apart from the message that Judge management of Magellan cases sends about the importance of these cases to the Court, it has practical benefits in terms of the consistency of approach, the satisfaction of litigants that their story will be remembered and understood:

*“The Judge can—despite large workloads—retain a level of familiarity with the file, and can remember the previous interim proceedings, the reports, and those outcomes. Whereas if you always had a different Judge every time, there wouldn’t be that level of familiarity, and that could extend the proceedings. They may try to argue the same thing before a different Judge for a third or a fourth time.”*

Judge

One Judge summarised how the Magellan list works differently to the way in which cases would otherwise be managed:

*“Specifically, because there’s a Judge managing the particular file—and there’s agreement as to what will happen once first directions and second directions Orders are made—yes. Because there’s consistency in the sort of Orders that are made, and the expectations and understanding of the department as to what should happen.”*

Judge

In one stakeholder focus group, an important distinction was highlighted. Although everyone was uniformly in favour of cases being tightly managed and heard by a single Judge, this was more important for interim hearings and directions hearings, rather than a trial *per se*:

*“If a different Judge did the trial, this wouldn’t be such a problem. It’s if the interim hearings are done by others that it’s a problem. It’s like briefing counsel.”*

Stakeholder

There have been registry differences in implementation of the judicial allocation practices for Magellan. There have also been changes over time. When the volume of cases becomes high, if there are only two or three Judges doing Magellan cases, it is impossible for them to hear them all. For example, since the original 100 cases in the Magellan pilot project in Melbourne, the docket system has been dropped in the Melbourne Registry. Although the cases are still managed by a single Judge and Registrar, if the matter goes to a final hearing, any Judge within the registry could hear the trial. As noted by the following Judge, it is practical reasons that has led to this change in a number of registries:

*“In most registries, while Magellan may be case-managed by a select number of specialist Judges, the number of them, and the scarcity of judicial resources means that every Judge, whether they are Magellan Judges or not, have to do the trial. I think the original idea was that you would have specialist Judges doing the management and the trial. And that would be preferable. But you also need to rotate Magellan Judges out of Magellan, just for mental health.”*

Judge

Similarly, in Queensland, initially there was a designated Magellan Judge throughout the matter. More recently, the Magellan Judge conducts the listings. But if the case goes to trial, it may go before any Judge. The stakeholder steering committee in Brisbane acknowledged that the Brisbane Registry is not as good at retaining matters before the same Magellan Judge as other registries. They identified some of the problems that occur if any Judge could ultimately hear the trial:

*“I don’t think it’s ideal, because Judges have their own strengths, and Magellan Judges are the best with children’s issues. But we think it is in the best interest of the child/family to have the matter go before the same judicial officer. People don’t feel like they are telling their stories over and over again. But it’s difficult in Brisbane, because so many go to trial.”*

Stakeholder

*“A change has occurred in the last six months or so. Now, any of the Judges can be the trial Judge. This can be confusing. Once you’ve got a Judge, you get directions. Then when it goes to trial, you get a new Judge. We don’t understand why the change has occurred—whether it is an official change in the Magellan protocol or not.”*

Stakeholder

In Parramatta and Sydney, trials go before any Judge, although Sydney is looking at moving to a docket system. (See Appendix 7 for a comparison of registry differences in use of the docket system.) These variations between registries—as well as changes over time—highlight the importance of clarifying what are the essential elements of the Magellan protocol, and ensuring consistency in their implementation, through appropriate training, mentoring and monitoring.

Combined with the fact that a large percentage of cases are still proceeding to a hearing (more than was originally envisaged), some stakeholders expressed concern as to the capacity of the Court to continue prioritising Magellan matters, and whether such a practice in fact compromises one of the key protocols of the Magellan project of having Magellan matters case managed by a single Judge; with that Judge having special expertise in dealing with Magellan-type cases. Overall, there were mixed views from participants (both Judges and other stakeholders) about the value of cases going to trial and being heard by non-Magellan Judges.

Another variant in the model was apparent in Melbourne, where they have now adopted a judicial teamwork approach, where both of the Magellan Judges are responsible for managing the cases and either can hear the matter throughout various interim hearings.

They also talked about the value of having a couple of Judges working together cooperatively. Although they may have different personal styles, by discussing the cases with each other, regardless of who hears the cases at each point, parties do not have to start telling their story from the beginning again. Previously, one of the problems was that litigants felt that they needed to tell their story from the beginning each time they encountered a new judicial officer. They described the judicial teamwork approach as follows:

*“It’s like a joint docket; a team docket. It can accommodate the other Judge being away. It’s only once in 24 months that they won’t have a Magellan list in any month—and it will be in September, which is school holidays anyway, and a lot of families have difficulties with cases run in school holidays.”*

Judge

The key characteristics of effective case management were succinctly summarised by one stakeholder as involving three things:

- (a) timely judgments:

*“Getting a final judgment at the end—in a timely fashion—is nice.”*

Stakeholder

- (b) making decisions:

*“Being prepared to make a decision and saying: ‘That is the last involvement of the Court with this family’. There is a bit of a tendency to want to manage the family until the children are 14 or 15.”*

Stakeholder

- (c) focusing on the critical issues and ‘getting to the point’:

*“Whether they are self-represented or represented, a proactive Judge will really quiz them as to what information or evidence they will file in Court, and how this will help me make my decision.”*

Stakeholder

### **Judge’s qualities (personal characteristics)**

The leadership and involvement of Judges is critical at every stage in Magellan. This relies a good deal on the personal qualities of the Judge: their experience, level of dedication, organisational skills, as well as their ability to deliver good judgments. Another important issue is their ability to manage relationships with stakeholders, particularly the statutory child protection department. The importance of this latter point is evident from this comment from a Judge:

*“I think one of the important features seems to be that it’s Judge-led. And that gives, I think, a sense to everybody that it is a significant project to the Court and that they devote one of the key personnel in a Court—namely the Judge—to oversee the whole task and be actively engaged in every part of the process from the identification of the matter, through the interim hearings to the ultimate trial, to chairing stakeholder meetings, to—in my case—visiting the offices of a number of the stakeholders (such as child protection services), lecturing staff about what to expect in the courtroom, how to give evidence and respond to questions, inviting staff here to visit our premises, get a sense of what the court room’s like, take them in through the back room, see where the Judges come from; see what it looks and feels like; sit them in the witness box to get a taste of the environment, and generally try and put them at ease as much as you can ever be at ease in giving evidence in matters such as this.”*

Judge

Participants recognised, however, that there was variability in the degree to which Judges fulfilled this role. There were views that some Judges manage the process better than others. Some Judges themselves recognised their limitations in terms of case management, differentiating between having their cases *heard* well, even though they may not be *managed* as well as they should:

*“Judges have different capacities and interest in case management. Some Judges don’t have much interest or aptitude in taking some cases by the scruff of the neck and giving them a good shake. To say this is a bit of a taboo, but [it is] something that registries hopefully think about when asking them to take on these roles. It’s not just about commitment or legal knowledge, but a particular skill or way of dealing with cases, and not everyone’s interested in acquiring it. The worse thing is if it falls into the hands of non-volunteers.”*

Judge

The Judge went on to talk about burnout, due to the difficult nature of the job—particularly the need to discriminate between false allegations and genuine ones:

*“It’s a very demanding role. If you do that year in, year out, you end up being burned out. It’s hard to maintain objectivity. But then again, not all Judges are suited to that. Some wouldn’t just simply like to do them. We come from a wide range of backgrounds. Mine, for instance, was from crime, so I’m used to that. The rules of evidence I’m used to applying more strictly than some other Judges who haven’t practiced in the criminal jurisdiction. Some Judges are just more resilient than others.”*

Judge

All of the stakeholders were at pains to spontaneously say positive things about the Judges who manage and hear Magellan cases, and recognised that their commitment to children’s welfare is one of the key reasons why they believe Magellan works.

## Procedural fairness and ‘natural justice’

The importance of a Judge-led process links to the theme of ‘procedural fairness’ that cut across many of the participants’ responses. Many of the Judges noted the high stakes that are involved in Magellan cases, and therefore the importance not just of getting the outcome right, but ensuring timely processing and procedural fairness.

One of the themes that emerged in the interviews and focus groups was the importance of quickly re-establishing relationships between parents and children where allegations were not supported (i.e., where time with a child had been suspended or limited to supervised contact only, and it was now safe for time to be spent, or for supervision to not be required):

*“One of the tragedies, pre-Magellan, when there was no finding of abuse or no unacceptable risk, the relationship between the father and the child was often ruined, just by the lapse of time. And of course, Mum—usually—convinced of the abuse, or perhaps deliberately using it as a weapon, falsely, had done a great deal to ruin the relationship. So even if dad had done nothing wrong, he might not see his children again, or never have the same relationship again, because it had taken two-and-a-half years to get to trial. Most children certainly still remember their father if it has only been six months they’ve been waiting; and generally it’s not that, because the preliminary reports tell you that you may be able to establish some time, even if it’s supervised. That is another of the significant advantages: there are many, many important relationships between fathers and their children, and also some mothers and their children—because it might be her partner who’s alleged to have abused the children. So maintenance and early restoration of a full relationship is another significant benefit of Magellan.”*

Judge

*“If there’s no time being spent with the parent, that’s difficult if they haven’t seen them for six months. The Court has decided that where there’s an allegation, the alleged perpetrator needs to wear supervised contact until a final hearing.”*

Stakeholder

There was a recognition that the worst two things that could happen to a father are to be wrongly accused of sexual abuse and to be deprived of ability to spend time with the child. Consequently, the role of the Judge is critical for parties to feel that their ‘story’ has been heard:

*“Just having the opportunity to talk as a human being (and as a father, not that I often mention that) demonstrates to them that you understand, but you can explain why you need to err on the side of caution.”*

Judge

Other stakeholders echoed this view:

*“Litigants cope better with the allegations dealt with by Magellan because it is managed by the one Judge. Litigants tend to be far more settled throughout. They know one person is in charge. There is a much higher level of litigant satisfaction. They think they are being specially treated—in a better fashion, and quicker than others, especially for the party refuting the allegations.”*

Stakeholder

*“Some who are acting say, for a father against whom an allegation’s been made, will have already have spoken to the client, told them what the Magellan Project’s all about; tell them that probably the Judge is going to say is that whilst we investigate this, you’re not going to see your children, but we’ll get back to him as soon as we can. We’re going to get as much information as we can, and then we’ll review it. The lawyers will say: ‘Look: you’re denying you did it. I know it’s harsh on you. But you can trust the Court is doing its best to get it through the system as quickly as possible. That’s why they created Magellan. And look, the Judge doesn’t have a lot of alternatives whilst the allegations are being made. Under the Act, the Judge has to protect the child, first and foremost. But you’ll be back in six weeks with the preliminary report from the department, and it may then change then, and look at some supervised time, maybe, if abuse is not confirmed. And then there’s another timeline of 10 weeks until family report, and it then it may change again.’”*

Judge

The Family Court is not a child protection court. It is there to resolve disputes between parents in a fair and impartial way that serves children’s best interests—and to ensure that the Parenting Orders they make do not place a child at risk, based on the evidence presented to them. As well as being protected from harm, it is a right of the child to maintain a relationship with both parents, as long as doing so is in their best interests. In contrast, it is the role of the police to investigate claims of criminal behaviour, and for the statutory child protection department to ensure the safety of children.

Although it is clear that Judges understood that investigating and confirming (or vindicating) alleged criminal behaviour is not the role of the Family Court, it became obvious that not all stakeholders were necessarily clear on this. In the focus groups, stakeholders did not spontaneously mention the dilemma posed by the different responsibilities and the particular jurisdictions of the Family Court, the statutory child protection departments, police, and the juvenile courts. Therefore, procedural fairness seemed to mean different things to different stakeholders. Judges also talked about expectations of stakeholders, including parties. A Family Court proceeding will not ‘vindicate’ a wrongly accused parent; neither will it confirm the actions of the parent making the accusation. It would be unreasonable to criticise the Court, or the Magellan process, when the legislation and constitutional division of power that underpins the Family Court and the state/territory responsibilities cannot be changed without substantial legislative reform at both tiers of government.

### Is it just about fairness for dads?

Throughout the interviews and focus groups, the issue of gender was either implicit or explicit. Most participants talked about mothers raising allegations concerning the behaviours of fathers.<sup>36</sup> One Judge clarified the issue, emphasising that the type of abuse that mothers are alleged to have perpetrated is not usually sexual abuse (which is the ‘typical’ allegation against fathers in Magellan cases):

*“I keep talking gender-specific, but that’s just the nature of Magellan. It’s the man usually who abused the child. But we’ve got to remember of course that there are a number of allegations made against mothers. Because Magellan also encompasses physical abuse, and that is occasionally perpetrated by the mother. Or the partner. Or the partner might be responsible for the fears of sexual abuse. When I talk about gender-specific, I’m talking about the majority. I’m not intending to convey that that is always the case.”*

Judge

Given the emphasis placed on restoration of relationships (usually with the father) notions of procedural fairness appeared—at face value—to equate with concern about ‘fairness for dads’. However, a more considered analysis does not fully support this. Participants also talked about children maintaining relationships with both parents. Judges did not often spontaneously refer to the role of Magellan in protecting children or achieving procedural justice for them.<sup>37</sup> However, they were clear that protection of children is the statutory responsibility of the state/territory child protection department, not the Court.

### Relationship with the child protection department

Departmental involvement was seen as one of the most important aspects of Magellan. Participants described the relationship between the Court and the various state/territory child protection departments as critical to the success of Magellan. It is a prime example of where and how communication needs to work. One Judge provides an example of how problems need to be identified and overcome:

*“Early on, there were difficulties in getting the department to meet timelines. When we asked for a report, they thought we wanted a big, fancy document. But I just said, ‘Forward the existing report you have.’ Once they realised this, it was easy.”*

Judge

A positive relationship between staff from the Court and the department is important for encouraging departmental child protection workers to provide prompt reports to Court on their investigations in relation to the allegations, “so that the parties aren’t left wondering” (Judge). The focus on cooperation, particularly with statutory child protection, has resulted in “the provision of information that was previously somewhat jealously guarded by state authorities” (Judge).

As one of the principal stakeholders, the statutory child protection department was identified as a beneficiary of Magellan. One Judge identified how prompt examination and resolution of matters in the Family Court may in fact reduce the workload of department staff:

*“I don’t imagine that their files are as big. I don’t imagine they have to deal with as many notifications and don’t have to investigate them. I imagine their files have a shorter life—they get them in and out quicker.”*

Judge

*“The very real cooperation with the department manifests itself. They go outside their statutory charter to assist. Their job is to investigate and prosecute where children are at risk. Because of how litigations have run, by the time it comes to a Magellan Judge, we’d like to think that an immediate risk has been removed. So, the state child protection department can rightly say, ‘there’s no need for us to do anything.’ But because of how Magellan was set up at the beginning, they stay in as part of the process and conduct an investigation that they don’t really need to do, on the basis that it won’t be on their shift in the future.”*

Judge

Given their different roles and responsibilities, the Court and the department needed to agree on the Magellan protocols and mechanisms for information sharing. The department is only responsible for ensuring that children are safe—that there is a ‘good enough’ parent that is being protective towards the child. In contrast, the Family Court’s responsibility is a broader one—to look in the long-term to what parenting arrangements are going to be in the best interests of the child.

## The “Magellan Report”

A critical part of the Magellan process is the “Magellan Report”. The department is requested to undertake an assessment and prepare a report to the Family Court addressing the identified allegations. This report is required back before the Court within four-to-six weeks. A subpoena may also be issued for the department’s files at this time. After the department has conducted their investigations and assessments, it is required to advise the Family Court of its findings, and of any proposed action (referred to as the “Magellan Report”). The department’s role also continues if the proposed action is for the department to become a party to the proceedings. The following quote from a Judge emphasises why the Magellan case-management system—and in particular, the “Magellan Report” from the department—was needed:

*“At the time that Magellan started, if the Court called for a report, invariably it took months. Often it was that the department is not satisfied that the child is at risk. But we don’t know if they’ve done an investigation, and don’t know what that meant. The other thing that happened invariably was that you asked the department to participate—in other words, to intervene in the proceedings. Before Magellan, they invariably said ‘no’. One of the things that gave me most pleasure was that now they would come along and appear amicus curiae (‘friend of the Court’). In one very difficult, complex case, a lawyer came along from the department. They got their own Family Report because they were so worried about the outcome. That’s the optimum. I’m sure that they weren’t just being optimistic. Some clever manager realised the case would cost less if they invested early.”*

Judge

There are a number of internal departmental processes that are used to expedite the investigation, in order to be able to produce the “Magellan Report” on time—with priority given to Magellan cases in order to meet these deadlines. However, the implication is that other child protection cases where there are not Family Court proceedings may have a reduced priority as a consequence. One departmental representative compared the process with what used to happen prior to the implementation of Magellan:

*“The difference now is that [the departmental ‘intake’ unit] has to enter, complete and transfer the report the same day it is received at [the ‘intake’ unit]. In the past, the information was prioritised on the basis of urgency and whether the information was already known.”*

Stakeholder

As identified previously, some diversity in perspectives was explained by divergent implementation across some registries. For example, provision of a “Magellan Report” by the statutory child protection department does not happen in Queensland. (Instead, the ICLs subpoena the entire departmental case file). When asked whether the absence of a focused “Magellan Report” was a problem, a member of the stakeholder focus group said:

*“I can see, in principle, the benefit of having an experienced child protection practitioner make a report to the Court. But a report from an inexperienced practitioner wouldn’t provide much value. If they were able to go through the history and identify current concerns... this would be of value. But we would still like the department’s full file subpoenaed. We’re used to the process we have.”*

Queensland

### **Does it change what departments do?**

There was some limited evidence from participants that Magellan changes the activities of departmental child protection workers. This is particularly the case where the department is re-investigating cases where reports have already been investigated—and particularly, where the case had previously been notified, but had not been investigated, because the information provided at the time of notification failed to meet the department’s criteria (i.e., the level of harm to the child/young person was not serious enough to warrant further investigation, or the child was now safe; i.e., living with a protective parent). According to the Magellan protocol (at least in the registry where this was raised), this matter would still be investigated, in order for a “Magellan Report” to be written by the department. This can take direct resources away from other departmental priorities:

*“This has meant that other matters which may be of a higher priority due to a higher level of risk/seriousness have had to be redirected or delayed to ensure that the “Magellan Report” is completed within the designated time frame. In this instance the difficulty has been the differences in the thresholds of ‘seriousness’ for the department and the Family Court.”*

Stakeholder

It was apparent that there were divergent views about whether Magellan changes the activities or the roles of the agencies responsible for investigating allegations of child sexual abuse or physical abuse. For example, within the one stakeholder focus group, different perspectives were evident. One participant said:

*“Magellan doesn’t make a difference to how it needs to be investigated by police, or the department.”*

Stakeholder

However, another participant gave an example of where the Family Court’s involvement in a case (although not necessarily being a Magellan matter *per se*) changed the department’s view of the case. The participant said that in a particular “Magellan Report”, the department had noted that because the children were not seeing the father, and the matter was being dealt with in the Family Court, they were closing their file. They also noted that some of the early “Magellan Reports” talked about resource implications—namely, that the department had insufficient resources to investigate the allegation. However, it was also pointed out that the decision to not investigate does not always result from the department knowing that the case was before the Family Court—or because of the Magellan process *per se*:

*“It’s an historic record: it was about the decision to investigate at the time, before they knew it was Magellan.”*

Stakeholder

### **Diffusion of responsibility**

As noted in the Introduction, the roles and responsibilities of the department and the Family Court are complex. In the interviews and focus groups, the various Judges and stakeholders were presented with a scenario, and were asked whether there was any truth to it, as follows:

*Could the Family Court see it as the responsibility of the statutory child protection department to investigate whether there is any truth to the allegations? Due to high workload demands, however, the department turns to the Court and says, ‘Well you are in the best position to actually find out the truth of what’s going on?’*

Participants were asked whether such a ‘stand-off’ might occur, allowing the department to ‘take a breather’, believing there is someone else looking at this case who might be in a better position to find the evidence.

