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Review of the ACT Care and Protection Intensive List

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We acknowledge and celebrate the Aboriginal and Torres Strait Islander peoples on whose traditional lands we meet, work and live, and we pay our respect to their Elders past and present.

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Acknowledgments

We are grateful to the Australian Capital Territory (ACT) Courts and Tribunal for the opportunity to undertake this project. We thank stakeholders from the ACT Children's Court, Legal Aid ACT and ACT Child and Youth Protection Services for their assistance in completing this project. All three agencies were very helpful in responding to the questions and forthcoming with information about the program, especially in the limited timeframe available.

All errors are the authors' own.

Executive Summary

Many parents in the care and protection systems experience complex and co-morbid issues that may in some cases trigger protective concerns, which lead to the removal of their children and act as a barrier to reunification. In 2021, the Australian Capital Territory (ACT) established the Care and Protection List (CPIL) for care and protection matters heard in the Children's Court (the Court). The CPIL is underpinned by therapeutic jurisprudence principles and aims to work towards reunification, where found to be in the best interests of the children. There are numerous eligibility criteria associated with program, including:

- the parent is committed to change and consents to participating;
- the risk of neglect or harm arises particularly because of a dependency on alcohol or other drugs; family violence; or parenting capacity;
- the parent has no mental health conditions, which in the opinion of the eligibility assessor, would prevent them from complying with the program obligations; and
- there is an application before the Court for long-term orders under the *Children and Young People Act 2008* (ACT), in relation to the children.

If found eligible, matters are assessed for suitability. This takes into account the children's needs, the parenting issues identified, and the recommended short-, medium- and long-term goals for families. This report then forms the basis of a family recovery plan.

Review methods

This report presents the findings of a rapid review of the CPIL undertaken during a five-week period in October-November 2023. The methodology adopted therefore reflects the limited time-frame for undertaking the project. The review is based on interviews with six representatives from Child and Youth Protective Services (CYPS) and the Court, as well as written comments provided by Legal Aid. We also received de-identified administrative data collected by the Court for families referred to the program, and reviewed the *Practice Direction Childrens Court No. 1 of 2021 – Care and Protection Intensive List* (ACT Childrens Court 2021), which is the governing document for the CPIL.

There are significant limitations associated with the methods we used for the current review. In particular, because of the small sample size and absence of a comparison group, we are unable to make an assessment of the impact of the CPIL, relative to the traditional care and protection pathway. Further, the data necessary to undertake a detailed evaluation is not currently being collected by the Court in a format suitable for analysis.

Families referred to the CPIL

Since its inception, CPIL has received 12 referrals. In seven of the 12 referrals (58%), at least one of the parents was the subject of an assessment report. In five of the seven applications

where an assessment was undertaken (71%), at least one of the parents was deemed suitable for CPIL. In the cases where the matter was not found suitable, this was because reunification was considered unlikely.

Of those five matters found suitable, four had been finalised at the time of data extraction. In two cases, final consent orders had been put in place. In one case, one parent (the father) had withdrawn from the proceedings, while the other parent (the mother) had agreed to consent orders. In the final case, the Director-General formally withdrew from the proceedings.

Benefits of the CPIL

Stakeholders identified a number of benefits associated with the CPIL for participating families and agencies. This included:

- increased ability for the parents to have a say in proceedings, actively engage with support services, address underlying issues, and feel more comfortable in the 'circle court' setting;
- the increased accountability of CYPS case management decisions and updates for parents from a broader range of organisations; and
- increased attempts at restoration and fewer long-term orders being made.

Further, because the Court is underpinned by therapeutic principles, the respondents viewed the proceedings as less adversarial, contributing to improved relationships between the different participating agencies and families. In turn, it was suggested that families were more willing to share unfavourable information with the Court, including drug relapses.

In recognition of these benefits, stakeholders overall agreed that there was a need for a program like CPIL in the ACT.