There were mixed responses as to whether there is any truth to this scenario. Some participants were vehement in denying that departments paid any greater or lesser attention to cases when they were aware that they were coming before the Court. Others clearly saw that this had been happening, and was one of the principal reasons for needing the Magellan case-management system, with its protocols for information sharing with the statutory child protection department.

One Judge expressed deep concern about the misunderstanding in the community (and potentially in child protection departmental workers) about the role of the Court, and other agencies.

*“We do not have any investigative capacity whatsoever. We rely upon the evidence that is presented to us by others. We can make recommendations that people collect evidence on certain topics that we might be interested to hear. We have no resources—nor should we ever have resources—to carry out the investigation... They’re allowed to think that it’s all the Family Court’s fault for not investigating it properly. I’m so angry about it—I’ve been fighting against that perception for 20 years...”*

Judge

Fundamentally, participants identified a lack of understanding by many involved in the family law system about the difference between investigating a case, preparing a case, and hearing a case. A number of different stakeholders (but particularly Judges) felt that it was not always well understood what the role of the Court is (to make decisions in children’s best interests), compared to the role of child protection departments and other agencies, such as the police (which is to investigate and gather evidence to present to the Court). A number of Judges spoke about the need to improve understanding of what the court is and the functions of the investigating team (i.e., police and/or child protection department).

The clearest indication of this was in talking with stakeholders about the differences Magellan has made. One Judge said about the possibility of responsibility being handballed by the department back to the Court:

*“There’s no doubt that it happens. The department would hardly ever do anything when someone has instituted a matter in the Family Court [pre-Magellan]. On the whole, if it is before the Court, because of funding constraints, the department says, ‘It’s one less case.’”*

Judge

Speaking of the role of the state (through the statutory child protection department, the police, and the juvenile courts), another Judge felt that they do hold back, and that this is appropriate:

*“Definitely—But that’s partly because of their mandate. Their mandate is to make Orders where there is no viable parent. Almost, by definition, in a Family Court contest, they are both viable parents. So they let us make that decision. Then they don’t have to worry about it.”*

Judge

*“Sometimes child protection workers make the assumption that the Family Court will be assessing children and families. But when the department has assessed that there is a parent willing and able to protect the child, it is fine for them to hand over responsibility for the case to the Court. It should not make a difference if it’s a Family Court case, as it is still the department’s mandate to ensure the protection of the child.”*

Judge

In comparison, a number of stakeholders were clear that the department does not rely on the Family Court to resolve child protection issues. It is the responsibility of the statutory child protection department (in conjunction with police where appropriate) to investigate allegations of child abuse. From these investigations, where the department forms the reasonable view that the situation constitutes grounds for intervention within that state or territory’s legislative framework, the department intervenes to ensure the immediate and future safety of the child. These processes occur despite the existence of Family Court proceedings. Prior to Magellan, a department may have then instigated action in a juvenile court, depending on the outcome of a Family Court proceeding.<sup>38</sup>

The Court, however, relies on information from the department about the investigations they have conducted, and whether the concern that was raised by the parent is substantiated (i.e., is the child at risk of harm), and what this may mean for the likelihood of future risk of harm. The Magellan protocols are necessary for ensuring that information from the department is conveyed to the Court as quickly as possible:

*“The important element was to create good timelines for the case to go through the Court. In order to have good timelines, one of the key elements was to get more timely responses from state agencies who were investigating child abuse. There was a sort of stand-off. While we didn’t want to proceed without having that information at our fingertips—which is a respectful and practical approach; and they didn’t want to respond, as they saw them as ‘our’ children not ‘theirs’, which has got some logical flaws in it, but it’s a funding difficulty that they perceived. So that was the first thing—to ensure that we got timely reports. Then we needed to ensure that we responded in a timely way, because the fault wasn’t always the department, at all. So we set up better processes for the cases to go through the Court more quickly here, with good individual management.”*

Judge

Magellan was seen as a way of achieving better integration between state and federal roles: The state/territory department is responsible only for children, not families; the Family Court is responsible for resolving family issues, not testing the veracity of abuse allegations *per se*. So both perspectives are needed. Many participants talked about the Magellan project as being a critical mechanism for improving relationships and communication between the Court and the state/territory child protection department to enable this information sharing. Here is an example of how one Judge described the expectation that the department has of the Family Court:

*“The other thing they would expect is that if there is an ongoing child protection issue, that we would let them know so they can intervene in the proceedings, or let them know—by publishing our reasons for the decision—so that they can then discharge their functions, after ours is finished.”*

Judge

Other views about the relationship between the departments and the Court include:

*“The department is reluctant to be involved if there is Family Court involvement. However, the quality of the stuff they send through is great.”*

Stakeholder

*“We secured a high degree of cooperation from the department. When the case is very entrenched, the department will say, ‘We are satisfied that the child doesn’t have an original thought in their heads’.”*

Judge

*“There is also recognition by both institutions that child protection is only about interceding. It doesn’t look holistically, because of limited resources, for the long term. Their test is one of adequacy; our test is about ‘best interests’.”*

Judge

Because there are two bodies with an interest in the welfare of children, one of the questions that participants were asked was whether there was any ‘handballing’ of responsibilities backwards and forwards between the statutory child protection department and the Family Court. The response from this Judge was a typical answer:

*“The Court can’t handball. Before Magellan, [the department] certainly did. There was no question. They didn’t even bother investigating. This was one of the key problems. They were under enormous constraints, and so could think: ‘Great! Someone else can take that one’. I felt a genuine paradigm shift. They realised they were regular children...”*

*The Court both needed and respected their input (if you make that clear, you tend to get a better response from them.) Systemically, we made it clear that we need to cooperate.”*

Judge

Some participants felt that state/territory child protection departments do not investigate as much as they would otherwise. They gave some possible reasons:

*“There could be at least two motivations for that sort of approach: one is, they trust the Family Court now, so let them go, because they’re out to protect the kid. In the past, they thought they were the only ones to protect the kid, not the Family Court. But the other factor might be that they can save on workload and staffing and other issues.”*

Judge

However, most Judges and stakeholders were at pains to say that the state/territory child protection departments still conduct their investigations appropriately and thoroughly. Many articulated that it was not only ‘resource constraints’ that influence which cases are investigated by departments, but were aware that initial assessments by the department about the level of immediate risk and the availability of a protective parent are key factors.

There was little evidence that participants thought that statutory child protection departments are ‘dropping the ball’ on the investigations. The views from two different Judges illustrate the perspective of most participants:

*“No. I don’t think so. You’d never make that accusation, because that’s like saying that they are notified of a child who needs protection and they don’t do anything about it because it’s in the Family Court. I’m not saying that. They would never, to my knowledge, not take a step that should be taken to protect the child simply because the matter was in the Family Court.”*

Judge

*“I don’t see the department handballing. They have said, out of respect for the Family Court, that they cede their responsibility, because they have trust in our processes.”*

Judge

Participants were clear that the Court was not ‘handballing’ responsibility to the department. However, this is predicated on an accurate understanding of what it is for which the Court is responsible. Departments investigate to ensure children are safe (and if not, commence child protection proceedings in a juvenile court); the Family Court makes decisions about parenting matters in the best interests of children, which includes both protecting children and maintaining relationships with both parents where that can be done safely:

*“If someone comes to our Court with an allegation of abuse, we have the jurisdiction to hear it, and we hear it. It’s not quite so easy to get into the other jurisdiction [the juvenile court]: there has to be a notification, etcetera. We just accept that we have the jurisdiction to hear it. We don’t see it as anything other than our responsibilities. In every case, Magellan or not, we rely on the assistance of the department to provide their documents to us. In Magellan cases, they do a report within six weeks that summarises their involvement. But in non-Magellan cases, they still make their documents available to us at a hearing.*

*“I think there has been a tendency in the very overworked department, if there is an allegation of abuse made, and the matter is proceeding—if someone has filed in the Family Court—there probably was a bit of a tendency to say, ‘Oh well—look: it’s in the Family Court. They’ll have a good look at it.’ I’m sure that’s been one of the reasons why the department has been so keen to cooperate, and has cooperated with us. They can now say, ‘Look, it’s in the Family Court. They’ll have a good look at it. What we’ll provide is the “Magellan Report” and give the Court all the assistance we can.’”*

Judge

Rather than ‘dropping the ball’, some stakeholders suggested that in fact departments do their job more thoroughly when it is a Magellan matter. The following statement made in one of the focus groups is an example of the typical understanding from a statutory child protection department of their role in Magellan:

*“The department’s understanding of the protocols is that they provide for the case management by the Court of cases involving serious physical and sexual abuse, to enable those matters to be resolved quickly in the interests of the children concerned. The department is considered to be a key stakeholder in Magellan, as the “Magellan Report” is considered critical to case management in that it gives both the parties and the Court a sense of the level of external validation the department is able to*

*provide about the truth or otherwise of the allegations. It also enables the department, where appropriate, to either intervene in the proceedings at an early point or else remove the matter to the Children’s Court.”*

Stakeholder

### **Improved relationships**

It was common for stakeholders to acknowledge past difficulties in dealings with the Court about what role—if any—the statutory child protection department should play in family law proceedings. Development of the Magellan protocols with each state/territory department, as well as formation of the stakeholder steering committees have resulted in improvements in that relationship, and in the understanding of the role of each agency:

*“There have been improvements in that relationship and a greater understanding between the department and the Court, firstly of each other’s role in child protection but secondly, of the constraints each other works under. Magellan has contributed to that greater understanding and cooperation.”*

Stakeholder

The foregoing discussion of the department highlights the way in which Magellan has brought clarity to the roles and expectations of agencies, and allowed trust to build:

*“It stems back to a ‘them and us’ attitude that developed over the years. I think there were one or two cases where the Court made some very adverse findings about the manner in which the forerunners of the department handled a particular file or two—I think in one matter, made a substantial order for costs against them. And it’s taken many years to come back from that. I don’t have any sense of there being any level of concern or mistrust between the department and us. There are open lines of communication. Somebody just has to pick up the phone and it gets resolved immediately. They don’t jealously guard information. They let us have it.”*

Judge

One Judge wondered whether or not Magellan has led to the department making fewer protection applications in the state juvenile courts (e.g., for Guardianship Orders) because of a level of trust in the way that the Family Court is dealing with these cases through Magellan. The Judge felt that previously, the department did not always trust that the Court was going to properly protect the children, and in a timely manner. But with the introduction of Magellan, the roles were clarified, and departmental staff understood better the Magellan process and its aim. The evidence for this view was the comments made by departmental staff in “Magellan Reports”:

*“They say things like: ‘Whilst there are some concerns in relation to these children, we note that appropriate action is being taken by the mother or the father, and that it’s being taken within the Magellan project, and therefore we’re not inclined to intervene or take any other action.’”*

Judge

### **Departments / state juvenile courts**

Given that the Court is handling Magellan matters well, some participants identified a potential problem in the department relying on the Magellan pathway in some cases that in fact ought to proceed through the juvenile court, when neither parent is suitable or able to adequately protect and nurture the child:

*“The one area that might be an issue one day—and it’s troubled me a couple of times in interim stages, but it’s never been a problem in the end—was where I really wanted the state welfare department to intervene in the proceedings, because I didn’t think I had a good enough choice between mum and dad. The concerns about both parents were so great that you would have liked the option of putting the kid in the care of the Minister for a while. But without them intervening or agreeing to do it, or taking [juvenile court] proceedings — you can’t. If they’re not a party, I can’t order them to do anything. And they’ve got to intervene to be a party. Under section 91B, we can ask only invite them to intervene, we can’t force them to intervene. So we don’t have what sometimes might be nice to have, which is another option other than the parents. A couple of times I’ve made an order that a representative of the Minister be at Court on the next occasion to explain what they doing, and if not, why not.”*

Judge

Speaking about the overlap between juvenile courts (which hear child protection cases) and the Family Court, one Judge said:

*“You’ve always had those arguments: Do you have a single overarching court—a national court that deals solely with children, all aspects of children’s lives: their family disputes, their criminal behaviours, their protective needs? Do you have a tribunal that consists of a Judge, but assisted by experts... you know, the opinion makers, the commentators, the social scientists, the welfare workers?”*

Judge

Similarly, with regard to police, in one registry, the stakeholder focus group members commented that just because a case was a Magellan matter did not lead to any special treatment from police, but recognised that it has improved communication about the status of the case:

*“Magellan has influenced the provision of information about where an investigation lies, but not given them higher priorities.”*

Stakeholder

## Cohesion, clarity, focus and identity

A common theme from participants was that by bringing all of the agencies and the information together, Magellan brings clarity to the issues, which simplifies the way the case can progress:

*“Whilst they [cases involving child abuse] will always be difficult, they are easier cases than they were before Magellan. You might just have one or two allegations to deal with in evidence, rather than seven or eight that might have accumulated over two or three years.”*

Judge

Stakeholders attributed the success of Magellan, in part, to its focused nature (even to the extent of having its own a name). They felt that this gives a sense of cohesion to the case-management process, particularly in dealing with the department and the police:

*“When you say that you are working on a Magellan case, you feel that you’re working together. They’re much better managed. They get on quicker. Whether it’s more resources, or better case managed, they’re not getting lost. It’s got the mediators there, having all the one team operating from the Court’s perspective; it gives the department a contact point. It’s not lost within the system.”*

Stakeholder

The following extracts show how the quality of the personnel involved—as well as their experience with Magellan and deep understanding of the processes and intended outcomes of Magellan—affect the outcomes:

*“Counsel who are engaged in Magellan matters have normally had a bit of experience with it before—and again, know the process, and obviously agree with the process, because they cooperate fully with it. That’s very important at the interlocutory stages and the interim stages, because in these matters before Magellan, you often had a very lengthy argument*

*as to who the child should live with whilst it was moving toward trial, and whether or not dad was to have any time with the children or not, and whether there was to be any supervised time with the children. Now, because Counsel know what Magellan's about, they know that we're doing our best to get it done as quickly as possible, and know that there's not much a Judge can do if there's some early indications of abuse, other than terminate dad's time with children, or at least ensure it happens in a supervised environment—they don't waste the Court's time in arguing those matters any more. So we are now able to list more matters and get through more matters, and get them moving along the Magellan pathway, because they don't run arguments that you would have expected in the past."*

Judge

*"The level of support and cooperation is outstanding. The reports from the department are of very high quality, and our Family Reports are of a very high standard. The Independent Children's Lawyers that the legal services commission assigns to Magellan are the experienced representatives who are child-focused, who know their role extremely well, and are extremely efficient. They make a significantly beneficial contribution to the success of Magellan."*

Judge

A Judge described what the crucial parts of Magellan are, and why it should remain a specialist response, rather than just be identifying what should be 'best practice' across the Court:

*"Something that will be come part of all matters (and Magellan won't be special anymore) is individual Judge management and quick trial. Early and consistent Judge management. If we can do that for all of our cases—we'd be laughing. It can't be best practice though, because if we did it for all of our cases, the waiting list for the other cases would blow out to 10 years. Best practice is to manage within our resources. Magellan is eating up a huge proportion of resources. But it's been successful as well. If resources weren't an obstacle, everything would be 'Magellanised'. Best practice has to take into account the work we have to do. Bring the Judge in when we can afford to—bearing in mind the cost."*

Judge

In other words, the fact that it is a specialist response gives the cases—and the entire process—a special ‘identity’ and cohesion that was emphasised by participants to be an important aspect, particularly for litigants. Given the gravity of the issues at stake, they deserve—and are receiving—special treatment.

Some participants also highlighted the difference between providing a unique specialist response, and seeing Magellan as an example of ‘best-practice’ that should be provided to all cases. You can only have one ‘express lane’ on a freeway for buses or multi-occupant cars without the concept of giving priority or a specialised response becoming a misnomer. Some cars have to be held back, to give appropriate priority for those vehicles that society sees as deserving of priority. For the Family Court, the priority is those children who may be at risk of abuse. If you allow access to everyone, it is no longer a specialist response that gives priority to come cases.<sup>39</sup> However, a specialised response to cases where serious sexual or physical abuse of children is alleged is crucial to ensuring that they are treated with the seriousness they deserve, and are given priority, because of the enormous consequences that are at stake.

Finally, participants emphasised that Magellan ‘makes a difference’:

*“I think it has. It was a very creative innovation. I think that the [legal] profession would generally think it, even if they would like some changes.*

*This is simply work of the Court. These cases have got to be heard. So it’s a question of how best to hear them with least damage to vulnerable people, making the best use of resources, and acknowledging the damage that is done to families through poor systems. And what can sometimes be called ‘systems abuse’. But if you abolish Magellan tomorrow, you still have to hear these cases. They won’t go away. They’re just part of the core work of the Court. But they couldn’t be heard as effectively. There would be a much greater issue of avoidance.”*

Judge

*“If you didn’t have Magellan, the cases would get heard, but wouldn’t be heard as efficiently or as effectively for the children. They wouldn’t get as good a result as they get with Magellan, both in terms of the process, and the outcome for families. That includes not being shuffled from pillar to post. Magellan cases are amongst the worst of the children’s matters.*

*You can’t put them through the same case-management approach as for property cases, which are a commercial dispute.*

*They don’t have a best-interests test.”*

Judge

## Key message

Magellan matters were believed to be shorter, often resolving without judicial determination. Most participants identified better outcomes for children and families, through tight case-management procedures, particularly the role of Magellan Judges and Registrars. The importance placed on Magellan matters by the Court is reflected in the role that Judges play, and this was seen as one of the ways that the process gives parties a sense of procedural fairness. Through the Magellan stakeholder steering committee meetings and the protocols outlining the role of the department in providing the short, focused “Magellan Report”, the cooperation with the statutory child protection department was seen as critical to the success of Magellan.

## 6.5 Improvements to Magellan

### Magellan in context: Other Family Court initiatives

As identified in the Introduction, Magellan sits alongside a range of other new pilot projects and legislative changes in the area of family law in Australia, including the LAT (its forerunner, CCP), CRP and the trial Combined Registry Initiative of the Family Court and the FMC.