Challenges associated with the CPIL

Although stakeholders identified benefits associated with the program, they also outlined a small number of issues. In particular, there was a perception among some stakeholders that matters referred to the CPIL took longer to finalise than the traditional care and protection pathway, which is not in the best interests of affected families. Part of this issue arises because the 12-month period does not include the period during which suitability is being determined. Stakeholders reported that the wait times for suitability assessment meant that families were in the system for longer than the 18 month time-frame envisaged for participation in the program.

Another concern identified by representatives from all three agencies was about the point in time at which a matter becomes eligible for the CPIL. Several stakeholders suggested that,

to minimise the amount of time before a matter is finalised (and ideally children are restored), the eligibility criteria for the program should be amended to allow applications to be made earlier in the proceedings, for example when the Director-General makes an application for an order after taking emergency action. Referring matters at the time of emergency action would also have the potential benefit of maximising family engagement in the program. Stakeholders noted that emergency action often increases families' motivations to enter rehabilitation and to engage with the Court.

A number of other challenges were identified by stakeholders, including the absence of mental health services in the delivery of the program and lack of suitable and affordable housing options. Our analysis of the Practice Direction also identified a number of issues for review and revision, both as to its form and substance.

Recommendations

Recommendation 1: Clause 6(c) of the Practice Direction be amended, to remove the eligibility criterion that there be an application before the Court for long-term orders.

Recommendation 2: The Practice Direction should be reviewed and revised, to promote accuracy, consistency and clarity.

Recommendation 3: There is a need for training and guidelines about the program, to ensure a clear understanding of stakeholders' and participants' roles.

Recommendation 4: Consideration be given to including a wider range of stakeholders in progress review conferences, including people with expertise in mental health, AOD and domestic violence.

Recommendation 5: Staff involved with the delivery of CPIL should work collaboratively with researchers to improve their capacity to monitor the implementation and impact of the program on an ongoing basis. This should include use of a comprehensive data collection protocol with families on commencement, during the program and on completion, as well as information about families who are initially referred but deemed ineligible.

Recommendation 6: The CPIL should be evaluated in more depth, to determine its impact on participating families and agencies. This should involve:

(a) the inclusion of a comparison group, to assess the CPIL against the traditional care and protection pathway; and
(b) consultation with a larger pool of stakeholders, including CPIL participants and members of the ACT Aboriginal and Torres Strait Islander community.

Recommendation 7: If the other recommendations are implemented, it is likely that additional resources will need to be allocated to the CPIL, to ensure that the program is able to respond effectively to a larger case load; facilitate the engagement of key services (e.g.,

mental health); and support the development of data collection systems, to monitor the program's implementation and impact.

1. Introduction

Many parents in the care and protection systems experience complex and co-morbid issues that may in some cases trigger protective concerns, which lead to the removal of their children and act as a barrier to reunification. The purpose of family drug treatment courts (FDTCs, also known as family drug and alcohol courts, or FDACs) is to ensure the safety and wellbeing of children, while addressing the underlying parental substance use or other issues that have led to child protection involvement. The main aims of these courts are to reduce parental alcohol and/or drug misuse and related problems and increase reunifications, and they provide a more intensive and treatment-oriented approach to child protection matters (Brook, Akin & Lloyd 2016).

Despite their growth in use, well-designed robust evaluations of FDTCs are infrequent. However, the limited existing evidence about the effectiveness of FDTCs shows that, in comparison to mainstream child protection court proceedings, they result in:

- higher reunification rates;
- more significant decreases in parental drug and/or alcohol use; and
- shorter times spent in the child protection system (see e.g., Hall 2020; Mersky et al 2023; Moore et al 2020; Tach et al 2022; cf de Bortoli et al 2018).

This model was first adopted in Australia in the Victorian FDTC, which was launched in 2014, within the Family Division of the Children's Court of Victoria (CCV). An evaluation of this program (de Bortoli et al 2018) found that participants valued personal nature of the support they received and that the program was based upon honesty and compassion and support, rather than blaming and judging. Participants also felt they had a greater understanding of drugs and their drug addiction and had an opportunity to reflect upon their attitudes and values. Overall, almost all participants rated the Victorian FDTC 10 out of 10. The evaluation also found that FDTC clients were, on average, engaged with the FDTC and the CCV for 322 days longer, compared with clients in the traditional pathway, but they were 1.6 –2.5 times more likely to be re-unified with their children, compared with the traditional CCV pathway or those exited from the program by the magistrate. Furthermore, despite the longer engagement overall, it was considered likely that the FDTC is slightly more efficient than the mainstream CCV process, if clients are inducted into the program at an earlier point during the child protection process.