#### **Federal Magistrates Court**

Participants identified that before being transferred to the Family Court to be assessed for inclusion in the Magellan list, a matter may have been in the FMC for a significant period. One of the difficulties in identifying matters for transfer to the Family Court is that the abuse allegations may only arise in the responding documents (rather than Form 4, which is the Form to be completed when parties make allegations of abuse of children):

*“Some Federal Magistrates Courts have kept it [child sexual/physical abuse cases] in their systems, because they feel they can get the same information. There’s a problem in having two different courts that can deal with matters differently... Practitioners are choosing to put cases through the FMC to ensure a quicker response. The Magistrate has to agree for the matter to be transferred to the Family Court. If the Magistrate knows about the delays [in the Family Court], they may stay in FMC.”*

Stakeholder

It is a critical issue for the FMC to identify these cases as quickly as possible. If the allegations are no longer ‘fresh’, and the case has been running for some time, it was felt that including it in the Magellan list would provide no benefit. This also raises a resource issue: if cases have been held by FMC because they can deal with them quicker, transferring these cases to the Family Court may add further strain on the system, which is currently struggling to meet the time standards.

One change that was identified by some of the Judges was a need for a better intake system between the Family Court and the Federal Magistrates Court, particularly for litigants who have been in Federal Magistrates Court and—in hindsight—were inappropriately retained there. One Judge highlighted some of the obstacles encountered in files transferring from the FMC:

*“Ideally, these cases start [in the Magellan list] from right at the beginning. However, there are some hiccoughs because of transfers from the Federal Magistrates Court. Often the transfers are very belated. It might get to trial there, with known abuse allegations, and then the Federal Magistrates Court decides to send it to us (and with an order for it to be included in Magellan). But if the allegations have already been raised for a while, we wouldn’t put in Magellan, but just put it straight to trial. There are some problems with a lack of understanding about the Magellan process. People think ‘sexual abuse’ means ‘Magellan’, despite the fact that the case has been there for some time.”*

Judge

The proposed ‘streaming’ model that both courts are testing in Adelaide would achieve this. With a common entry point for the Family Court and the FMC, if matters are appropriate for inclusion in Magellan, the Magellan Registrar can then expedite it for assessment. The way the Magellan list works, participants pointed out that invariably the damage (due to delays, or multiple investigations and reports on children by police and child protection departments, as well as Family Consultants) can happen long before lawyers are involved. The Magellan model is seen as advantageous, as it controls a lot of unnecessary investigations.

### **Overlap with LAT**

Although there are many areas of overlap between the new Less Adversarial Trial (LAT) and the key features of Magellan, apart from the issue of prioritisation, one of the principal differences is the rules of evidence that apply:

*“But it’s still an adversarial system... Until the High Court says otherwise, you aren’t going to be deciding these cases on hearsay. So it is probable that they are going to be among the cases that are among the statutory exception to the new rules. You can’t say to someone, ‘You will never see your child again’ on the basis of something someone’s heard someone else say on the playground. We do some selecting of the evidence from witnesses. We are doing that in the adversarial model. Many Judges take the view that the key difference between Magellan and LAT is that Magellan is adversarial. This view is not out of any obdurate objection to the proposed change, but about what the High Court says about the relevant standard of proof. The view from them is that there would need to be caution about removing evidentiary safeguards.*

*“We’ve always had the overarching responsibility to ensure the best interest of the child. The Court can still say: I want to hear from ‘X’ or ‘Y’.*

*We have a duty to make sure that we get all of the evidence that we need. The model is close to LAT, but the difference is some of the evidentiary tests that would be applied...*

*“Rather than call it ‘hearsay’, you can call it ‘unfair’. What we need is highly cogent evidence that is fair. There’s a big emphasis in LAT on people talking for themselves. This is very helpful and therapeutic. But you also have to take into account the allegations. How freely can they genuinely articulate their concerns? It can be silencing them under the guise of giving them a voice, especially if they are a victim of violence themselves.”*

Judge

Another Judge highlighted the same point regarding Magellan being an exception to the new rules of evidence applying in the less adversarial trial:

*“In the national Magellan Judges meeting, we’ve decided that Magellan is an exception to Division 12A [the new less adversarial trials], and that as much as it can be made Division 12A, it already is. But given the nature and seriousness of the allegations in Magellan matters, it is a matter that under Division 12A, ought to be dealt with under strict evidentiary guidelines and rules. So I think Magellan will stand alone from those matters as well, even though of course they are disputes involving children, and you need to turn your mind to Division 12A.”*

Judge

There are similarities between LAT (and its precursor, the pilot Children’s Cases Program (CCP)), and other Family Court changes to children’s matters, such as the and the Child Responsive Program (CRP). For example, under the combined ‘CRP and LAT’ procedures, the first stage involves parents meeting with the Family Consultant before affidavits are filed, before any trial documents. However, the key difference is the priority that’s given to Magellan cases, and the cooperation with external agencies, most notably the statutory child protection service:

*“But difference between Magellan and CCP is, with CCP, you might’ve already been in the court system for nine months. Although there’s a family report, CCP doesn’t have a report from the department; and there’s no particular priority for the case.”*

Judge

In one focus group, the suggestion was raised that Magellan was “the poor relation” of the Family Court section, in comparison with other initiatives designed to promote less adversarial proceedings and focused on the developmental needs of the child, and the availability of social science expertise to the Court (e.g., LAT and the Child Responsive Program). The experience of these two methodologies (CRP & LAT) highlighted the particular value of the advice of the Family Consultants, which is the impetus for bringing the children’s needs to the forefront of proceedings. These proceedings are child-focused and micro-managed. However, it was not clear from this discussion which aspects of LAT and CRP were lacking from Magellan, or how they could be incorporated.

## Greater national uniformity

It is important to differentiate between (a) departures from the original Magellan model and (b) changes or improvements made since the initial implementation.

A number of participants talked about the lack of uniformity nationally, occasioned by departures from the original model. As well as the interrelated problem of the intersection between Commonwealth responsibilities (family law) and state/territory responsibilities (e.g., child protection, police, juvenile courts, etc.), participants talked about the importance of uniformity and sticking to the agreed model. For example, in response to the question as to whether there is the need for any improvements to Magellan, one Judge replied:

*“The lack of uniformity, country-wide, in the structure and jurisdiction of the departments for a start. They’re all different. They are state instrumentalities dealing with a national federal court. So you get jurisdictional gaps and overlaps. You’ve got different statutory provisions covering disclosure and protection of informants. We’re a national court, so therefore we could be in any state; but different states have different statutory provisions and different practices, and you’ve got to get on top of all of them. And I’ve got to say, they’ve got different philosophies and attitudes to providing information to the courts. [Name of another state] is almost hostile to doing that, whereas the others are perhaps a little more facilitatory. That’s historical I think. There’s conflict of function that often happens. Protocols are different from state to state. Largely that’s a reflection of the difference in the statutory provision, and of what works.”*

Judge

One Registry that was singled out for its lack of conformity to the original Magellan model was Brisbane (see Appendix 7). In particular, the operation of the protocol with the statutory child protection department in Queensland was the critical difference. One issue identified was the need to get the right supports for brokering the relationships with the department, and finalising the protocol. This was one of the most consistently recognised variants from the original Magellan model, and one of the issues that almost all participants (with the exception of departmental staff and some ICLs) felt needed improvements to ensure that the protocols are working well for the best interests of children:

*“There are problems. There are competing demands on their [the Queensland Department of Child Safety’s] resources and time, and sometimes our emergencies aren’t theirs. In a particular case, there is often a need to resolve particular matters directly with officers, or if necessary, the Director General. I think the process is lacking in some respects, because of the issue of general subpoenas. They’re not specific enough. It involves a lot of cost and time. The department has to go through each document to ensure there is no protected information involved. If we never needed that document in the first place, they wouldn’t have had to do that. That’s a problem. We’re all running on tight budgets and timeframes. So I think that’s one of the current inadequacies of the system.*

*“The other problem is that often, the department will just give you raw information, and we’re not looking for that, or only that. We’re looking for value-added information as well: what they think and why. That’s generally done by a report done by the case officer. But the case officers are so overburdened with work that they rarely produce a report and are reluctant to come along as witnesses to give oral evidence. So we don’t do that except as a last resort. It’s a balance as to how important is it to get them along. That’s difficult because sometimes you can make a wrong call. You’re often making that decision in a vacuum. Sometimes you don’t know how important they are until they’re there.”*

Queensland

Given that some participants seemed to be framing the problem—at least in part—in terms of departmental resources, they were asked whether it would be helpful if more resources were made available for allowing departmental staff the time to provide a more focused, short report that addressed what they saw as the key issues and current concerns (i.e., a “Magellan Report”). In response, a participant said:

*“It would be of benefit, if they can say why, and be available for cross-examination. Why they don’t provide reports, now, is that they know they are likely to be cross-examined on it. No one likes that. And not only is it hard to become available for it, it’s also a stressful process. As lawyers we avoid it like the plague. We just inflict it on other people. There has to be a balance there. I think the department in Queensland has a court forensic section. They have direct court liaison officers who might not be field officers, but they know what they can expect.”*

Queensland

This respondent felt that it would be an improvement if it was expected that those Court officers were available to be cross-examined. This would also make it more consistent with other registries. The need for briefings for those involved to understand about what they are being asked to do would lead to provision of a better quality service to the Court:

*“It would also be more cost-efficient. They would become experts—become a real niche.”*

Queensland

## Improvements to protocols and communication

Although participants raised a few isolated examples of poor communication that they thought could be improved, these were issues that are best dealt with at the registry level through the Magellan stakeholder meetings (and according to the participants, this does happen). All participants saw these meetings as critical to the success of Magellan by providing the opportunity for such instances of poor communication or other obstacles, to be raised and addressed.

An example was where in one registry, the Court was not using the agreed mechanism for alerting the department that a Magellan Order (under s 69ZW) has been made (i.e., for a departmental “Magellan Report” to be produced). This highlights the importance of complying with procedures (and simplifying wherever possible), which is a standing agenda item at the Magellan stakeholder meetings.

In responding to the question about possible improvements, one Judge cautioned:

*“If any changes are made, it’s important to keep the key aspects in place: the Magellan committee—for communication between agencies; one Judge and one Registrar; obtaining the early report from the department; having the child representative (ICL); and no legal aid cap. I see each one as a key component. If you remove any one, it is no longer Magellan. Those ones should never be negotiable.”*

Judge

Others emphasised the importance of making sure that all cases were well managed (reflecting differences between judicial officers in their ability to do this).

## Interviewing children

Some stakeholders mentioned unnecessary assessment of children in some Magellan cases. However, the damage often happens prior to the matter entering the Magellan system (e.g., transfers from FMC). For example, in one focus group, it was mentioned that because the child has already been interviewed a lot, that it is left to the lawyers to try and “unravel” the allegations; yet they recognised the need for appropriately qualified professionals to do this, not lawyers. (Again, such views cut across the correct understanding of the role of the family law system, which is not to conduct forensic examinations *per se*—that is the role of the police—but rather, to unravel the issues surrounding the best interest of the child, which includes any risk of abuse).

Others said that Judges not seeing children was a disadvantage:

*“The other disadvantage is that we don’t hear directly from children. We don’t interview them. I probably have different views from most other Judges in this jurisdiction. I think we should interview children. I think that in sex cases, the reasons for not having children in the witness box in other cases don’t really apply. I don’t think you can have a positive finding against a father—or a mother for that matter—unless the alleged victim is in the witness box swearing to it. And we just get what they say indirectly from other people who have to interpret what they do and what they say. And they’ve got a vested interest in the outcome—often because their mother’s alleging the disclosure. And you don’t know what prompts or questioning has elicited the disclosure or what’s been done before. And I’d like to know all that sort of stuff, and the child’s not there, and yet the order affects them most directly.*

*“In the criminal court, children as young as five give evidence against their parents in sexual cases. You just need safeguards and processes. Or you don’t try to do it at all. You either do it properly or you don’t do it at all. Getting information second hand via interested parties is dangerous: Always calculated to be counterproductive. These are two people who, depending on which ways it goes, are supposed to, or assumed—by law—to cooperate, and to carry on making joint decisions about children’s welfare, after one has accused the other of perhaps one of the grossest forms of contact you can think of. There’s too much hit and miss, I think.”*

Judge

Different opinions were evident about whether Family Consultants could play an additional role. For example, in the Melbourne focus group, one stakeholder said:

*“I’d like to see there be Family Consultants available for ICLs to talk through [their issues]. Previously, the ICL would not have to interview the children. The guidelines now recommend it. There are differences in practice among ICLs as to whether they interview children. But if children make a disclosure, you don’t want to be a witness in your own case. You need to have another witness present.”*

Stakeholder

In contrast, another stakeholder said:

*“The hiccough is the recommendations for the type of safe contact—getting into an open court and suggesting things is very public. It would be better for the ICL and the court mediator to get together privately beforehand.”*

Stakeholder

## Adequate resourcing

A number of participants—both Judges and other stakeholders—spontaneously raised the issue of resourcing, particularly judicial resources. Some went so far as to suggest that the system has the potential to collapse, because of the reduction in the number of Judges available to hear Magellan matters. The limited availability of judicial resources will be exacerbated by retirement of Judges in some registries; and if protocols with FMC are improved and more cases transferred for inclusion in the Magellan list, the workload may become unmanageable:

*“A real danger is that good will among stakeholders will fall off if cases get clogged up. If it goes out to 12 or 18 months, we are back to square one.”*

Stakeholder

*“The only disappointment I would express is that we are struggling to meet the 6-month timeline now. The principal factor, I think, is judicial resourcing now.”*

Judge

This has serious implications for the family—particularly for the child’s relationship with a parent who is denied access while the case proceeds, because of the Orders made at an interim hearing to restrict time spent with a parent (or to only allow it under supervision):

*“I’ve got a case where it’s been nearly 10 months without seeing his kids. This is hard to explain to someone who believes they’re innocent.”*

Stakeholder

A Judge went on to describe how retirement and long-service leave of staff have led to a significant reduction in the number of Judges in a particular registry. Despite a reduction in the number of Judges available to do the work, the workloads in terms of trials have not changed much, particularly for complex matters such as Magellan cases.

A consistent message that a significant downside to the way things are operating at the moment—perhaps even the *only* significant downside in some registries—is the judicial resources available to Magellan. The reality for the Court is that child abuse cases were a small percentage of overall caseload, but it took a huge amount of the Court’s resources—particularly when the number of cases that went all the way through to judgment are considered (see Moloney et al., 2007). Participants talked about the need for a cost-effective solution being another strong reason for the implementation of Magellan. As one Judge put it:

*“We had our own imperative, apart from the children, to ensure that we were being more cost effective.”*

Judge

It was not an explicit part of the brief to examine cost-effectiveness; however it is an implicit issue in asking whether Magellan is ‘effective’, and was an issue raised spontaneously by many participants, emphasising (a) the resource constraints; but also (b) a firm belief that Magellan is cost-effective.<sup>40</sup>

Another issue identified was that, in each registry, a range of practical obstacles to implementation existed that centred around political will and getting ‘buy-in’ from all key stakeholders—particularly the statutory child protection departments, but also the legal aid commission in that state/territory. The issue was raised in one registry, that support from legal aid was difficult to obtain because of fear of increased costs, due to the lifting of the cap for Magellan cases; or fear of reduced funding if it is shown that Magellan cuts costs. However, most participants felt that ultimately it must be a cost-effective mechanism. Although it is resource-intensive early on, one of the benefits is that some cases (but perhaps not as many as hoped) settle early:

*“Fewer went to judgment, fewer came back afterwards...  
It has to be cheaper!”*

Judge

One Judge noted that Magellan has been responsible for significant improvement in the understanding by child protection workers of their role—however, the Judge noted that this happened without any significant increase in their resources:

*“It’s a good system; it works. I’d just like to see more resources thrown in at every stage.”*

Stakeholder

One Judge identified a problem with expectations of roles for ICLs:

*“And the other problem is that people think that Independent Children’s Lawyers is some endless bucket of money to go around creating investigators. And the poor Independent Children’s Lawyer is doing something that the Minister ought to be doing. Child protection workers and any others with a capacity to investigate need to be properly resourced and aware of their responsibilities.”*

Judge

There is a constant tension between balancing the need to do the best by the children with the resources that are available:

*“The only thing I would say, but it’s not Magellan-specific, is that I’d like there to be more family and child psychiatrists available to do the assessments. There is a relatively small panel. That is a problem not just in Magellan matters... That’s a perennial problem. There can be a small delay when practitioners are overbooked. Everything that can be done by legal aid to remedy this is being done.”*

Judge

One practical solution to the problem of the availability of limited judicial resources is the use of a ‘blitz’ to make available extra Judge time, and list multiple cases in a given time-period to clear the backlog of cases by using the Judge’s time most efficiently (as has been conducted recently in Adelaide and Melbourne). But as discussed in the following section, there are criticisms of this approach.

## Listing practices and early settlement of cases

One of the difficulties that participants identified was the listing practices used for Magellan. There is a tension between only listing matters in a way that allows enough time to hear the matter, or taking a calculated guess that some matters will settle prior to, or on the first day—and having a Judge available, but no case to hear.

Participants in some registries talked about the difficulties faced by the high ratio of early settlements at trial, with up to 50% settled on the first day of trial. Judges and stakeholders identified that sometimes parties need to be issued with the trial notice to induce them to settle. As one Judge said:

*“Parties swear black and blue it needs to go to trial, but then they settle.”*

Judge

A Judge gave an example:

*“I’m having a call-over for matters that have been waiting for a trial. I’ve got about 12 or 15 of them. When I check with our listing coordinator, there were 26 Judge days available, for an estimated 80-90 days of trial. So we’re in serious strife. I’ve now got an additional 20 days from interstate Judges who are coming to sit. But it will continue to be a struggle to meet timelines. We don’t have the Judges to hear them. That worries me in terms of some of the successes of Magellan. If one of its successes is its rapid processing, then that would suffer. And that may mean that a lot of the benefits—like less notifications, and less institutional abuse of the children, less interviews—all that sort of stuff, that might have to yield a bit, unfortunately. But that’s a decision that’s not up to me or the Court to make. So I think that’s the greatest worry about Magellan at the moment. We do everything efficiently up to the point of the trial. But we don’t have the Judges.”*

Judge

Some participants noted that in comparison with cases in the LAT system, the number of Magellan cases listed on the first day is too many. The Court only has five hours in a day for hearing matters; however, if parties’ representatives want to run a complicated argument about why the child should continue to spend time with a parent, it can take a couple of hours. One of the solutions suggested by participants was that there needs to be more liaison between the Magellan group and the Court’s listings group.