The Care and Protection Intensive List (CPIL) in the Australian Capital Territory (ACT) adopts the principles of the Victorian FDTC, extending the inclusion criteria beyond parent's drug and alcohol use to other protective concerns, including family violence and issues related to parenting capacity.

This report presents the findings of a rapid review of the CPIL. This list sits in the Children's Court (the Court), a division of the ACT Magistrates Court. Care and protection proceedings in ACT are governed by Chapters 10-19 of the *Children and Young People Act 2008* (ACT) (the Act). Section 433 of the Act empowers the Court to make an interim care and protection order for a child or young person, if an application for such an order has been made but not finally decided and 'the court believes on reasonable grounds that the child or young person is in need of care and protection or would be in need of care and protection if the interim care and protection order was not made' (s 433(1)(b)).

Under s 464(1) of the Act, the Court may:

> make a care and protection order for a child or young person if the court—
> (a) is satisfied that the child or young person is in need of care and protection; and
> (b) has considered the care plan prepared by the director-general for the child or young person; and
> (c) is satisfied that—
> (i) the provisions included in the order are necessary to ensure the care and protection of the child or young person; and
> (ii) making the order is in the best interests of the child or young person.

As the ACT Government's Community Services webpage explains:

> Child and Youth Protection Services (CYPS) is the ACT Government agency that investigates the wellbeing of Canberra's children who may be at risk of abuse or neglect.
> An **interim Care and Protection Order** is usually granted when [CYPS] first apply to make short-term arrangements for your child, and to provide time to review the arrangements before finalising the order. This time is used to see how your child responds to their new arrangements and to note what changes (if any) you can make in that time.
> This could include getting appropriate accommodation, a violent partner leaving your home, entering a detoxification or rehabilitation program, or building a successful working relationship with us.
> A **final Care and Protection Order** is granted when the ACT Childrens Court is satisfied it has enough information to decide your child *is* in need of care and protection and making a Care and Protection Order is in your child's best interests. A final order is usually made for either one or 2 years, or until your child turns 18 (ACT Government 2023: np).

These two types of orders are generally known as 'short-term orders' and 'long-term orders' respectively. Under s 476 of the Act, a final order allocating short-term parental responsibility will be made for one year for a child under the age of two and for two years for a child over this age (although this can be extended, under s 477). Section 481 applies in

relation to *long-term parental responsibility provision* (ie, long-term orders) and, as noted above, these orders remain in place until the child is 18.

1.1 The Care and Protection Intensive List

In the 2019-20 budget, the ACT Government committed resources to:

> establish a Therapeutic Care Court for care and protection matters heard within the Children's Court. This will provide court-led interventions for parents whose children have been removed from their care, or are at risk of being removed, and seek to achieve re-unification and address parental substance abuse issues, parenting capacity issues, family violence, and mental health issues (ACT Government 2019: np).

The CPIL was established as a result, informed by a confidential report to the ACT Magistrates Court on the role of therapeutic jurisprudence (TJ) in the management of care and protection matters before the ACT Children's Court (Taplin et al 2017).[1] The stakeholders consulted for that report recognised that parents in the ACT have 'complex co-morbid issues and many lack support to manage these issues (2017: 21). As with the Victorian FDTC model, some stakeholders discussed parents' fear of having their children removed and were therefore unwilling to seek help for drug/alcohol, family violence and/or mental health problems.

Some of the concerns identified about the proposed model included reservations about progressing too quickly with the proposed pilot (although CPIL did not in fact commence for some time after the report was completed) and the need for a culture shift in the courts, given the prevailing adversarial model. There was also concern about a lack of services in the ACT. However, there was generally broad support for the model. As discussed in Section 3 of this report, a number of potential benefits were identified.