One of the concerns that was raised about using the standard practice of having a 5-day block for all Magellan cases, was that if the case does not run, judicial time is wasted, which prejudices other cases from the Magellan list from being heard any earlier. A solution that is being used in some registries is to have a “rolling list”, where five cases per Judge are listed over a 2-week period. Having a rolling list for Magellan (in Melbourne) is a decision that has been made by the Magellan Judge there, as the most effective use of resources, as it is believed that many of the matters will settle once they are listed with a trial date:

*“In our last rolling list, a vast proportion of matters settled.”*

Stakeholder

A rolling list allows for efficient deployment of judicial resources. Judges cannot spend too much time in chambers without a matter to attend to. The rolling program answers that imperative:

*“We’ve changed our trial listing process—now going to a rolling list. Originally... they were listed in 2-week blocks. But we were losing an enormous amount of Judge time, for example, if the first case settled on the second day. But the alternative—if you get everyone in on the Monday, there’s a lot of hanging around. With a rolling list, there are some uncertainties—the profession has to keep in touch. But we now get through a lot more cases.”*

Judge

Although this makes it easier for the Court (particularly by minimising waste of judicial time when matters listed settle early); it makes it difficult for lawyers to manage their practice when they have barristers and expert witnesses lined up, but then find that their case does not get reached:

*“It’s hard to get a barrister to write out a week where they ‘may’ be called. It’s not easy to run, and hard to get someone who’ll sit up all night and read through the matter. They’re not going to do that if there’s a risk they won’t be involved.”*

Stakeholder

Although the system works well to turn the cases over, the ability of litigants to get quality representation may be compromised. In one of the focus groups, a stakeholder also questioned whether the high settlement rate for Magellan cases was because parties know that they still have a significant wait before the case is listed for final hearing. With the prospect of a significant delay, the pressure to settle is huge. They raised the issue of the ‘recidivism’ rate for these cases. If the Court’s listing practices are inducing settlement where it is not desirable, that is a concern. However, other stakeholders countered this view, acknowledging that it is not just having lots of cases listed that makes them settle: It is also about having all the evidence there; talking to all of the people who have prepared the reports. Often, it is at the point that the barrister is being briefed that clients are advised to settle, because it is clear from the evidence what the outcome will be. A ‘check and balance’ on the subtle pressure that litigants have to settle is that the Judge still has to be satisfied that the Orders are appropriate, and will take into account the views of the ICL (who, on occasion, will not endorse the arrangement to which both parties have agreed).

One solution to the problems associated with a “rolling list” that was identified by a participant was to have a “not before” date, or some level of certainty, to assist with planning and overcoming some of these logistical barriers. Another solution raised was to include within the Magellan protocol the use of trial plans with Counsel—to force the ones that will settle anyway to settle earlier. Apart from increasing the over-listing ratio; another solution identified was to allocate the first day of every month to Magellan trials.

## Counselling and forensic interviewing

In this section, participants' views about the need for appropriate counselling and support for the child who is alleged to have been the victim of abuse are explored. Within the interviews and focus groups, the contention that surrounds the provision of such counselling services, and what the aim should be, was evident.

There is a dilemma facing professionals involved in Magellan cases. Children who have been abused need to be supported with therapeutic counselling; however, there is also a need for careful investigative/forensic interviewing to see if the child makes a disclosure and to examine the child's perspectives on the allegations. There is an evident tension between the need to provide such counselling for children in such a way that it meets their needs, but does not contaminate the collection of forensic information that would be useful either for criminal prosecutions—or for Family Court Judges assessing the veracity of allegations in order to understand the likely risks that a particular living arrangement may pose for a child in the future. This raises issues about the different perspectives on the purpose of counselling, the timing and person or organisation responsible for provision of forensic interviewing and supportive or therapeutic counselling.

A lively and robust debate that occurred in one of the stakeholder focus groups about the problem of how to best respond when there is not sufficient evidence to bear out the allegations, and to balance the need for provision of therapy to children without prejudicing the outcome of a case provides an excellent example of the variety of views, and the complex needs and interests that are at stake.

One stakeholder put forward the view that providing counselling may 'reify' or reinforce the allegations:

*“If kids believe they've been abused, what do you put in place for them (regardless of the finding, one way or another)? To some extent it resolves not because it occurred, but because of what is in the best interest of the children.*

*“This is touching on the issue of the process abusing the child. If a child is said to be abused, but the evidence doesn't bear that out, but they're living with a parent who thinks they're abused—the Court process can assist the child to believe that. The Court shouldn't assist an incorrect belief system.”*

Stakeholder

This stakeholder went on to talk about how provision of counselling to children prior to the allegation being investigated may assist that child to maintain an 'incorrect belief system':

*“After months of counselling, a child will often believe there's a good reason why they've been going there, even though there's not evidence.”*

Stakeholder

However, as explained in the brief literature at the beginning of the report, the process of disclosure for children can be gradual; and a lack of evidence does not necessarily mean that abuse did not occur. A good therapeutic process does not set out to prove or disprove an allegation, but to allow the child to communicate at their own level and pace their experiences of complex family dynamics, including security issues within their relationship with both parents. It is particularly important to provide such support to children who have experienced difficult legal proceedings, to give them space to explore their experience of relating to both parents. Other stakeholders in the same focus group countered the view of the particular stakeholder quoted above by emphasising that the Court does not make a finding as to whether abuse has occurred, but about whether a child is likely to be at risk with a particular parenting arrangement:

*“People rarely go out being absolved, or having their risks confirmed. Rarely would Judges say, ‘I find that this child has been abused’.”*

Stakeholder

In addition, other stakeholders in the focus group argued that the Court does not contribute to this ‘systems abuse’, and had concerns if children were denied therapeutic assistance for months on end, pending the determination. They used the analogy of a physical ailment, where you would not withhold treatment. The difficulties that children have in disclosing abuse and being believed is a significant issue, and some stakeholders reminded the group of research evidence showing that children have often tried to disclose about 10 times before it is picked up, emphasising the importance of believing children, and providing appropriate supports for them after they make a disclosure.

They talked about the difference between forensic and therapeutic counselling, and what they saw as ‘appropriate’ counselling when Family Court proceedings were underway. In one of the stakeholder focus groups, the importance of providing children with therapeutic support was raised—but with a caution around the type of counselling that was provided:

*“The concern would be that children are denied assistance for months and months and months, pending the determination. Similarly if there was a physical ailment, you wouldn’t withhold treatment... There are two sorts: counselling predicated on finding out that it’s happened, compared to supportive counselling. We need to make sure that therapeutic support of that kind is available... It would depend on the kind of services they’re accessing. It should be general psychological services, not specialist services that set up a presumption that the child has been abused. If he hasn’t been abused and mum believes he has, he needs help. And the reverse.”*

Stakeholder

## Other improvements

Stakeholders made suggestions about a range of other improvements they would like to see incorporated:

**Interstate protocols.** Better protocols are needed for dealing with interstate issues (e.g., when a Magellan matter is activated from another state/territory).

**Reduce delays in listing for trial.** As discussed previously, part of the issue around listing practices is the need to list Magellan matters for trial more quickly than is currently the case (participants acknowledged that there had been considerable improvement already, however, further reduction in delays was seen as something to add to a ‘wish list’).

**Post-trial role of ICLs.** Some participants talked about the possible role of ICLs in ‘following-up’ issues after a matter is finalised in the Court:<sup>41</sup>

*“Once the matter is finished, the ICL is terminated. But there are follow-up issues (e.g., compliance with counselling, explaining Orders, arrangement for supervision), but the ICL can’t be funded by legal aid to do this. It’s a misnomer that once you’ve got Final Orders that it’s finished.”*

Stakeholder

**Private access to Family Consultants for ICLs.** In one focus group, a stakeholder made the suggestion that ICLs be able to talk privately to Court mediation counsellors. Although there was general acknowledgement that it could be beneficial for the ICLs, there were mixed views, particularly given the ethical implications:

*“They’ve been accused of the most horrendous issues—and you’re denying justice. It needs to be an open process.”*

Stakeholder

**Expand Magellan to include domestic/family violence.** When asked what improvements were needed, some stakeholders stated that “in a perfect world, with lots more resources” cases involving domestic or family violence should be included in the Magellan list. However, the limitation to this was also noted:

*“But you’d be running a ‘special process’ that would apply to most cases.”*

Stakeholder

**Ensure all parties have legal representation.** Although the current Magellan protocols provide for legal aid funding for an ICL to represent the interests of children in the matter, the parties themselves do not always have legal representation. Some stakeholders felt that this was sometimes a difficulty.

**Child contact centres.** Greater access to child contact centres (where formal supervision is provided for a parent spending time with a child) is critical for the interim stages (where unsupervised contact is routinely denied to the parent against whom the allegation of abuse is made). They have a huge role to play in Magellan, but families are not able to make use of this because of the usual five to six-month wait list at most centres. Participants identified that improved access for Magellan cases would greatly enhance the value of this community resource (e.g., if some of the child contact centres would set aside time where families from a Magellan list could slot in, ahead of the usual waiting list).

But a central issue that many stakeholders kept in mind when considering any need for improvement was the cost. A number were explicit in acknowledging that the cost of any improvements may be prohibitive. As one Judge said:

*“Is there a better system than Magellan? Probably. Can we afford it? Are we willing to fund it? I doubt it.”*

Judge

**Accurate information about the child.** Currently, Form 4 (which is the Court’s form for recording the notification of child abuse) does not always identify the child’s residential address. However, the statutory child protection departments need this information in order to conduct their investigations.

## Key message

Although participants emphasised the success of Magellan, opportunities for improvements were identified, including: streamlining procedures for cases referred from FMC; greater uniformity across registries; improving some isolated cases of poor communication; consistent training and monitoring, and ensuring adequate resources. Participants also suggested that consideration be given to listing practices, clarification of practice directions, and the best ways of meeting the therapeutic needs of children.

## 6.6 Summary of qualitative data

Participants described the essential elements of the Magellan protocols:

- cooperation between all the agencies involved with families;
- timeliness and prioritisation by the Court;
- receipt of a report from the statutory child protection department as early as possible;
- good individual case management by a dedicated team of a Judge, Registrar and Client Services Officer;
- provision of un-capped legal aid funding for parties who are eligible for a grant of legal aid;
- independent representation of children's interests; and
- the focus on children's best interests.

By addressing timeliness and quality of the information available to it, the Court is able to come to a speedier resolution in the best interest of the child—particularly when the allegations are not supported and the parent can resume spending time with the child.

At the conclusion of each interview and focus group, participants were asked about their overall belief about whether Magellan makes a difference:

*“Yes. It’s such a difficult group of cases. For kids at such risk, it makes a difference for those kids. You want to get your processes right.”*

Judge

*“Yes, definitely. It focuses the Court’s resources on the neediest areas: the most vulnerable children. And you get a much more interdisciplinary approach than you otherwise would. The other advantage in Magellan is the ancillary processes, such as the stakeholder meetings—locally and then nationally. That’s good for building trust and rapport with other agencies. That doesn’t happen anywhere else.”*

Judge

One stakeholder used a particularly striking metaphor:

*“Magellan is a Rolls Royce romp through the system. That’s absolutely correct. The resourcing is there. It’s mirroring what happened in the Children’s Cases Program—which became the foundation for the less adversarial process... [The state/territory child protection department] is one of the parts of the Rolls Royce engine.”*

Stakeholder

Although everyone said that Magellan made a difference, some qualified it, saying that it definitely makes a difference *if it is used the way it is intended to*. One person described the difference that Magellan makes as ‘superficial’, but important:

*“Why it is partly superficial is that, at least in Queensland, the cases don’t get on all that much faster. But at least they feel it is being dealt with quicker. It has worked well because there has been some continuity with one or two Judges allocated to it. I can see the upside of that.”*

Stakeholder

The parties and the practitioners take the serious cases more seriously. And there is the likelihood of greater satisfaction on both sides, because they feel that their cases are given special treatment. In the words of one of the Judges, they are experiencing “the best package in litigation that the courts offer”.

Other themes that emerged about the importance of Magellan included:

- ▶ The overriding principle is to ensure children’s best interests—which is both protecting children from harm, and supporting their relationship with both parents, where it is safe to do so.
- ▶ Magellan is seen as a way of bringing together information, so that evidence can be brought forward—where it exists—to support allegations, and to ensure safety of children, or so that false allegations (whether malicious or in good-faith) can be shown to be not supported by the evidence from the statutory child protection department, and children’s relationships with the alleged offender can resume. Procedural fairness and ‘natural justice’ were key Magellan outcomes identified by stakeholders.
- ▶ Different (and sometimes unrealistic or incorrect) expectations of Magellan were identified by stakeholders, stemming from a lack of clarity about the roles of each of the agencies involved in responding to allegations of child sexual or physical abuse, including police, criminal courts, child protection services, juvenile courts, and the Family Court.
- ▶ Several implementation issues were raised, including variable model fidelity between registries. This perception was consistent with the variation between registries in the case outcome data from the file review component of the study.
- ▶ The risk of burnout for staff involved—particularly for Judges—was identified; yet the personal qualities of these Judges, and the importance of having the process led by an individual Judge who volunteers to be involved in Magellan cases was seen as critical.
- ▶ Although the overall length of matters was shorter for Magellan, when cases went to trial, Magellan trials were not necessarily any shorter than *Magellan-like* cases.

- ▶ The injection of time and resources early in the case was seen as critical to resolving the matter as quickly as possible, and ultimately achieving better outcomes for children and families. Tight case-management procedures, particularly the direct involvement of Judges, supported by Registrars, was seen as critical, as it highlighted the degree to which these cases were seen as important by the Court.
- ▶ Participants talked about how Magellan has improved relationships between the stakeholders, particularly the statutory child protection departments. This was supported by the data from the case-file analysis, where reports from the department were generally provided in the intended timely fashion, and led to a quicker resolution of the matter.
- ▶ The Magellan protocols and stakeholder steering committees played a critical role in clarifying roles and responsibilities, and preventing ‘handballing’ of responsibility between child protection departments and the Court.
- ▶ The fact that a unique system has been developed for responding to these cases provides a sense of cohesion and focus to the case and those working with it. This was seen as important not only in terms of prioritising these cases and gathering together all of the relevant information quickly, but also in reassuring families that because of the importance of the issues identified, that they are being given the best help that is available.
- ▶ Improvements to Magellan that were identified included: greater national uniformity; training; clarifying protocols and communication; maintaining adequate resourcing for Magellan cases (particularly the time allocated for Judges to be in chambers hearing matters); and improving listing practices.

Some of the key issues that emerged across the interviews highlighted the tensions that were being balanced:

- ▶ federal vs state/territory responsibilities;
- ▶ the importance of consistency in implementation vs. regional variation;
- ▶ front-end resourcing vs. achieving overall cost efficiencies (and availability of resources for other cases);
- ▶ role clarity (e.g., responsibility for investigation vs. decision making);
- ▶ fast-tracking vs. effective case management and allowing time for thorough investigation by other agencies;
- ▶ the importance of the process (not just the outcome); and
- ▶ the importance of inter-agency communication and collaboration.

With the introduction of a new legislative model for children's cases (the Less Adversarial Trial), Part VII particularly Division 12A of the *Family Law Act 1975* (Cth) has introduced some of the Magellan-style concepts into children's cases, such as active judicial case management. There is a convergence in case-management approaches for serious child abuse cases (under Magellan) and other children's cases (under Division 12A). However, the key difference with Magellan that assists with resolving matters expeditiously, is the provision of a focused report from the statutory child protection department; as well as the protocols that ensure departments investigate and report in a timely way on their investigations.

Even in registries where Magellan has not been implemented as it was originally envisaged (e.g., Brisbane), participants all still felt that it was an improvement over the Court's usual processes—and they still claimed that Magellan was a success. Everyone agreed that cases where sexual or physical abuse of children is alleged required a specialist response. No participant said that Magellan should be 'scaled back', nor suggested that it was something into which the Court and each of the stakeholders should not put time and energy.





# Conclusions and implications

The Magellan model of case management sits among a complex set of expectations, at the intersection of a range of agencies and systems involved in responding to serious allegations of sexual abuse or physical abuse of children in private family law matters. It is important to understand the role of family courts—to resolve private law issues, such as parenting matters, in children’s best interests—and how this differs from the role of police, child protection departments, forensic interviewers, Directors of Public Prosecutions, and criminal courts in protecting children, enforcing laws and bringing criminals to justice. Each of the agencies and systems that intersect in Magellan cases has overlapping interests, yet distinct responsibilities.

The complexity of this intersection created the need for the Magellan case-management system to provide a coordinated approach to bringing the information from each of these areas together to ensure that private family law disputes are resolved in a way that provides for the best interests of children. Central to ensuring the best interests of children is the paramount consideration of the need to balance their right to know and have a relationship with both parents—with the need to be protected from harm. Despite research in the social sciences that shows the frequency with which sexual abuse and physical abuse of children occur, significant difficulty exists in proving the occurrence of child abuse, as the private nature of the crimes result in a lack of evidence.

Although it is not appropriate to make detailed comparisons with Brown et al.’s (2001) results from the Victorian pilot project due to the evolution of the case-management procedures and protocols, it is important to note that the broad conclusions of the pilot program’s success have now been replicated with its transfer to the other registries of the Family Court.

In line with the aims of the project as set out by the National Magellan Stakeholder Committee, the evaluation has shown that the Magellan case-management approach:

- ▶ is quicker and more streamlined;
- ▶ has strong inter-organisational protocols and cooperation, particularly with the statutory child protection department;
- ▶ has resources injected early into the process;
- ▶ is tightly managed by Judges and supported by a multi-disciplinary team;
- ▶ uses Court-ordered expert investigations and assessments;
- ▶ is focused on children’s needs; and
- ▶ has children’s best interests independently represented.

## 7.1 Summary of key findings

Each of the elements of the Magellan case-management model identified in Box 6.1 was seen as ‘essential’ by some or all of the participants. These included:

- ▶ cooperation between all the agencies involved (particularly the statutory child protection departments);
- ▶ Court timeliness and prioritisation of Magellan cases;
- ▶ early reports from statutory child protection departments (the “Magellan Report”);
- ▶ good individual case management (Judge-led);
- ▶ a dedicated Magellan Registrar;
- ▶ un-capped legal aid funding for eligible parties;
- ▶ Independent Children’s Lawyers to help gather information early, foster discussions and represent the interests of children; and
- ▶ child-focused processes (timely, good quality reports from Family Consultants and other experts).

A speedy response by the Court was seen as critical to the success of Magellan; however, this relies on good cooperation, and the provision of all relevant information from other agencies. In particular, the importance of receiving a timely summary about the actions taken by the statutory child protection department, their views about the veracity of the allegations, and any concerns they have about future risk to the child was emphasised. Opportunities for training in order to achieve greater consistency of interpretation across Judges and registries about key aspects of the protocols—such as the eligibility criteria—were also identified.

Magellan matters were believed to be shorter, and because of this, able to deliver better outcomes for children and families. A critical element of this is the tight case-management procedures, particularly the role of Magellan Judges and Registrars. The importance placed on Magellan matters by the Court is reflected in the role that Judges play, and this was seen as one of the ways that the process gives parties a sense of procedural fairness. Cooperation with the statutory child protection department was seen as critical to the success of Magellan, through the Magellan stakeholder meetings and the protocols outlining the role of the department in providing the short, focused “Magellan Report”.