The CPIL is a proceeding within the Court, whose legislative framework is provided in the Children and Young Persons Act 2008 (the Act).[2] Its operation is governed by a Practice Direction (ACT Childrens Court 2021), which is included as an appendix to this report. The following material draws principally on the Practice Direction.

- The CPIL is an alternative to regular care and protection proceedings and will ordinarily take 12 months. However, an earlier determination may be made in certain circumstances, or the process may be extended to up to 18 months.

[1] Two of the authors of the present report (Bartels and Suomi) were also co-authors on that report.
[2] For reasons that are not entirely clear, the Practice Direction refers to the *Children and Young Persons Act* (emphasis added), while the relevant part of the ACT Courts website refers to the *Children and Young Person Act* (emphasis added).

- The CPIL provides an opportunity for a parent/parents (parent) in relation to whose child/ren or young people (children) CYPS has made application for long-term orders to participate in a court-mandated process.
- The aim is either immediate restoration of children to their parent's care at the completion of proceedings or short-term orders with planned restoration, where that is found to be in the best interests of the children.
- If the Court at any point forms the opinion that restoration cannot foreseeably be ordered in the children's best interests, the process will be terminated, and long-term orders made.

Eligibility

Eligibility for participation is based on the following criteria (see Appendix, cl 6):

- the parent is committed to change and enters the program voluntarily;
- the children are assessed by the Director General for Community Services Directorate (DG) as in need of care and protection and:
- the risk of neglect or harm arises particularly because of:
  - a dependency on alcohol or other drugs;
  - family violence; or
  - parenting capacity;
- the children are in out of home care or at risk of removal;
- there is an application before the Court for long-term orders under the Act in relation to the children;
- the parent accepts the need for therapeutic intervention and consents to interim care or protection orders in a form approved by the Court;
- the parent consents to participate in the CPIL eligibility and suitability assessment processes and to the assessors accessing their mental health records, as required;
- the parent has no mental health conditions, which in the opinion of the eligibility assessor, would prevent them from complying with the program obligations;
- if the parent is unable to comply with the requirements of the program, so that the magistrate determines that the process must be terminated, all parties consent to the magistrate determining the application on the papers; and
- there are no serious plausible allegations of physical or sexual abuse by a parent.

In addition, eligibility for parents with pending criminal matters before a court will be assessed on a case-by-case basis for suitability and may be deferred entry into CPIL until their criminal matters are resolved. Where they are engaged in Warrumbul, Galambany or Supreme Court Drug and Alcohol Sentencing List (DASL) processes, they will be assessed in consultation with the co-ordinator of those processes, to ensure their suitability for participation and co-ordination of services.

Referral process

If all the eligibility criteria are met, a parent or their lawyer may apply for a suitability assessment. The form for this is available on the Court's website (ACT Childrens Court nd) and includes a consent sheet. This asks the parent a range of questions, including whether they consent to a criminal record check and urinalysis, the number of children in the family and how many are in out-of-home care, and why they want to participate in the program. A copy of the completed form is to be provided to the DG and the children's lawyer.

In some instances, an additional clinical screening is ordered, and conducted by mental health, social work and/or drug and alcohol workers employed by ACT Health, who are allocated to provide support to the courts. They review the parent's ACT mental health records and any reports provided to them at the direction of the registrar.

Once the eligibility form and assessment are prepared, the matter is listed at the first available time before the CPIL magistrate. At this point, the DG or children's lawyer may object to the parent's application to have their matter dealt with in CPIL.

Suitability assessment process

The review team was advised by the Court that, as part of the assessment process, the independent assessors use a number of assessment tools, including:

- the Domestic Violence Safety Action Tool (DVSAT);
- the Alcohol, Smoking and Substance Involvement Screening Test (ASSIST);
- the BASC-3 PRQ;
- the Paulhus Deception Scales;
- the Assessment Checklist for Children (ACC);
- the Short Hardiness Scale (updated); and
- the Forensic Social Network Analysis (FSNA).