The perception of stakeholders that Magellan provides a time-critical response was confirmed by the findings of the case-file review. Compared to *Magellan-like* cases, Magellan cases are being processed by the Court more quickly. They are shorter in total by an average of 4.6 months. In particular, once the allegations are raised, they are resolved within approximately seven months. In sum, cases are shorter in Magellan, but not as short as was hoped for (i.e., within 6 months).

When comparing Magellan and *Magellan-like* cases, caution must be applied to the findings because of registry differences. Because the Magellan cases contain cases from three registries (Adelaide, Brisbane, and Melbourne) and *Magellan-like* cases from two (Parramatta and Sydney), it is possible that within- and between-group differences may be influenced by differences in state/territory legislation, policy and procedures that affect the statutory child protection department's investigations. Of the registries included in this study, the registry with the shortest resolution time was Adelaide, where the cases were finalised within 31.4 weeks (mean 220.4 days) from the date the Court was first made aware of the allegation. Although this is longer than the guideline of six months for Magellan cases (26 weeks), it is not far off. However, it should be noted that Adelaide was the smallest of the five registries, and only 16 of the 80 Magellan cases included in this evaluation were drawn from the Adelaide list (i.e., Adelaide represented 20% of the Magellan sample).

The data suggest that the Magellan protocols are achieving the desired benefits for the Court (and hopefully for children and their families): Magellan cases have fewer Court events, are dealt with by fewer different judicial officers and more often settle early compared with *Magellan-like* cases. This is consistent with the aim of the case-management approach to provide a coordinated approach that delivers consistency of approach and a timely outcome for matters. The protocols for information sharing and involvement of the statutory child protection departments appear to have improved relationships between the statutory child protection departments and the Court; with evidence on the case-file review of greater involvement of departments, and timely provision of reports (except in Queensland). However, the quantitative case-file statistics confirmed the qualitative findings that the significant deviation from the original model evident in the Magellan processes in Queensland was associated with poorer outcomes on a number of case characteristics, particularly the total duration of cases. However, it was still an improvement over the Court's standard case-management approach.

The findings from the interviews and focus groups supported the data from the case-file analysis: Magellan leads to matters being processed more quickly (but not quite as quickly as expected). Key issues that emerged from the qualitative data that may help with interpreting the variability within the case-file data were:

- ▶ the importance of speed—but not at the expense of investigating thoroughly;
- ▶ viewing Magellan as an integrated case-management approach, not just a fast-tracking tool;
- ▶ understanding that the Court and the interacting agencies are subject to resource constraints (therefore all the elements of Magellan cannot be 'best-practice' for all cases);
- ▶ recognising the importance of individuals and their characteristics to the success of Magellan (e.g., particularly Judges, Registrars, and the critical communication role of the broader stakeholder steering committee in each registry).

As well as finding key differences—overall—between the Magellan and the *Magellan-like* cases, the high level of variability in the data must be noted (the range of scores on some variables was high). Not all cases experience the same case management inputs (such as the number of different judicial officers, or the availability of the “Magellan Report” from the department), and outcomes varied, particularly in terms of reaching a conclusion to the matter as quickly as possible (having regard to the need to allow time for the necessary evidence to be gathered). However, the positive findings from the quantitative case-file analysis in relation to Magellan cases (compared to *Magellan-like* cases) supported the qualitative data.

It is important to note that in the interviews and focus groups with 51 people, no one identified Magellan as unsuccessful. Although some limitations were noted, or suggestions made for improvement, these were in the context of having already said that they felt that the original Magellan case-management pathway was successful.

Participants thought that the Magellan model was an excellent one, and that it was achieving its aims to the degree that it was implemented faithfully and adequately resourced (particularly with appropriate judicial time, while avoiding the risk of overburdening Judges). Implementation issues were raised about the lack of fidelity to the original model (especially in Queensland), and the need for high quality, timely reports (and oral evidence) from experts. Maintaining ‘corporate knowledge’ and the goodwill that builds up between participants in the stakeholder committees is also important, particularly when personnel in the intersecting agencies change.

Although participants emphasised the success of Magellan, opportunities for improvements were identified, including: streamlining procedures for cases referred from FMC, greater uniformity across registries, consistent training and monitoring, clarification of eligibility criteria and practice directions, improving some isolated cases of poor communication and ensuring adequate resources. Participants also suggested that improvements be considered such as: addressing listing practices, and finding the best ways of meeting the therapeutic needs of children.

As is borne out by the interviews with Judges in this report, Magellan remains an adversarial system. In particular, the evidentiary burden is higher (because of *Briginshaw* and *M and M*). Judges hearing Magellan cases are unlikely to be deciding these cases on hearsay, and so these cases will be seen as an exception to the new rules for LAT. However, in order to be able to make decisions based on the best evidence available, the importance of the department’s “Magellan Report” should not be minimised.

## Importance and nature of the “Magellan Report”

The results from this study emphasise the importance of obtaining the “Magellan Report” from the statutory child protection department, which provides different information from the simple outcome that is noted on the statutory file (i.e. whether the allegations notified to the department were ‘substantiated’ or ‘unsubstantiated’).

State/territory child protection departments can only substantiate concerns about abuse or neglect of children that falls within their legislative responsibility to investigate and act. In addition, in most instances, they are *not* substantiating whether or not a particular type of maltreatment (or event) occurred, but rather, whether the child/young person has been harmed or is at risk of harm *where there is no parent willing and able to protect that child/young person* (Bromfield & Higgins, 2005). In other words, it is unlikely that a family law (post-separation parenting) matter will be a priority for investigation for the department (or will lead to an official substantiation) as, by definition, there are two parents who both believe they are able and willing to care for and protect the child (as spending time with the child is the issue over which they are in dispute). This is why the Magellan case-management model requires that protocols are developed with the state/territory child protection department whereby they agree to investigate all allegations that are referred by the Family Court in Magellan cases, and produce the “Magellan Report” within the agreed timeframe (4-6 weeks). This is also why some stakeholders noted that prioritisation of Magellan cases did represent a change in the nature of the work that the department has to do as a consequence of Magellan.

Therefore, what is important is not the ultimate outcome of the department’s investigations (i.e., that the allegation was ‘substantiated’ or ‘unsubstantiated’), but the detail of the investigations they undertook, their views about the harm that might have occurred in the past, as well as their views about the any risks the child might face in the future (particularly, if there is any alteration to the child’s residential/supervisory arrangements).

The issue is illustrated using a description of two fictitious cases.

#### CASE STUDY I Simon

The mother alleged that her son, Simon, was sexually assaulted by his father during a contact visit. They have been separated for five years, with considerable acrimony during this time, including abusive/threatening behaviour by the father towards the mother. She alleged that, at age 3½, Simon disclosed to her that his father touched Simon’s ‘willy’, and imitated the actions of an adult masturbating. The mother notified the statutory child protection service, which investigated. They were unable to make a finding confirming the abuse allegations. She ceased allowing the father to have face-to-face contact for 10 months, until Family Court Orders were made by consent. Upon resuming daytime-only contact with the father, the mother again became concerned that his father was sexually abusing Simon because he engaged in sexualised play, and described inappropriate touching/kissing. The mother ceased Simon’s contact visits with his father, and notified her ongoing concerns to the department. At this subsequent investigation, 18 months later, Simon did not produce any reliable disclosures until the 6th session, which had been planned as a final play session to end the forensic investigation. The interviewer was concerned about the possibility that Simon had been coached (given the absolute lack of disclosure up to that point) and the department noted that the allegations were not substantiated, and closed their file.

**CASE STUDY 2 Sharleen**

Sharleen, 11, disclosed to her mother that when at her father's house on an overnight visit, she was often forced to watch pornographic videos. After she has had an evening bath, her father makes her come into the lounge room, wearing only a towel, and sit on the couch between her father and her father's brother. She says that sometimes her uncle masturbates in front of her; and on the last occasion, while her father was out of the room, he asked her to touch him. She said 'no', but is now scared that he will make her touch him, or that he—or her father—will touch her. After Sharleen's disclosure, her mother refused to allow Sharleen to go to her father's, and instigated proceedings in the Family Court to prevent further contact. She also notified the statutory child protection department. As the matter involved sexual abuse, they referred the matter to the relevant police unit, who conducted forensic interviews with all parties, where Sharleen made clear disclosures. The father and his brother denied the allegations, though admitted that after she had gone to bed one night, that they had put on an adult video, and that it was possible that Sharleen had woken up and come into the room without them noticing. As there was no physical forensic evidence, and some inconsistency in Sharleen's accounts of the events (e.g., whether it was a single or multiple occasion; differentiating between what she has witnessed on the video and what she was asked directly to do), police did not proceed with laying charges. As the mother was acting protectively, and they knew that the matter was to come before the Family Court, the statutory child protection department did not intervene and closed their file. The case could not be recorded as "sexual abuse—substantiated" as the grounds for intervention in this jurisdiction exclude situations where there is a parent willing and able to protect.

These case studies demonstrate that decisions need to be made not on the basis of whether or not the statutory child protection department has 'substantiated' harm or risk of harm to the child, but on the broader information that has been collected about the history of the allegation, the steps that were taken to examine whether the child is at risk, and their views about future risks. Given the increased demand for child protection services (nationally, the number of notifications has more than doubled in the past 5 years), resources are often not directed to cases where one parent is willing and able to actively protect the child, when there are other cases that need investigation where neither parent is protecting the child.

The complexity arises when the child protection service investigation was predicated on a particular pattern of residence/contact with the alleged offender—and if this was to change as a result of a new Family Court Order, the department's view might change. This highlights the importance of a focused, but sufficiently detailed "Magellan Report", and in not relying on the department's case outcome (substantiated or not substantiated). It also suggests the importance of ongoing training for all child protection workers involved in writing "Magellan Reports" for the Family Court, so that they understand the context, the role that they need to play, and the way in which the information they provide is used. Given that the Judge will usually not be interviewing the child

directly—or playing any other forensic role—it is important that departmental staff are aware of how important their views are to the Court in making these complex decisions.

The only agency with responsibility for working out whether past abuse has happened is the criminal courts, based on evidence from police/forensic interviewers. It is not the Family Court's, nor the statutory child protection department's statutory role. The former is responsible for overall determining children's best interests, and the latter has a narrow remit of intervening to ensure the protection of children from harm.

The fact that evidence for abuse may not be strong enough for the Director of Public Prosecutions to lay charges, or for the child protection department to substantiate (or even if evidence of past abuse is strong, the presence of a protective parent may prevent the department from substantiating risk of harm) does not mean abuse did not occur. Given the High Court's finding in *M and M*, even the focus of the Family Court's decisions is not about determining whether past abuse actually happened, but about whether there is a risk to the child in the future, which may therefore make a particular parenting arrangement not to be in the best interests of the child.

In this context, the Family Court should not be seen as a forum for investigating abuse allegations or determining the historical accuracy of one or both parents' allegations. It is not within their mandate to do so, even within the Magellan case-management model. However, the limitations of the broader child welfare and justice system are that unless good information from those who have conducted forensic interviews is presented to the Family Court (i.e., via the "Magellan Report")—about not only the past allegations, but their views on the safety of the child (a) in the current arrangements; and (b) if there was any alteration to the arrangement—decisions will be made about the child's living arrangement that do not fully account for all of the risks and what is in their best interests.

The Magellan case management pathway and interagency protocols make considerable progress in addressing the problems identified by Moloney et al.'s (2007) analysis of family law cases commencing in 2003. They showed that at that time, decision making occurred in the context of a lack of evidence. Magellan also provides answers to problems identified by the Family Law Council's (2002) report on family law and child protection, such as not all cases being investigated by state authorities, and the lack of information conveyed to the Family Court. The role that state/territory child protection departments play—along with other investigatory agencies such as police and forensic medical units—in providing information to the Court as part of the Magellan protocols is critical to the success of Magellan, and ensuring the safety of children and that their best interests are served in family law proceedings.

## 7.2 Limitations

There are a number of limitations to the current project—the most significant of which is that it does not allow for the views of children and families involved in the court process to be considered, nor for longer-term relationship and mental health outcomes to be studied. The decision for this was mainly around the scope of the project—both in terms of time and available resources. There are a number of sensitivities around contacting families who have had experience with the Magellan program by way of a questionnaire, including:

- ▶ ensuring the privacy of individuals and confidentiality of their responses are respected—this can be overcome by the Court being responsible for sending out the survey to families (although with address changes, there is a risk that the information may be opened by someone else, and that it would identify them as having been Court clients who have gone through the Magellan system i.e., identifying that there were allegations of sexual or physical abuse);
- ▶ difficulties in contacting both parents—they may have very different views of the outcomes, which would be important to represent, and there may be a response bias towards the parent with whom the child resides, due to the greater likelihood of them remaining in the marital home, and therefore not changing address); and
- ▶ the potential for the family to be re-traumatised by being questioned again about their experiences and the potential for this to impact negatively on the child (e.g., if a non-residential parent who felt aggrieved by the Court process was contacted and asked to complete a survey—this may raise their anger, and increase the risk of violence or aggression being directed towards the ex-partner and/or child).

Such complex issues could (and some would say should) be dealt with within a larger research program, but—given the constraints of the present study—it was decided to limit the scope of the study to the views of professionals, even though children and families are a legitimate—if not central—stakeholder in the process that Magellan is attempting to address. The implications of this for future research are discussed later.

Some other limitations of the current evaluation are that:

- ▶ the evaluation covered five of the largest registries, but cases were not included from registries such as Dandenong, Darwin, Alice Springs, Townsville, Newcastle, Hobart, or Canberra;
- ▶ tests of statistical significance were not able to be performed due to the small and uneven size of the sample from the five registries and the variability between registries;
- ▶ it looks at retrospective case-file data, and the views of participants about a case-management system as it related to cases up to June 2006 (prior to the broader reforms to the family law system when the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (Cth) came into force on 1 July 2006);

- ▶ co-morbid allegations of domestic violence were not a focus of the case-file analysis or the interviews/focus groups—yet in the Australian Institute of Family Studies’ report on *Allegation of family violence and child abuse in family law children’s proceedings* (Moloney et al., 2007), allegations of domestic violence were shown to frequently co-occur with child abuse allegations;
- ▶ the perspectives of some other stakeholders who are part of the broader network of professionals involved with serious allegations of child abuse were usually not included in focus groups—particularly General Practitioners, forensic assessment professionals and child contact centre staff;
- ▶ information from statutory child protection departments on the number (and nature) of allegations of child abuse subsequent to the case finalising in the Family Court was not available;
- ▶ information about the nature of resulting Orders was not collected; and
- ▶ reliability checks were not done on the case-file review (due to ethics requirements to preserve the anonymity of the cases, external researchers were not able to have full access to the case files; hence, coding was completed only by the Family Court Registrar).

It should also be noted that because this evaluation was based on case-file data and participants’ views of policies and procedures prior to the implementation of the amendments to the *Family Law Act 1975* (Cth) that came into effect on 1 July 2006, some of the issues may have changed.

Many of these limitations are overcome by the particular strength of the evaluation: the naturally occurring comparison group (due to the later roll-out of Magellan in NSW), as well as bringing together conclusions from both the qualitative and quantitative data.

## 7.3 Implications

### Implications for improving practice

The results of the current evaluation highlight a range of issues that have emerged in developing and replicating Magellan beyond the original Victorian pilot.

#### Roles and communication

There are opportunities for clearer delineation between the tasks of ‘investigation’ about harm or risk of harm, and making appropriate parenting Orders in the light of the assessed risk. Although some participants were clear about the differential roles (particularly of the Court and the statutory child protection department), it was apparent that not all stakeholders clearly understood their roles, particularly those new to the process. One way that information sharing and role clarity can occur is through the Magellan stakeholder steering committees communicating with and mentoring all key stakeholders about their roles and responsibilities. Many participants talked about the communication function of the steering committee as one of the many successful elements of Magellan. In some instances, it was clear that good communication between stakeholders relied on the energy and goodwill of the Judge responsible for chairing the particular Magellan stakeholder steering committee (see section on personal qualities of Judges). However, this could be strengthened by clearer documentation and training around the model and its key processes.

#### Importance of comprehensive, quality reports

One of the consistent themes that emerged across the interviews and focus groups was the confusion that child protection workers had about their role, and what they were expected to do for the Court. This same issue extends to other expert witnesses or people asked to provide a Family Report. Report writers should be talking about whether children will be at risk under the proposed Orders, not only whether abuse has or has not occurred (although past abuse may be a good predictor of future potential). Sometimes reports are too detailed and focused on issues not relevant to the case. The Court does not need to know all the background (e.g., about the child’s early development). What Judges need to know is the perspective of the report writer on the impact of the Orders sought. The request should be very clear about what the judicial officer wants. Otherwise, the reports and/or subpoenaed files do not assist in settlement of the issues raised in the case.

A range of other implications emerge from the findings of the current study:

- ▶ **Judge time.** Shrinking judicial resources could jeopardise the success of Magellan.
- ▶ **Police.** There is scope for greater involvement of police in some of the stakeholder committees, and the need to develop explicit protocols with police in registries where they currently do not exist.

- ▶ **Training for Magellan stakeholders.** Regular training for new personnel involved in Magellan is important. Reports such as this evaluation and other training mechanisms could be used as a way of providing corporate history to professionals who are new to each of the agencies involved in Magellan matters. In particular, stakeholders emphasised the importance of departmental child protection workers being adequately informed about their role in Family Court cases, given the high level of staff turnover in many of the state/territory child protection departments). Regular training based on the latest social science research on the nature of abuse, its impact, the process of disclosure, and the support/therapeutic needs of children would ensure accurate and contemporary knowledge is maintained by all stakeholders involved.
- ▶ **Community education.** There are significant opportunities for increasing public awareness of the roles of all agencies in the ‘interconnected web’ that represents those responsible for ensuring the safety and wellbeing of children.
- ▶ **Wider professional education.** As with community education, it is also vital that professionals who are likely to come in contact with parents early on in the process of trying to resolve their parenting dispute, such as the new Family Relationship Service providers know about the separate roles of different agencies where allegations of child abuse are raised in family law issues. Similarly, there are opportunities for improving the understanding of the legal professional about the nature of the statutory child protection department’s role and organisational mandate, and the limits to this. Particular topics include the difference between ‘false allegations’ and an allegation not being substantiated, and the limits of a department’s legislative grounds for intervention when there is a protective parent willing and able to care for the child.
- ▶ **“Magellan Report”.** The “Magellan Report” is a critical way of summarising as quickly as possible the statutory child protection department’s activities and concerns, and cases resolve more quickly in registries where “Magellan Reports” are available. The absence of a “Magellan Report” for cases in the Magellan list in the Brisbane Registry is an important issue.
- ▶ **Court listing practices.** Listing practices have significant implications for the availability of legal representatives and expert witnesses; however, this needs to be balanced with the benefit that listing the matter early for trial often brings on a resolution, with the parties settling before the trial commences. Variability between registries as to whether they had a single Magellan Judge hearing all interim and final matters for a case may be a factor affecting the outcome of Magellan cases.