Where a parent is identified as eligible, their referral form, together with signed parental consent and potential clinical screening, is referred by the CPIL magistrate to an independent family assessor. If a report is ordered, the assessor will prepare an independent family assessment report for the Court. The terms of reference for this report are determined by the CPIL magistrate under the Act, and a copy of the report is provided to all parties. The report focuses on:

- the children's needs, taking into account their age, developmental ability and psycho-social factors and support needs for the short and long-term; child's wishes where appropriate.
- parenting issues that have been identified;
- the relationship between the parent and the child, including information about other relevant family members, such as siblings.

- recommendations for short, medium and long-term goals for families, placement of the child and contact arrangements, if applicable, with recommendations around interventions or support services to support the family in achieving these goals.

The report forms the basis of a family recovery plan and includes a recommendation that the parents are either suitable or unsuitable for the CPIL.

The Practice Direction states that the CPIL magistrate will ordinarily follow the report recommendation; otherwise, they must provide reasons for not doing so.

If a parent is found unsuitable for the CPIL, they will be informed of this outcome and the matter will be listed for a care and protection case conference for progression in the regular Court list.

Views of children or young people

In accordance with the Act and *Court Procedure Rules 2004* (ACT), children are entitled to have their views and wishes considered by the Court and participate in the proceedings before the Court. They are represented by a lawyer and may participate in CPIL, consistent with their best interests, having regard to their wishes and capacity. This participation may include meeting with the magistrate or being invited attend or participate in progress review conferences. CPIL may also engage an intermediary.

Progress of matters after suitability asessment

If the parent is found suitable by the assessor for CPIL, a family recovery plan is developed by the co-ordinator, to present to the CPIL magistrate. The family recovery plan is developed from the independent family assessment report and any clinical or health recommendations available to CPIL. It has regard to the care concerns of the DG under the CYP Act. It identifies the supports required to assist the parent, child or family.

The family recovery plan should be developed in collaboration with the parent. Where alcohol and other drugs (AOD) are identified as risk factors, CPIL adopts a harm minimisation approach.

The family recovery plan is provided to all parties and any relevant party will have time to consider it before a conference with the CPIL magistrate, who then makes necessary orders. The parent must sign their commitment to comply with the orders at that conference. The co-ordinator is the conduit for communication between the court, parties and referred services and assists with coordination of services for the participating family. The DG is responsible for ensuring funding and access to identified support services. Progress review conferences are held as scheduled by the CPIL magistrate. These are intended to be an informal meeting between the Court and the parties, with the aim of supporting the family

to achieve identified recovery goals. It is expected that the following attend these conferences:

- the CPIL magistrate;
- the parent;
- the parent's lawyer;
- the CYPS dedicated CPIL lawyer;
- the CYPS case worker;
- the children's lawyer; and
- the co-ordinator.

In addition, AOD clinicians, mental health supports, domestic violence case-workers and/or support people may request or be requested to attend these conferences. It may also be appropriate for the children and/or extended family to attend or provide information to CPIL. The Public Advocate also has a statutory power to attend.

CPIL phases

Consistent with the approach adopted in drug courts (see e.g., Rossner et al 2022), there are three phases to the CPIL process:

- stabilisation and compliance monitoring (minimum four months);
- building foundations and progression (minimum three months); and
- consolidation and restorative phase (minimum three months).

The children may be restored to the parent during any phase of the program, but the parent must complete the program while an application remains before CPIL.

The CPIL magistrate may direct family group conferencing between the parties or other individuals during any of the CPIL phases.

Completion of CPIL phases

Upon successful completion of all three phases, the CPIL magistrate will make a decision about the application, in accordance with the Act. If a parent takes longer than 12 months to complete the program, the CPIL magistrate may extend the time to complete the program by up to six months. The maximum time a parent has to complete the CPIL process is 18 months from the date of the first progress review conference.

1.2 Report overview and structure

The following section provides our methodology, including comments on its limitations. In Section 3, we synthesise our findings. We provide an overview of the cases that have been

referred to the program and comment on those that have entered into the program and the outcomes to date. We also highlight stakeholders' perceptions of CPIL's benefits and challenges, noting in particular issues with the point in time at which matters are eligible to enter into the program. We also review the Practice Direction, drawing attention to areas in need of review and revision. The final section provides our conclusions, directions for a future, more comprehensive evaluation, and recommendations to improve the program.

2. Methodology

This report presents the findings of a rapid review of the CPIL, undertaken during a five-week period in October-November 2023. The methodology adopted therefore reflects the limited time frame for undertaking the project. As discussed with the Court, the review methodology was restricted to the analysis of the following information:

1. deidentified administrative data from:
   (a) the courts;
   (b) Legal Aid; and
   (c) CYPS; and
2. consultations with representatives from:
   (a) the courts;
   (b) Legal Aid; and
   (c) CYPS.

2.1 Administrative data

The Court provided the review team with adataset with limited details about the program, including how many parents/families were referred to the program, referred for suitability assessment, assessed, found suitable, commenced and finalised the program.

2.2 Consultations

For the consultations, the three agencies agreed on the following questions and the Court provided them to the review team by email, together with the contact details of relevant stakeholders in each agency:

1. What is the number of children who have been restored to the care of their parents at the conclusion of the CPIL program?
   a. What are some of the other peripheral benefits recognised by agencies during the CPIL process *eg. improved behaviour of parents at contact, more consistent attendance at contact, engagement with support services, secured housing*?
2. What is the number of children who have since been removed from the care of their parents following restoration to their parents at the conclusion of the CPIL program?
3. How many parents have exited/been exited from the CPIL program?
4. How many matters have returned to the traditional care and protection pathway in the Childrens Court?
5. What are the timeframes from the point of entering the CPIL to the finalisation of the matter?
   a. How does this timeframe compare to matters travelling through the traditional pathway?

6. What are the benefits for participating agencies in the CPIL program?
    a. Eg increased collaboration with other agencies or services
7. What re the challenges for participating agencies in the CPIL program?
    a. Eg funding, staff capacity and relevant level of experience of staff required
    8. Is the eligibility criteria for consideration of entry into the CPIL program suitable?

Many of the questions related to administrative data, rather than how the program is operating, and it emerged that Legal Aid and CYPS do not keep records on the families that participate in the program. As such, they were unable to answer these questions.

The email from the Court with the questions above also included the following text:

> Evaluate, compared to the traditional pathway:
>
> - outcomes for parents participating;
> - outcomes for children subject of the proceedings; and
> - outcomes agencies participating [sic].

Unfortunately, without consistent data on outcomes for the CPIL or traditional pathways, we are not able to do this effectively. We suggest in the future including the review team in all aspects of research design, to ensure realistic research questions and high-quality data. We recommend that consistent and comparable data be collected on both pathways, to allow a meaningful comparison.

A representative from Legal Aid provided written feedback in response to the questions above (to the extent possible). We also conducted one discussion with three representatives from CYPS and another discussion with two representatives from the Court, in relation to the questions above. Towards the end of the review period, we spoke with the CPIL magistrate. The questions for this discussion are set out in the Appendix.

All discussions were audio-recorded with the participants' permission.

2.3 Limitations

We acknowledge the significant limitations of the methodology adopted. Table 2.1 sets out the components we ultimately included in this review, alongside the elements of Taplin et al's (2017) evaluation design for the proposed ACT therapeutic care and protection court and the evaluation of the Victorian FDAC (de Bortoli et al 2018).

Table 2.1: Comparison of evaluation components

	The present methodology	Taplin et al evaluation design (2017)	de Bortoli et al (2018)
Interviews with… - parent participants - program staff - service providers - stakeholders	 - ✓ - ✓	 ✓ ✓ ✓ ✓	 ✓ ✓ - -
Staff survey	-	-	✓
Administrative data collected by the court on participants, with an appropriate comparison group(s)	limited data, no comparison group	✓	✓ (including linked administrative data)
Court observations in court, including team meetings and decision-making	-	✓	✓
Case file analysis	-	✓	✓
Data on the social and other economic impacts of the program	-	✓	-

Section 3 synthesises our findings, based on the information provided by the Court, Legal Aid and CYPS, as well as other relevant information, including the Practice Direction (ACT Childrens Court 2021) and Taplin et al's (2017) report.