- ▶ **Clarifying communication protocols.** Participants raised a number of specific suggestions that could be taken up by the National Magellan Stakeholder Committee, or by the stakeholder steering committee in each state/territory. For example, some participants mentioned that currently, Form 4 (which is the notification of child abuse) does not always identify the child’s residential address; however, the statutory child protection departments need this information in order to conduct their investigations.
- ▶ **Transfer of files from FMC.** Timely identification of matters where serious allegations of sexual abuse or physical abuse of children are raised in Federal Magistrates Court proceedings would assist with transferring these files to the Family Court, so that they can be assessed for inclusion in the Magellan list as early as possible.
- ▶ **Internal vs. external Family Reports.** The use of Family Consultants from the Family Court’s Child Dispute Services was inconsistent across registries. Where registries did draw on their services, they were very satisfied with the timing and quality of the services.
- ▶ **Addressing inconsistent practices and improving dissemination of practice developments.** The variations in practice across registries observed in the current evaluation was consistent with the findings from Parkinson and Cashmore (2006), who noted that even Judges in the same registry “were sometimes unaware of the practice of other Judges just along the corridor” (p. 4).
- ▶ **Clarify practice directions.** With the introduction of LAT, confusion exists regarding how Magellan sits within this new framework, and which practice directions apply (and which ones do not). Clarification is also needed as to which of the Court’s practice directions do and do not apply in relation to Magellan cases, as well as eligibility criteria.

A number of these implications are consistent with the conclusions that Hunter (2006) drew in relation to her evaluation of the Children’s Cases Pilot Program. She emphasised the need for:

*“...ongoing training, reiteration and reinforcement of the Court’s objectives for Division 12A proceedings, not letting Judges get burnt out with children’s matters, careful monitoring of the consumption of judicial resources under national rollout, the promulgation of time standards; and their articulation with the listing system to make the most efficient use of judicial time” (p. 160).*

## Implications for further research

There is scope to conduct further analysis of the case-file data extracted for the current evaluation, as well as to initiate new research that looks at experiences of the Magellan process and outcomes post-Final Orders for children and parents. Opportunities for further evaluation exist, particularly in relation to the cost of Magellan, the views of parents and children, and longer-term outcomes of cases (i.e., whether Magellan is successful in securing the safety of children and preventing future malicious or unsubstantiated allegations to statutory child protection departments).

### Opportunities for further analysis of the case-file database

Given the wealth of information that exists in the database of 80 Magellan cases and 80 *Magellan-like* cases created as part of the current evaluation (and the significant investment that the Family Court of Australia has already made in reviewing and coding the file data), there is considerable scope for further examination of a range of issues. For a full list of all the variables that were coded from the case files, see Appendix 5. As well as conducting more detailed quantitative analyses of these variables, a qualitative approach could also be taken to examining case characteristics, and their relationship to key events and case outcomes (particularly to compare matters that took a long time with matters that were shorter, and to look at some registry differences in how cases progressed and their final case outcome).

### Follow-up of families after involvement in Magellan

An additional measure of the effectiveness of Magellan that was not possible to conduct within the timeframe and budget of the current study would be to look at the nature and stability of the Orders made in Magellan cases (and compare them to the *Magellan-like* cases), including Orders for treatment and the degree of compliance with these Orders. Further, in order to know whether Magellan is successful in providing arrangements that ensure the safety and wellbeing of children, in addition to whether matters return to the Family Court, it is important to know whether subsequent notifications are made to child protection authorities by parents or whether further attempts are made to alter the parenting arrangement (e.g., whether parties access legal aid for the purpose of initiating further action, whether in the FMC, the Family Court, or through mediation).

In order to assess the stability (and in some ways the ‘success’) of Final Orders, information is needed from statutory child protection departments about the number of cases where fresh allegations of violence/abuse are made, and whether it was the same type of allegation (and concerning the same alleged offender) or a different protective concern. In order to protect the privacy of statutory child protection clients, the Court could send a list of all the cases from the current case-file review to departments, with a request for them to identify the number of cases where further allegations of violence have occurred (and if so, what is the nature of the allegations and who is the alleged perpetrator; i.e., are they the same or different to the original allegations), or where the risk-assessment has changed (i.e., they no longer believe the child is safe).

Thus, statutory child protection departments would not be asked to release information about individuals, but only the aggregate number of cases that have come to their attention since the involvement of the Family Court.

Similarly, the Court could send this same list to the legal aid commission in each state, asking whether the families have returned since the Final Orders. In order to maintain integrity of the quasi-experimental design, the two groups (Magellan and *Magellan-like* cases) could be randomly identified as 'A' or 'B'. Families would need to be listed separately according to whether they were a Magellan or a *Magellan-like* case (i.e., a case involving serious allegations of sexual or physical abuse in NSW, prior to implementation of the Magellan process). In both instances, the statutory child protection department and the legal aid commission would only be asked for a global response to the question of how many cases in the two groups have returned since Final Orders.

### **Findings of past abuse and the concept of 'blame' in family law matters**

Further research is needed to understand the degree to which there may be pressure to uphold allegations and make positive findings of child abuse in family court matters (where such matters are not being tested in criminal jurisdictions), and how this impacts on a system for resolving private law issues that, since 1975, does not rely on proving fault. This is particularly salient given the Briginshaw qualification to the standard of proof required in *M and M*, and the criticisms that have been levelled at the Family Court in extending such stringent tests from questions of past abuse to questions of future risk. It is possible that while such stringent tests protect children from the psychological harm caused by unnecessary separation from a parent falsely accused of abuse, they may not help children who have been abused—or are at risk of abuse—but where there was not sufficient evidence for child protection departments to substantiate, or for the Court to make a positive finding. Such a situation might not only place children at risk of physical or psychological harm, it might also represent a subtle reversion to concepts of blame in what is purportedly a 'no-fault' divorce system.

### **Magellan and co-occurring family dysfunction/violence**

Given that sexual abuse and physical abuse frequently co-occur with other forms of family violence (i.e., emotional or psychological abuse of children, physical or emotional neglect, or witnessing inter-parental or other family violence; see Higgins & McCabe, 2000; 2001), the extent to which Magellan addresses these issues is an important area of investigation. It would be of concern if there was a disconnection between the resolution of sexual abuse and other protective concerns in family law cases, given the frequency with which they co-occur, and the similar types of impact that various forms of child abuse, exposure to family violence and other forms of family dysfunction have on children's wellbeing.

## **Cost-effectiveness**

An examination of the cost-effectiveness of Magellan was not part of the current project brief. There is scope to look at the level of funding provided to Magellan cases by the legal aid commissions, as well as the cost of the time and resources contributed by the Family Court, the statutory child protection department, and each of the other interacting agencies.

## **Children and parents' perceptions of Magellan**

A number of stakeholders mentioned that the effectiveness of Magellan should also be assessed from the perspective of children and parents involved. Future studies should be undertaken in which families from new Magellan cases are asked to sign a consent form, agreeing to be contacted in the future as part of a prospective research/evaluation project. The impact on families (parents and children) could then be the focus of a separate study.

In the current study, there was evidence that stakeholders—in particular, Judges—believed that although not all litigants would agree with the outcome of the case, they felt that litigants were happier with the process, seeing it as more rigorous, timely and fair. Therefore, it would be particularly important to contrast the perceptions of litigants who proceed to judicial determination, those who settle early, those who are granted the Orders in line with their initial expectations, those who raised the allegations, and those against whom the allegations were made.

This is important because of the focus of the Court is on determining future risk, not on making positive findings about past abuse. The views of parents—and children — need to be examined further. In particular, research is needed to look at whether parents who made allegations had their concerns allayed if the abuse was not confirmed by the statutory child department and how they feel about resuming time spend between the child and the other parent (who they alleged had offended) if this is subsequently allowed by the Court.

## **Juvenile court applications**

One Judge wondered whether Magellan resulted in statutory child protection departments taking out fewer juvenile court applications, because of their perception that the Family Court is making sure that these children are not at risk, and therefore the department does not have to do anything further about it. This issue warrants further exploration, as it goes to the 'separate' mandates of the two systems, yet seeming overlap in some of the roles (as noted by the Family Law Council, 2002).

## **Community and professional perceptions of the role of Judges**

Finally, the findings highlight some opportunities to look at a range of issues concerning the role that Judges play in Family Court cases where there are serious child abuse allegations. One issue that was raised by a few participants was the degree to which Judges should have direct access to interviewing children in chambers in Magellan matters. This is consistent with calls that have been made by others in the past. For example, Carmody (2005) made a case for allowing children to give direct evidence to the Court. He argued that “the time has come to reconsider the exclusion of children from court-room participation in the ongoing search for the truth generally and answering the ‘unacceptable risk’ question in child abuse cases, in particular” (p. 34, para 123). However, there are a number of risks involved with Judges directly interviewing children, including risks to the quality, process and subject of decision making (Parkinson & Cashmore, 2006). Based on their research with 14 judicial officers from the Family Court and six magistrates from the FMC, Parkinson and Cashmore (2006) argued that although there are sound reasons for the opposition to interviewing children in chambers for forensic purposes by most judicial officers, there is a strong case for it to occur in some circumstances, and therefore guidelines are needed. (In their report, they provided some guidelines in relation to this matter.)

## 7.4 Conclusion

*“The main idea [of Magellan] is to ensure a timely disposal of allegations or suspicions of child sexual abuse where it is a best-interests factor, and is likely to affect the outcome of the Orders that are being made; and to ensure that all information that’s needed is available from all sources; and to ensure that matters are properly managed by the Judges making the decision, rather than by somebody else.”*

Judge

This report is the first comprehensive evaluation of a world-first initiative of the Family Court of Australia, since its widespread implementation in 2003. Consistent with the findings from the original pilot study in Victoria (Brown, Sheehan et al., 2001), the results show that the Magellan case-management model is a unique system for responding to the most complex of family law parenting matters. Despite difficulties in implementation, Magellan was seen both as a significant improvement over the Court’s usual case-management procedures, and the best possible way of identifying the issues and resolving matters in children’s best interests, given the consequences of the outcomes, and the resources that are available.

Families look to the family law system to resolve of the implications of child abuse and family violence for children’s future care and family relationships. In so doing, the Family Court relies on evidence gathered by others (although the Family Law Council in 2002 called for the establishment of a Federal Child Protection Service to directly assist the Court with this function). It is not a jurisdiction for testing the veracity of criminal allegations (instead, this is the responsibility of criminal courts, assisted by police and the Director of Public Prosecutions). Nor is the Family Court’s primary function that of ensuring that children are protected (instead, this is the responsibility of the statutory child protection departments and juvenile courts). The Family Court is not a “forum for forensic inquiry” (Kaspiew, in press), and should not be focusing on making determinations about the veracity of past abuse, but about the potential for future risks. It has a broader mandate: children’s best interests.

Child sexual abuse often occurs in conjunction with other forms of abuse (such as physical or emotional abuse). These may occur at the hands of family members other than the perpetrator of sexual abuse. In other words, while parental incest may occur in highly functioning families, the more frequent situation is one of multiple family problems and dysfunction. Given the research on the negative impact of these other forms of abuse (Higgins & McCabe, 2001), it becomes clear why focusing on the need for positive findings about sexual abuse alone cannot be the sole test of what is in the best interest of children.

Perhaps having a specialist focus—even if the model is not implemented fully—is enough to bring about some improvements. However, in the interests of children’s wellbeing, and that of their parents—this should not be interpreted as ‘near enough is good enough’. In registries where all of the key elements are in place, Magellan has been shown here to be positively evaluated by stakeholders, and to lead to better outcomes.

The success of Magellan is reflected in its ability to assist with what participants saw as the central task of gathering all the necessary information together to ensure a timely response:

*“Quick justice is justice that perpetrates least harm.”*

Judge

In a civil society, children deserve the best that society can give them. And for vulnerable children whose litigating parents have alleged that the child has been harmed, a system that is designed to uncover all of the relevant information, in a coordinated, and managed way in the quickest time possible, needs to be the best that it can be—not only to ensure that children are safe, but that decisions are made that are in their best interests.



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# Appendices

## 1 Plain language statement describing the study

My name is Daryl Higgins. I'm a researcher from the Australian Institute of Family Studies (AIFS). We have been engaged by the Family Court of Australia to conduct an evaluation of family law cases in which there are allegations of serious physical abuse or sexual abuse of children.

You are invited to take part in this research project. The purpose of this study is to look at cases that have been processed through the court using the Magellan process, as well as comparable cases involving serious allegations of violence that were processed in the usual way.

We will be conducting interviews with Judges, and focus groups including court personnel and key stakeholders involved in family law cases and allegations of violence. The interviews and focus groups will be conducted by Daryl Higgins (AIFS), and Leisha Lister (Executive Advisor Client Services at the Family Court of Australia) will sit in as an observer during our discussions in order to assist with recording data, and particularly answering questions that I may have afterwards regarding legal terminology or processes (I'm not a lawyer).

I'll be asking questions concerning your perceptions of the process that is followed, and your views on how you think it is working. Examples of questions you will be asked include: "What is your understanding of the Magellan process?" and "What would you do to change the court's process for dealing with allegations of violence in family law matters?" Unless you specifically indicate that you wish to be identified, your name won't be used.

Interviews will last for up to one hour, and focus groups will last between one and two hours. (Refreshments will be available during the focus groups).

Participation in this research project is voluntary. If you do not wish to participate, you do not have to. If you decide to take part and later change your mind, you are free to withdraw from the project at any stage until completion of the interview, or commencement of the focus group discussion.

A brief summary of the project findings can be obtained from the Family Court of Australia at the conclusion of the project (around September 2007).

Your individual responses will not be disclosed to any person outside the research team, and results of the study that will be publicised will not include identifying information.

This project will be carried out according to the National Statement on Ethical Conduct in Research Involving Humans (June 1999) produced by the National Health and Medical Research Council of Australia. This statement has been developed to protect the interests of people who agree to participate in human research studies. This research project has received ethics approval from the Australian Institute of Family Studies, and the Family Court of Australia.

If you require further information or if you have any problems concerning this project, you can contact the main researcher, Dr Daryl Higgins (03) 9214 7821.

If you have any complaints about any aspect of the project, the way it is being conducted or any questions about your rights as a research participant, then you may contact the AIFS Ethics Committee on (03) 9214 7888

## 2 Wording used to obtain oral consent from participants

When conducting focus groups or individual interviews with Family Court of Australia personnel and other key stakeholders involved in family law proceedings, the following statement will be read out:

### **For individual interviews:**

“Thank you for making time today for this interview. My name is Daryl Higgins. I’m a researcher from the Australian Institute of Family Studies. We have been engaged by the Family Court of Australia to conduct an evaluation of family law cases in which there are allegations of sexual abuse or serious physical abuse of children. And this is Leisha Lister, Executive Advisor Client Services at the Family Court of Australia. I’ve asked Leisha to sit in as an observer during our discussion in order to assist me with recording data, and particularly answering questions that I may have afterwards regarding legal terminology or processes – as I’m not a lawyer. I’ll be asking questions concerning your perceptions of the process that is followed, and your views on how you think it is working. Unless you specifically indicate that you wish to be identified, your name won’t be used. Your participation is voluntary, so, I’d like to check with you now:

- ▶ Are you happy to answer some questions about your perceptions of the court processes in relation to allegations of violence in family law matters?
- ▶ Are you happy for Leisha to sit in on our discussion?
- ▶ Do you also give your consent to have the conversation recorded?

[Wait for participant to say ‘YES’].

Great. Let’s get started.”

### **For focus groups:**

“Thank you for making time today for this focus group. My name is Daryl Higgins. I’m a researcher from the Australian Institute of Family Studies. We have been engaged by the Family Court of Australia to conduct an evaluation of family law cases in which there are allegations of sexual abuse or serious physical abuse of children. And this is Leisha Lister, Executive Advisor Client Services at the Family Court of Australia. I’ve asked Leisha to sit in as an observer during our discussion in order to assist me with recording data, and particularly answering questions that I may have afterwards regarding legal terminology or processes – as I’m not a lawyer. I’ll be asking questions concerning your perceptions of the process that is followed, and your views on how you think it is working. Unless you specifically indicate that you wish to be identified, your name won’t be used. Your participation is voluntary, so, I’d like to check with each of you now:

- ▶ whether you are happy to answer some questions about your perceptions of the court processes in relation to allegations of violence in family law matters;
- ▶ whether you are you happy for Leisha to sit in on our discussion; and
- ▶ whether you give your consent to have the conversation recorded.

“If you are not happy, then it’s OK to leave. You can leave at any point during the group, however, the things that we are saying today will be recorded, so we won’t be able to delete the recording for anyone who no longer wants to participate once we have begun. Please remember that what each person says today is personal, so can we all agree to respect each other’s privacy and not talk to others about what other people have said in the group today. Can I ask each of you to indicate by saying “Yes” or “No” whether you give your consent to participate, to have Leisha sit in on our discuss, to have the conversation recorded, and to respect the privacy of each others’ responses?

[Wait for each participant to say ‘YES’].

Great. Let’s get started.”

### 3 Interview and focus group questions

#### **Alternate questions for interviews and focus groups in Sydney and Parramatta Registries:**

- 1 How long have you been involved in Family Court residence/contact cases involving allegations of serious physical abuse or sexual abuse of children?
- 2 What is your understanding of the Magellan protocols, roles and expectations of key parties involved?
- 3 How is this different from the way in which Family Court residence/contact cases involving allegations of serious physical abuse or sexual abuse of children were handled prior to the introduction of Magellan?
- 4 Do you think Magellan has been implemented and is operating in the manner in which it was planned?
- 5 What are the obstacles/changes that have occurred in implementing Magellan?
- 6 What are the key successes of Magellan (What elements work best, and why)?
- 7 Does it decrease the length of cases?
- 8 Does it lead to better outcomes for children and families? (On what type of evidence do you base your beliefs?)
- 9 Is there anything you would do to improve Magellan?
- 10 Is the process tightly managed?
- 11 What is the nature of the interaction between the Family Court and the statutory child protection department? (Is there 'handballing' of responsibility for protection of children between the department and the Court?)
- 12 Overall, does Magellan make a difference?

## 4 Case file review – data collection notes

### **Contravention applications**

Magellan matters may include the issuing of a contravention application (e.g., the contravention could be to have the Court deal with one party not returning the children after contact visit). The effect of one or both parties issuing a contravention is that it results in more Court events. A contravention is usually listed for trial that takes a day or so. Contravention applications are not often issued in Magellan matters, as the timeline is so tight; however, it may be more frequent in the *Magellan-like* files from NSW. Information about this is captured in the brief case summary for each case (see FileMakerPro database).

### **Trial notice issue**

If a trial notice was issued at the Direction Hearing conducted by the Magellan Judge, and the Registrar was sitting in Court with the Judge (as per the Magellan model) and issued the trial notice while the Magellan Judge remained on the bench, this was coded as one Court event (i.e., as a direction hearing by the Magellan Judge and ignore the “event” by the Registrar).

### **Breakdown of Final Orders**

In relation to whether the matter returned to the Family Court, we looked at whether this occurred within 18 months or *by the time of the research for cases that finalised less than 18 months prior to the data collection for the research* (i.e., it is an under-estimation of the breakdown rate for cases finalising more recently than 18 months ago).