3. Key findings

This section summarises the key findings from our interviews with six stakeholders from CYPS and the Court, written comments from Legal Aid, data provided by the Court, and other relevant documentation.

We present some data on participants, including case flow into the program, and the perceived benefits of, and challenges with, the program. We also provide some comments on the Practice Direction, which governs CPIL's operation.

A significant portion of the Taplin et al (2017) report was dedicated to the needs of Aboriginal and Torres Strait Islander families. It is well established that Aboriginal and Torres Strait Islander children are over-represented in the ACT care and protection system and there have been some efforts to address this (see e.g., Our Booris, Our Way 2019). Unfortunately, this issue did not arise in any of our discussions and no data were provided on this, due to the small number of families. The review team is therefore unable to make any comments in relation to this. Any future evaluation should consider this issue further, including consultation with representatives of the ACT Aboriginal and Torres Strait Islander community about the CPIL, as Taplin et al (2017) did about the proposed therapeutic care and protection court.

3.1 Administrative data

As noted above, CYPS and Legal Aid do not keep any data about individuals participating in (or seeking entry to) CPIL. This limits these organisations' ability to assess the impacts or resource implications of the program. The following material draws on administrative data about cases referred to CPIL collected and provided by the Court.

In order to maintain participants' confidentiality, the information we received from the Court did not contain any details about the parents (e.g., the nature of the issues they were experiencing) or the children (e.g., gender, age). We also did not receive any information about the number of children in the families that were not deemed eligible or suitable for CPIL.

Since its inception, CPIL has received 12 referrals. Five were referred in 2021, three in 2022 and three in 2023. In one case, the mother was referred to CPIL in 2022 and the father in 2023.

As set out in Table 3.1, in seven of the 12 referrals (58%), at least one of the parents was the subject of an assessment report. In four applications (33%), neither of the parents was the subject of an assessment, because the matter was deemed unsuitable for inclusion in the program. In one case (8%), the assessment was pending at time of data extraction (i.e., the assessment had not started).

Table 3.1: Outcomes of referrals to the CPIL, by case

	Assessment undertaken	Found suitable	Commenced	Finalised
Case 1	Yes	Yes	Yes	Yes – DG withdrew
Case 2	Yes	No	-	-
Case 3 (Parent 1 - Mother)	Yes	Yes	Yes	Yes – Consent orders
Case 3 (Parent 2 - Father)	Yes	Yes	Yes	Yes – parent withdrew
Case 4	No	-	-	-
Case 5	Yes	Yes	Yes	Yes – Consent orders
Case 6	No	-	-	-
Case 7	Yes	No	-	-
Case 8	Yes	Yes	Yes	Yes – Consent orders
Case 9	No	-	-	-
Case 10	No	-	-	-
Case 11 (Parent 1 - Mother)[a]	No	-	-	-
Case 11 (Parent 2 - Father)	Yes	Yes	Yes	Yes – Consent orders
Case 12	Pending	-	-	-

a: The mother was the subject of a disputed diagnosis meaning that her assessment could not be completed. At time of data extraction, her matter had been finalised by way of consent orders without her ever being a CPIL participant.

Source: ACT Courts CPIL administrative data 2021-2023

In five of the seven applications, where an assessment was undertaken, at least one of the parents was deemed suitable for CPIL (71%). In an interview with a Court stakeholder, it was explained that, where cases were not found suitable, this was because there did not appear to be any prospect of restoration in 12-18 months and there was just 'too much going on' for there to be any prospect of the child going back to live with the parent. This was considered to be due to psychiatric issues, rather than substance abuse. As a Court stakeholder noted:

> It's mental health issues, particularly where the parent won't acknowledge the issue and where they won't accept the diagnosis and it's not worth spending the money on the report… [by contrast] people with substance abuse issues struggle but, so far, 12-18 months has been enough to sort that out.

Of those matters found suitable, at time of data extraction, five had been finalised. In three cases, final consent orders had been put in place. In one case, one parent (the father) had withdrawn from the proceedings, while the other parent (the mother) had agreed to consent orders. In the final case, the DG formally withdrew from the proceedings.