In one matter, proceedings commenced in 2000 in Melbourne and were dealt with as a Magellan case. The father re-issued proceedings in 2003. It was not that apparent from the file until the Registrar found a bench sheet that identified Magellan directions dating back to 2000. For this case, the total duration of the case was counted from the first time it was made Magellan (i.e., in Melbourne in 2000), and it was recorded as the case having come back to Court.

### **Children’s Protection Service report**

In SA where a separate agency from the statutory child protection department is responsible for assessments, a report from the Children’s Protection Service in SA (or evidence that such assessment took place) is included in the section on ‘Other Reports’ (at item 25) as ‘other assessment’. However, this would mostly occur before the matter is made Magellan. In most other registries, it wouldn’t be a separate report, as there is no separate body from the department responsible for assessment—it is all done by the statutory child protection department and/or the police, or in the case of NSW, by a joint investigative response team (JIRT).

## **Departmental records**

The date of when the departmental records were received by the Court is blank in many cases, due to the difficulty of locating this information on the file (particularly in Brisbane files). If the information could not be found within a reasonable time, it was left blank.

## **Length of trial**

If trial settled without evidence, the 'number of days' field was left blank.

## **Court events**

Court attendances occurred mostly in date order, but court mediation will often be at the end as they are stored in a different section of the file.

## **Inclusion of two matters that did not finalise until after 30 June 2006**

Two matters actually finalised after 30 June 2006. Most of the file had been reviewed and the data entered before it became apparent that the Order prior to 30 June 2006 was an Interim Order, not a Final Order. As the process of selecting the files had already been completed and non-selected files returned to the registry, there were no files with which to replace them. As one matter was Magellan and other a *Magellan-like* case from NSW, it was decided that both would be retained in the final sample.

## 5 Copy of File Review Template questions

1. Which registry was the case drawn from?  
 Melbourne  
 Adelaide  
 Brisbane  
 Sydney  
 Parramatta
  2. Is case Magellan?     YES     NO     NOT KNOWN
  3. If **Yes** to Q2:  
Date case was declared Magellan by the Magellan Registrar: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_
  4. CHILDREN  
**Child(ren) subject of the proceedings: (list all):**  
Child 1: Gender (M/F); DOB: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Child 2: Gender (M/F); DOB: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Child 3: Gender (M/F); DOB: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ .... etc.  
  
**Child(ren) subject of the allegations: (list all):**  
(if same as above—need a way of having a tick against their name, and typing in new names of children who aren't subject of the proceedings, but are subject of the allegations): Child A1, A2, A3, etc.  
Child 1: Gender (M/F); DOB: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Child 2: Gender (M/F); DOB: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Child 3: Gender (M/F); DOB: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ .... etc.
  5. Date Application first filed: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_
- Child abuse allegation:**
6. Date child abuse allegations were first raised to the Court (e.g., date of application or date of filing of the Form 66 or Form 4; letter to the Court; affidavit; or response document):  
\_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_
  7. Alleged perpetrator's relationship to child of the proceedings: (mother; father; sibling, stepmother, stepfather, defacto partner, other relative, other [state])
- Case description:**
8. One sentence describing who alleged what, any details of multiple parties & any other notes [free text].
  9. Does the matter involve multiple parties or complex family relationships?  
 YES     NO     NOT KNOWN

10. Chronology of Court events (list each event 1, 2, 3... 30):

Event 1: Type: \_\_\_\_\_; date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Event 2: Type: \_\_\_\_\_; date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

...

Event 30: Type: \_\_\_\_\_; date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**Key for 'type':** Direction hearing [DH]; trial notice issued [TN]; pre-trial conf [PTC]; court mediation [M]; or Trial [Trial]—if TRIAL then ask: Number of days of trial: ##)

11. Total number of court events (before a judicial officer): ##

12. Number of different judicial officers involved: ##

13. Total number of court mediation sessions (identified by a memo on file): ##

14. Was there an Order for a legal representative for the child?:

YES       NO       NOT KNOWN

15. If **Yes** to Q14: When was the Order made? \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

16. Number of consent Interim Orders and/or Partial Consent Interim Orders: ##

17. Was there any evidence of proceedings in another court (e.g., Youth Court, Criminal Court)

YES       NO       NOT KNOWN

18. If **Yes** to Q17: This resulted in:

(a) delay of more than 6 months

(b) delay of less than 6 months

(c) no delay

19. **Family Report**

REPORT 1:

Who wrote the report? (internal; external)

Date of report: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

What was recommended in the mediation (child dispute service) or external family assessment: (no time; supervised time; change of living arrangement; shared care; trial arrangement for review in ... months [state how many months: ##]; other [free text])

REPORT 2:

Who wrote the report? (internal; external)

Date of report: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

What was recommended in the mediation (child dispute service) or external family assessment: (no time; supervised time; change of living arrangement; shared care; trial arrangement for review in ... months [state how many months: ##]; other [free text])

\*\*Is this report: (a) a new report; or (b) an update of an earlier report?

REPORT 3, etc.:

Repeat [as for Report 2] – include options for up to six reports to be entered

### Other reports

20. Is there an Order for supervised contact?

YES     NO     NOT KNOWN

21. If **Yes** to Q20: Is there a report or affidavit on file of observations of supervised contact:

YES children's contact service centre staff member's report

YES affidavit from a family member of friend

NO report or affidavit on file

22. Are there any psychiatric reports?  YES     NO     NOT KNOWN

23. If **Yes** to Q22: Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

24. Who was the psychiatric report about?

child 1

stepmother

child 2

stepfather

child 3...etc.

defacto partner

mother

other relative

father

other [state]

sibling

25. Was there any evidence in the file that any other reports/assessments had been conducted, or that the child was receiving therapy or other interventions (tick all that apply):

mental health assessment (e.g., CAMHS)

psychological therapy or counselling

speech pathology assessment

medical/paediatric assessment

speech therapy

occupational therapy

other assessment: [state type] \_\_\_\_\_

other therapy/intervention: [state type] \_\_\_\_\_

### Police reports

26. Was a police file on the alleged perpetrator subpoenaed?

YES     NO     NOT KNOWN

27. If **Yes** to Q26: Was the police file concerning abuse allegations?

YES     NO     NOT KNOWN

28. Was the police file concerning other police records?

YES     NO     NOT KNOWN

29. Was there a trial plan or evidence of proposed witnesses recorded on the file?

YES     NO     NOT KNOWN

30. If **Yes** to Q29: Was police evidence planned to be given in trial?

YES     NO     NOT KNOWN

#### Departmental reports

31. Did the court receive a specific report/letter from the department, at the Court's request?

YES     NO     NOT KNOWN

32. If **Yes** to Q31: Date report was received: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

33. Was the department's file subpoenaed?

YES     NO     NOT KNOWN

34. If **Yes** to Q33: On what date was the file received: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

35. Was there any evidence that the department investigated?

YES departmental file was available at time of research

YES other evidence on file

NO

36. Was there a notification of abuse on the department's file?

YES     NO     NOT KNOWN

37. [deleted]

38. Date of first notification: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

39. Type of child abuse notified:

physical abuse

sexual abuse

fear of future sexual abuse

40. Number of notifications: ##

41. Department's outcome on the case:

Not investigated

Confirmed—abuse perpetrated by the alleged perpetrator

Confirmed—but abuse perpetrated by someone other than the alleged perpetrator

Abuse not confirmed

If **Yes** to Q. 29 ("Was there a trial plan or evidence of proposed witnesses recorded on the file?"), ask Q. 42, otherwise skip to Q. 43

42. Was departmental evidence planned to be given in trial?

YES     NO     NOT KNOWN

43. Was there evidence in the court file that departmental staff were in attendance at any Court proceedings?  
 YES     NO     NOT KNOWN
44. TOTAL number of expert/external reports on file (including department, forensic child abuse assessment, psychiatric, psychological, speech, police, family/mediation, and contact observation reports): ##
45. Case outcome:  
 (a) Settled before listing for trial on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 (b) settled prior to evidence on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 (c) settled with evidence on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
 (d) proceeded to judicial determination on \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_
46. Where there is judicial determination (i.e., where category (d) above in Q. 45 has been selected), did the Court find that on the balance of probabilities, that the situation poses an unacceptable risk to the child?  
 YES     NO     NOT KNOWN
47. If **Yes** to Q46: Note details [free text]
48. What did the court order?  
 no time  
 supervised time (daytime only)  
 supervised time (including overnight stays)  
 unsupervised time (daytime only)  
 unsupervised time (daytime only, graduating to include overnight stays)  
 time to be by way of cards and letters only  
 telephone time only  
 change of living arrangement  
 shared care  
 other [free text]
49. Did the matter finalise without judicial determination?  
 YES     NO     NOT KNOWN
50. If **Yes** to Q49: What was the reason for the matter finalising without judicial determination?  
 applicant withdrew  
 respondent withdrew  
 consent Order  
 department intervened (e.g., takes child into care)  
 other [free text]

51. Did Final Orders breakdown within 18-months:

YES       NO       NOT KNOWN

52. If **Yes** to Q51: Reason for the case returning to Court:

- financial
- change to children's orders
- original allegations resolved by Order of the court, but fresh allegations made within 18 months

**Notes:**

- ▶ Each case entry was assigned a unique case identifying number.
- ▶ Unless otherwise specified, "date" means the date on which the document was filed at the court or released to parties (or if both, the earlier date).
- ▶ "Child protection" or "department" are terms used to refer to the state/territory department with statutory responsibility for child protection and/or any separate forensic child protection investigative service that assists the department with its investigations.
- ▶ It is assumed that reports from expert investigations were court-ordered unless otherwise stated.

## 6 Examples of FileMakerPro database screens

The following is a screen-shot of a typical section of the FileMakerPro database used to record and analyse the case-file data. This screen shows the information that was recorded about departmental reports:

The screenshot shows a FileMakerPro database screen titled "Departmental Reports" with a "Case Number" field containing "48". The screen displays a list of questions and their corresponding answers:

- 31) Did the court receive a specific report letter from the Department, at the Court's request? **Yes**
- 32) If Yes to Q31: Date report was received: **06/2006**
- 33) Was the Department's file outsourced? **Yes**
- 34) If Yes to Q33: On what date was the file received: **06/2006**
- 35) Was there any evidence that the Department investigated?  
**YES: other evidence on file**
- 36) Was there notification of abuse on the Department's file? **Yes**
- 37) Date of first notification: **06/2006**
- 38) Type of child abuse notified: **Physical abuse**
- 39) Number of notifications to the Department: **2**
- 40) Department's outcome on the case:  
**Abuse not confirmed against father but concerns for child when with mother**
- 41) Was Departmental evidence planned to be given at Trial? **Yes: known**
- 42) Was there evidence in the court file that Departmental staff were in attendance at any court proceedings?  
**No**
- 43) Total number of departmental reports on file (including Department, formal child abuse assessment, payments, psychological, speech, police, family/mediation, and contact observation reports): **4**

At the bottom of the screen, there are three buttons: "Back", "Menu", and "Next". Below these buttons are two labels: "Police Reports" and "Case Outcome".

The following screen shows the Menu:

The screenshot shows a FileMakerPro database screen titled "Menu". It contains a vertical list of buttons, each representing a different section of the database:

- Case Details
- Children
- Child Abuse Allegations
- Case Description
- Court Events
- Court Event Details
- Family Reports
- Other Reports
- Police Reports
- Departmental Reports
- Case Outcome
- Home

## 7 Table of key differences in implementation of Magellan across registries

	Adelaide	Brisbane	Melbourne	Parramatta	Sydney
When did Magellan commence?	July 2003	Feb 2004	1997– original pilot; July 2003	March 2006	July 2003 –trial with limited postcodes; July 2006–the range of postcodes was expanded
Name of statutory child protection department responsible for investigating notifications; (for further detail on legislation, intake and response procedures for each, see: Bromfield & Higgins, 2005)	Families SA (in conjunction with hospital-based Child Protection Service)	Queensland Department of Child Safety	Victorian Department of Human Services	Joint Investigative Response Team (JIRT), from NSW Department of Community Services and NSW Police	Joint Investigative Response Team (JIRT), from NSW Department of Community Services and NSW Police
Is a specific ‘Magellan Report’ provided by the statutory child protection department (cf. having the entire file subpoenaed)	Yes	No	Yes	Yes	Yes
Is a ‘docket’ system used? (having the same Magellan Judge that heard directions and interim hearings also conduct the trial if the matter goes to judicial determination)	Yes	No	Not since pilot (now a ‘joint docket’ between two Magellan Judges)	Yes	In-principle approval to move to a docket system
Is the FCoA Mediation Service used to provide a ‘Family Report’? If not, who chooses experts to write Family Report and other expert assessments?	Yes	No, ICLs choose; often reports from teachers are included	Yes	No (mainly because of low volume of cases, don’t need to rely on FCoA)	
Is the state/territory police department explicitly included in the Magellan protocol and as a member of the stakeholder steering committee?	Yes	No	Yes	No	No
Total number of Magellan cases (current and finalised) in each registry as at 30 June 2006 (the same date used to extract files for the case-file review)	111	77	253	0	6

## 8 Detailed tables of case-file results

**Table 8.1** Comparison of case-level data, averaged per case in each of the five registries

Outcome variable (per case)	Magellan Cases (n = 80)			'Magellan-like' Cases (n = 80)	
	Adelaide Registry (n = 16) Mean	Brisbane Registry (n = 19) Mean	Melbourne Registry (n = 45) Mean	Parramatta Registry (n = 27) Mean	Sydney Registry (n = 53) Mean
Number of separate Court events	5.5	6.8	6.1	11.3	10.7
Number of different judicial officers involved	1.9	3.6	3.8	5.5	5.8
For cases proceeding to judicial determination: length of trial (days)	4.0	3.9	2.9	3.4	2.9
Number of Consent (or Partial Consent) Interim Orders	1.2	1.1	2.0	1.7	2.0
Number of family reports	1.2	1.6	1.6	1.1	1.4
Number of expert/other reports in total	2.6	3.0	3.1	1.9	1.6
<b>Timing</b>					
Duration from date of application to date of case outcome (days)	223.6	426.6	333.0	419.1	497.8
Duration from the date the Court was first made aware of the allegation to date of case outcome (days)	220.4	339.1	300.8	353.3	425.7
Duration from department file received to case outcome (days)	122.1	144.9	190.1	238.9	207.6
Duration from Family Report to case outcome (days)	133.6	151.1	223.9	180.4	258.0
Time delay between allegation raised and ICL ordered (days)	47.1	-6.6	16.80	49.8	42.2

**Table 8.2** Comparison of aggregate data for the five registries

Outcome variable (number of cases per registry)	Magellan Cases (n = 80)			'Magellan-like' Cases (n = 80)	
	Adelaide Registry (n = 16) n (%)	Brisbane Registry (n = 19) n (%)	Melbourne Registry (n = 45) n (%)	Parramatta Registry (n = 27) n (%)	Sydney Registry (n = 53) n (%)
How many cases:					
Proceeded to judicial determination	3 (18.8%)	7 (36.8%)	10 (22.2%)	7 (25.9%)	10 (18.9%)
Multiple parties or complex family relationships	2 (12.5%)	3 (15.8%)	7 (15.6%)	6 (22.2%)	5 (9.4%)
Parallel proceedings in another jurisdiction (e.g., children/youthcourt)	11 (68.8%)	15 (78.9%)	39 (86.7%)	24 (88.9%)	41 (77.4%)
Number of cases with parallel proceedings in other jurisdictions	4 (25.0%)	3 (15.8%)	4 (8.8%)	3 (11.1%)	11 (20.8%)
Of cases with parallel proceedings, did it lead to delay in the Family Court proceedings?					
No delay	3	2	2	2	7
Delay of less than 6 months	1	0	2	0	4
Delay of more than 6 months	0	1	0	1	0
Did Final Orders break down within 18 months (or by the time of data collection, for cases where Final Orders had been in place for less than 18 months)?	0	1 (5.3%)	5 (11.1%)	2 (7.4%)	3 (5.7%)

**Notes:** In relation to whether the matter broke down, we looked at whether this occurred within 18 months or by the time of the research, for cases that finalized less than 18 months prior to the data collection for the research (i.e., we have an under-estimation of the breakdown rate for cases finalising more recently than 18 months ago).

The number of cases for data on particular variables may be lower; due to missing data on some variables for some cases.

**Table 8.3** Comparison of process and outcome variables for Magellan and *Magellan-like* cases

Number of cases where there was evidence on file of:	Magellan Cases (Adelaide, Brisbane & Melbourne) (n = 80)	'Magellan-like' Cases (Parramatta & Sydney) (n = 80)
No more than four different judicial officers conducting Court events	77.5%	26.3%
An order on file for a legal representative for the child (ICL)	92.5%	75.0%
<b>Observations of supervised contact:</b>		
Report from Children's Contact Service Centre staff	5.0%	1.3%
Affidavit from a family member or friend	10.0%	3.8%
Psychiatric report	37.5%	5.0%
Psychological report only	2.5%	18.8%
No psychiatric or psychological report	60.0%	76.3%
Other reports, assessments or counselling	21.3%	50%
Police file on alleged perpetrator subpoenaed	63.8%	61.3%
Police file subpoenaed concerning abuse allegations	30.0%	36.3%
Other police records having been subpoenaed	33.8%	28.8%
A trial plan on file	6.3%	0
Police evidence planned to be given in the trial	12.5%	6.3%
Court receiving a specific report from the statutory child protection department (i.e., the "Magellan Report")	65%	0
Statutory child protection department file subpoenaed	87.5%	75.0%
The department investigated the allegations	80.0%	26.3%
A notification of abuse was already on the department's file	55.0%	7.5%
The department planned to give evidence at trial	22.5%	1.3%
Evidence that departmental child protection staff planned to attend court proceedings	8.8%	1.3%
No expert/other report on file	6.3%	22.5%
Three or more expert/other reports on file	61.3%	26.3%
<b>Timing of matter finalising:</b>		
Settled before listing for trial	62.5%	41.3%
Settled after trial listing, but prior to evidence	18.8%	28.8%
Settled with evidence	7.5%	10.0%
Proceeded to judicial determination	8.8%	13.8%
Other	2.6%	6.3%
<b>Reason for matter finalising:</b>		
Consent Order	63.8%	63.8%
Matter returned to the Family Court within 18 months of finalising (or by the time of data collection if case finalised less than 18 months ago)	7.5%	6.3%
For cases proceeding to judicial determination: Judge found "unacceptable risk" to the child (i.e., confirmation of allegation) in only four cases—1 Magellan and 3 <i>Magellan-like</i> cases	1 of 7 (14.3%)	3 of 12 (25.0%)

**Table 8.4** Comparison of case-level data, averaged per case in each of the five registries

Outcome variable (per case)	Magellan Cases (n = 80) Mean	'Magellan-like' Cases (n = 80) Mean
Number of separate Court events	6.17	10.9
Number of different judicial officers involved	3.4	5.7
For cases proceeding to judicial determination: length of trial (days)	3.4	3.1
Number of Consent (or Partial Consent) Interim Orders	1.6	1.9
Number of Family Reports	1.5	1.3
Number of expert/other reports in total	3.0	1.7
<b>Timing</b>		
Duration from date of application to date of case outcome (days)	332.2	471.6
Duration from the date the Court was first made aware of the allegation to date of case outcome (days)	293.2	396.1
Duration from department file received to case outcome (days)	133.4	217.6
Time delay between allegation raised and ICL ordered (days)	16.8	44.9

**Table 8.5** Comparison of case-level data for Magellan case (excluding Brisbane) and *Magellan-like* cases

	Magellan Cases (excludes Brisbane) (n = 61) Mean	'Magellan-like' Cases (n = 80) Mean
Number of separate Court events	5.9	10.9
Number of different judicial officers involved	3.3	5.7
For cases proceeding to judicial determination: length of trial (days)	3.2	3.1
Number of Consent (or Partial Consent) Interim Orders	1.8	1.9
<b>Timing</b>		
Duration from date of application to date of case outcome (days)	304.3	471.6
Duration from the date the Court was first made aware of the allegation to date of case outcome (days)	279.7	401.2
Duration from department file received to case outcome (days)	194.7	378.7

# 9 Commonwealth legal aid priorities and guidelines

## Schedule 1, Part 2: Guideline 19 - Family law costs management

### 19.1 General

- (1) In this guideline 19:

*a family law or child support matter* includes any dispute that involves the same parties about the same or substantially the same issue, if there has not been a material change in circumstances or if any such change would not materially affect existing orders

*costs cap* means the costs limitations on a Grant of Legal Assistance as set out in guidelines 10, 16 and 19.2 of this Part 2, and

*costs of a matter* means the total costs paid by the Commission in a family law or child support matter in which a Grant of Legal Assistance has been made (taking into account the costs paid by any other legal aid commission, if the matter has been transferred from one or more of the States or Territories), including counsels' fees, fees for expert reports and other disbursements (except interpreter and translator fees, rural travel and accommodation costs), less any Contributions collected by the Commission from the Legally Assisted Person and any Costs Recovered by the Commission.

- (2) The costs management principles in this guideline 19 apply to all Grants of Legal Assistance made by the Commission for family law matters.

### 19.2 Limit on costs

- (1) Under a Grant of Legal Assistance, payment of the costs of a matter under the Commission's usual fee scales for a family law or child support matter (other than proceedings to enforce court orders) that is commenced after 1 July 1998, regardless of whether legal assistance in the matter is provided in-house by the Commission or by an External Service Provider, is limited to:
- (a) party professional costs of \$12,000, and
  - (b) child representative's costs of \$18,000.

**Note 1** For limits to assistance for costs of proceedings to enforce court orders, see guideline 16 of this Part 2.

**Note 2** The amounts mentioned in guideline 19.2(1)(a) and (b) are exclusive of GST.

- (2) This guideline 19.2 does not apply to payment of the costs of a matter where the matter is:
- (a) managed under the Family Court's Magellan Project, and
  - (b) for which the Grant of Legal Assistance is made on or before 30 June 2005.

### 19.3 If costs likely to exceed limit

(1) Subject to guideline 19.3(2), and (3), the Commission may increase the costs cap for a particular Grant of Legal Assistance if, in its opinion, undue hardship would otherwise be caused to an applicant for assistance or to a child who is the subject of an order for separate representation, having regard to the following factors:

- (a) whether the applicant for assistance has incurred significant additional costs due to special circumstances of a kind listed in the Commonwealth Legal Aid Priorities

**Note** Special circumstances are set out in subclause paragraph 6.7.2 of the Agreement.

- (b) whether it would be unreasonable to expect the applicant for assistance to adequately represent himself or herself due to special circumstances of a kind listed in the Commonwealth Legal Aid Priorities

**Note** Special circumstances are set out in subclause paragraph 6.7.2 of the Agreement.

- (c) whether the costs of the applicant for assistance have increased significantly through no fault of the applicant
- (d) the number and complexity of issues in dispute
- (e) the likelihood of risk to a child's safety or welfare, and
- (f) whether the applicant for assistance is a child representative.

(2) Before making a decision under guideline 19.3(1), the Commission must have considered whether it is possible to contain costs by:

- (a) providing legal assistance for the matter in-house, or
- (b) considering whether alternative means of funding are appropriate, including negotiating a fee package that is not in accordance with the Commission's usual fee scales with an External Service Provider.

(3) Any decision made by the Commission under guideline 19.3(1) to increase the costs cap for a particular Grant of Legal Assistance should be subject to strict limits on costs, and the nature and extent of the additional cost should be determined by the Commission or agreed between the Commission and the External Service Provider (as appropriate) having regard to the following factors:

- (a) advice from the court and the parties about the estimated length of time required for the hearing of the matter
- (b) the number and nature of witnesses who must be called or cross-examined, and
- (c) whether the other parties to the matter have legal representation.

**19.4 Commission must provide quarterly reports**

The [the relevant State or Territory] Liaison Officer must provide a quarterly report to the Commonwealth Liaison Officer in relation to cases in which the costs cap is increased under this guideline 19.

**19.5 Family Law Costs Management Methodology**

The Commission will manage the costs of a matter under a Grant of Legal Assistance made under this Part 2 in accordance with the Family Law Costs Management Methodology.

**Source:** Attorney-General's Department.

Available at: [www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid\\_CommonwealthLegalAidPrioritiesandGuidelines](http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_CommonwealthLegalAidPrioritiesandGuidelines)

Accessed: 10 August 2007

# Endnotes

- 1 The number of notifications to state/territory child protection departments has risen sharply in the past 6 years. In 1999-00, the number of notifications was 107,134; of which 24,732 were substantiated (AIHW, 2007). This represents a doubling of substantiations, and an even greater increase in notifications, which has considerably increased the workload on statutory bodies.
- 2 Some researchers assess only experiences that respondents say were “unwanted”. Some use definitions that have a set age category, such as any sexual act by someone over the age of 18 with someone 15 years of age or younger; while others use an age discrepancy – e.g., more than 5 years age difference between and adolescent and an older person (see Finkelhor, 1994; Higgins & McCabe, 2000).
- 3 The ABS noted that the figure for fathers/stepfathers needs to be used with caution because the incidence was too small to produce reliable statistical estimates.
- 4 For a detailed critique of the studies, the reader is directed to “Appendix A” in Moloney et al., 2007.
- 5 Western Australia is not part of the Magellan project, and therefore was not part of the current evaluation. In 2001, it developed its own processes for responding to child abuse allegations—the Columbus program, which also covers allegations of spousal abuse (see Brown & Alexander, 2007).
- 6 Similar orders can be made in the Family Court and the FMC under s 114 and s 68B of the *Family Law Act 1975* (Cth).
- 7 The proposed “streaming” model that is currently being piloted in the Adelaide registry may assist with this issue.
- 8 Interim matters can also be heard in state courts of summary jurisdiction, and final orders can be made if the parties consent.
- 9 The allegation may not be substantiated because the abuse did not happen; or it could be that the child was abused, but for a range of reasons, there was not sufficient evidence for a statutory child protection department to be confident that the abuse had occurred, particularly given the difficulties known about children disclosing sexual abuse (see subsequent section regarding evidence from the social science literature).
- 10 The role of ICLs is explained in the Glossary.
- 11 Moloney and McIntosh (2004) provided a definition of child-focused practices in dispute resolution. When children are present, the focus is on consulting with children in a developmentally appropriate manner to understand and validate their experiences—and to hear their needs. When children are not present, the focus is on supporting disputing parents to actively consider the unique needs of children, preserving their significant relationships, and protecting them from conflict and acrimony.
- 12 It should also be noted that under the *Family Law Act 1975* (Cth), personnel from the Family Court of Australia, the Federal Magistrates Court, or the Family Court of Western Australia have reporting obligations in all Australian jurisdictions. This includes Registrars, Family Consultants, family dispute resolution practitioners or arbitrators, and lawyers independently representing children’s interests. Section 67ZA states that where in the course of performing duties or functions, or exercising powers these Court personnel have reasonable grounds for suspecting that a child has been abused, or is at risk of being abused, the person must, as soon as practicable, notify a prescribed child welfare authority of his or her suspicion and the basis for the suspicion.
- 13 This was a feature of the pre-LAT case management model. The difference with LAT is that the parties will meet with the Family Consultant on the first day of trial and the Family Consultant is available to assist the Court in defining issues in dispute, giving evidence etc.
- 14 The implementation of Magellan in NSW was delayed due to the initial reluctance of the NSW statutory child protection department to cooperate (Harrison, 2007). Implementation commenced with an initial pilot of cases drawn from a very limited number of postcodes, which has been significantly expanded since July 2006 (see Appendix 7).

- 15 The sample size of 80 cases for both groups (Magellan and *Magellan-like*) was pre-determined as the size required to meet the needs of data analysis, given the number of variables that were being coded. Eighty cases represented approximately 1 in 6 of all Magellan cases that had been finalised by 30 June 2006. As comparisons were to be made with *Magellan-like* cases from NSW, it was decided that the sample size for both groups would be the same. The Court extracted files in date order that met the criteria until the quota for each registry was met.
- 16 Due to time and funding constraints, not all registries of the Family Court of Australia were consulted or included in the case-file review.
- 17 A proportion of the total number of finalised Magellan cases in that registry (from the time that Magellan had commenced operating in that registry until 30 June 2006) was randomly selected. The total number of Magellan finalised cases was divided by the quota, which provided a figure that represented the proportion of Magellan cases that needed to be sampled to be representative ( $n$ ). Then, in date order, every  $n$ th case in the list of files from 'Casetrack' for that registry was selected for inclusion in the study.
- 18 Where the decision by the Magellan Registrar as to whether the matter would have been listed as Magellan was borderline (i.e., in approximately 15% of NSW matters), the decision was taken to be conservative and not include the case as a *Magellan-like* matter; to have confidence that the matters that were selected would have been listed as Magellan, had Magellan been operating at the time the case came before the Court.
- 19 Magellan was not operating in all registries until July 2006 (see Appendix 7).
- 20 As disclosure of Family Court information is subject to legal restraint (Section 121 *Family Law Act 1975* (Cth)), in order to protect the identity of any individual involved in the proceedings, the case files were reviewed and coded by Family Court staff, rather than a researcher from the Australian Institute of Family Studies.
- 21 As well as inviting the Judges and the stakeholders from the steering committees to participate in the interviews and focus groups in each of the registries, Leisha Lister (Executive Advisor to the CEO, Family Court of Australia) was also an observer during some of the early focus groups and interviews in order to assist with answering any questions that the interviewer had regarding legal terminology or processes.
- 22 A broad thematic analysis was conducted to identify the themes that emerged across participants and groups. Given the methodology employed and the practical aims of this research, more detailed forms of qualitative analysis (e.g., content analysis to identify all themes and their relative strength, or discourse analysis focusing on language use and subject positioning) were not considered appropriate, as the purpose of this research was to provide a focused evaluation of a program, as well as to identify areas of strength and issues to consider in improving the program. All participants' responses are anonymous. Therefore, in most instances, the particular organisation, role or other particular characteristics of focus group participants (such as gender, or the registry they are from) are not identified. However, because of their particular role in Magellan and the fact that individual interviews were conducted with Judges, their perspectives are identified, although quotes are not attributed to individuals (they are simply marked 'Judge'). Where particular problems are raised, the registry is identified—as these usually relate to the specificities of the implementation of Magellan in that particular location. In these instances, the registry is identified, but care was taken to ensure that the identity of the individuals was not compromised (i.e., Judges are not separately identified). Where possible, the voices of participants are used to illustrate the theme. Direct quotes from Judges and stakeholders were originally transcribed during the interview (using a laptop computer), and later checked for accuracy against a digital recording of the interview or focus group. To ensure a consistent approach to conducting and interpreting the qualitative data, all interviews and focus groups were conducted, transcribed and analysed personally by the author. If the participant referred to the names of the particular statutory child protection department, agency, or services, these were replaced with a generic term in order to maintain the confidentiality of participants' identities. As with most qualitative research, the inclusion of participants was not primarily based on them being representative, but to cover the most diverse range of opinions and perspectives. Consequently, it is not appropriate to quantify the number of participants who raised particular issues, or held particular views. Instead, the themes conveyed in the analysis should be seen as reflecting the diversity of views and experiences of a wide group of stakeholders. Analysis of the extent to which specific professional groups or organisations hold particular attitudes or engage in particular behaviours would need to be the subject of separate investigation. The results of the current analysis, however, could be used to inform the development of such specific research questions.

- 23 The author was provided with a copy of one file from which all identifying details had been removed for the purpose of understanding the type of information and the manner in which it is recorded on the file, in order to assist with developing the template for the case-file review.
- 24 Although case-level data can also be averaged across one or more registries to produce registry-level data, registry-level data cannot be broken down. The number of cases for data on particular variables may be lower, due to missing data on some variables for some cases. Due to small numbers for a range of variables, significance tests were not applied.
- 25 Sometimes the only information that could be found was a line in an affidavit that referred to the department (e.g., "Ms X of the department contacted me"; "the department is always checking up on me"; or "I rang the department"). This was not counted as 'evidence', and so was coded as "Not known". Unless there is clear evidence on the file (e.g., a report, an affidavit, or a judicial request for same), it is not known if there has actually been an investigation. Where there are statements that refer to the department but without any clear evidence, this is coded as "Not known". However, when there is no reference to the department in any of the affidavits, applications and so on, it is coded as "No evidence from the department".
- 26 The reason for the difference between the duration from allegation to case outcome and the duration from listing as Magellan to case outcome (i.e., the delay between when the case commenced and when the allegations were raised), was usually that the allegations were not raised by the applicant, but were raised in responding documents. A common reason for the difference between the duration from allegation to case outcome and the total duration of the matter (i.e., the delay between when the allegations were raised and the matter was included in the Magellan list), was that the matter was held up in the FMC before being transferred to the Family Court.
- 27 This may be an underestimation, as some matters finalised less than 18 months prior to the date the file was reviewed.
- 28 A significant issue that warrants closer scrutiny is the fact that the Registrar reviewing the case-files only found evidence in four cases of a Judge having made a determination of "unacceptable risk" to the child. However, further information would need to be gathered from the files directly to see the reason for the finding of unacceptable risk, and how these four cases compare with cases where findings of "unacceptable risk" were not made. The summary information extracted for the purposes of the current case-file review do not provide the detailed required—such as the severity of the alleged abuse, the type of evidence put forward to support the allegation, and the role played by the statutory child protection department's investigations and conclusions.
- 29 Although legal aid commissions have discretion to increase the costs cap for a particular grant of legal assistance—if in its opinion undue hardship would otherwise be caused to an applicant for assistance or to a child who is the subject of an order for separate representation—it was agreed that for a trial period in Magellan cases, that these caps would be waived. Because of the waiver of the funding caps for a trial period, if the costs in a case have reached what would have been the relevant funding cap, the legal representatives of people who are entitled to legal aid have not needed to seek to have the cap increased.
- 30 The scope of the study did not include a focus on whether the views of distinct professional groups cohered. However, analysis of the qualitative data did identify that some perceptions of the effectiveness of the Magellan case-management system were common to particular groups of participants. It is only where one particular group had a consistent view, and that other stakeholders did not express this view that it is noted.
- 31 However, legal aid commission representatives felt that most Magellan cases—arguably because of the way they are being managed by the Court—are not reaching what would have been the cap. Even if the cap was in place, Magellan cases are the sorts of cases where the discretion to increase the cap would be exercised.
- 32 Data were not collected as part of the current evaluation concerning Court-ordered therapy/treatment, and whether such interventions actually occurred. This issue warrants further research as part of an evaluation of the impact on children and families.

- 33 S 69ZX of Division 12A, Part VII of the *Family Law Act 1975* (Cth) states that “The court may make an order in child related proceedings requiring a prescribed State or Territory agency to provide the court with the documents or information specified in the order.” S 69ZX also outlines the court’s powers to give directions or make orders about the matters in relation to which an expert is to provide evidence, as well as the number of experts and how such evidence is to be provided.
- 34 Although it was not a focus of the current project, it would also be important to consider children’s experiences of involvement with ICLs. Also, it would be interesting to know whether ICLs interviewed children directly more often in Magellan matters than other children’s cases. However, this was not a direct question that was put to the stakeholders in the focus groups, and whether it changed the frequency with which ICLs interviewed children was not an issue that was raised when discussing stakeholders perceptions of Magellan and how it differed from the way such cases had been handled in the past.
- 35 This was supported by the data from the case-file review (see Section 5). However, because of registry differences (0, 1 and 5 returns in the three Magellan registries), there was a similar proportion of returns overall (7.5%) as was found in the *Magellan-like* cases (6.3%). For further detail, see Table 8.2 in Appendix 8. Similarly, Hunter (2006) noted that “better outcomes for children are achieved by stable resolutions which do not break down or result in their parents returning to court for further litigation” (p. 56). In her evaluation of the CCP trial, Professor Hunter found that although survey data from parties showed that those who were part of the CCP trial felt the arrangements would work better and last longer (compared to the control group), this was not borne out by the case data. She found that analysis of the case files showed a greater number of appeals and subsequent applications in the CCP cases than the control group.
- 36 This was generally supported by the case-file analysis; however, 18.8% of Magellan cases (and 26.3% of *Magellan-like* cases) had evidence on file of allegations against mothers (see Table 5.2).
- 37 It should be noted that in parenting matters (including Magellan cases), Family Court Judges do not usually see or interview children in chambers. Consequently, the views of children about protection of harm and procedural justice may not be as salient for Judges as it might be for ICLs, Family Consultants or other professionals who interview children directly.
- 38 The object of Magellan, through its ‘one-court’ principle, is to try to eliminate the necessity for such subsequent action in a state/territory juvenile court. This relies on a full disclosure to the Family Court of the department’s investigations and protective concerns (via the “Magellan Report”), so that orders can be made that do not place a child at risk of harm.
- 39 This is a separate issue from arguing whether more resources are needed across the Court and each of the agencies with which it interacts in these matters in order to decrease delays in all cases (see sub-section on resource implications under “Improvements” in Section 6.5).
- 40 One factor is the cost of legal aid for Magellan cases. The Attorney-General’s Department is currently undertaking an analysis of data provided to it by the legal aid commissions.
- 41 Currently, the Guideline 14 of the Commonwealth Legal Aid Funding Priorities and Guidelines (“Assistance after final court orders”) states that “a grant for legal aid assistance is not available for any action undertaken after final orders in relation to a family law or child support matter have been made...” and then lists some exceptions, such as enforcing a final or interim court order. As it currently reads, the funding guideline does not provide for ICLs to do things that according to some views, should properly be done as a consequence of the order. ICLs usually are required to do work incidental to final orders, for example, explaining orders to children, forwarding copies of reports to child protection agencies or medical professionals and organizing initial appointments for counselling or therapy which may have been provided for in final orders. This work is considered necessary and appropriate, but is not covered by a separate grant of aid.