In an interview with Court staff, further advice was provided that the program had resulted in nine children being restored to their parents. However, at time of writing, one child was subsequently the subject of emergency action and now has a further order in place to age 18.

3.2 Benefits of the program

As noted in the introduction, programs of this nature have a number of potential benefits. Taplin et al interviewed key stakeholders, to inform the development of a therapeutic care and protection court. They found that stakeholders anticipated that:

> if set up properly, a therapeutic court would result in more reunifications and success in helping parents to manage their drug and alcohol use and other problematic issues.
>
> …While reunification was thought to be one clear measure of success for the therapeutic court, reductions in drug and alcohol use or mental health issues, and increased engagement with services were also mentioned as potential positive outcomes of the therapeutic approach. Some other potential successes identified included increased emotional health of family members and/or positive relationships between the parent and child, even in cases where reunification was not possible.
>
> Even small impacts, such as the parent feeling like they were heard and supported, were considered as positive outcomes, although these impacts are subjective and less straightforward to measure. Other more abstract outcomes mentioned were shifting the power balance between the Court and families, to a situation where the Court has the potential to empower parents to take action towards reunification. It was thought that the opportunity for the parents to work towards mutual goals with the Court would result in more positive outcomes for both parents and their children. A shift to a client-centred approach in court hearings was considered a central prerequisite for the therapeutic effects of the Court (2017: 31-32).

It is of course early days in the life of the program, so it is difficult to say with confidence whether any of these impacts have been achieved and to what extent, especially considering the limited stakeholder consultation undertaken for the present review. Further, assessing the impact of CPIL against some of these anticipated outcomes would require the inclusion of a comparison group. Nevertheless, all three agencies agreed that there were a number of benefits to the program. In fact, one Court stakeholder said 'If I had my way…every family would go through that sort of system [ie, CPIL], it's great and there should be more of it'.

These perceived benefits include:

- increased ability for the parents to:
    - have a say in proceedings;
    - actively engage with support services, address underlying issues, and feel more comfortable in the 'circle court' setting;
    - raise unfavourable information, such as drug relapses; and
    - be more willing to work with CYPS;

- better relationships between all of the stakeholder groups (ie, Legal Aid, CYPS, the Court and parents), in a less adversarial environment;
- increased accountability of CYPS case management decisions and updates for parents from a broader range of organisations; and
- increased attempts at restoration and fewer long-term orders being made, which was thought by one stakeholder to be in society's interest.

A Court stakeholder spoke about the 'tremendous value in the empowerment of parents, when they're successful'. A CYPS stakeholder observed that:

> there is some value to it [CPIL]… particularly where it's a family where we've removed elder children as well. There is such a level of distrust and resentment towards CYPS. And I think if they're at a point in their lives where they can start to turn things around, having that magistrate there who tells us what to do essentially makes them feel more heard as part of the process and that they're getting a fairer go.

Similarly, a Court representative described another aspect of the CPIL that was potentially empowering for the parents:

> I think this is relevant … that it's a self-referral process for the parents, so we're looking at parents that do want to be involved, as opposed to parents that may have been referred by the solicitor, without any real understanding of what it would entail.

Another perceived benefit of the program, according to CYPS, was that:

> even if restoration can't be achieved, there can be other benefits like a parent, their attendance at contact is better. The quality of the contact is better. So even if restoration is not achieved, there is benefit for the child…I think if, you know, we've got a parent who has issues with addiction and or some mental health difficulties, if they're able to address one or both of them, even to a minor degree, it means that, when they're at contact, they are present. They're attuned, the contact is about relationship-building and the child knowing their parent.… They're there. The child knows that they mean something to that parent, so that that's a positive for the child, even if it means we can't restore. At least we've got a parent who is present, who is making an effort, and then the child can look back and go, 'You know, Mum still came and saw me. She wanted to know me.' And that's a huge thing for a kid.

Representatives from both CYPS and the Court were supportive of the more therapeutic, collaborative model underpinning CPIL. As a CYPS stakeholder put it:

> …you don't have that serious confrontation that parents do, in relation to what they have or have not done with their children….that gets back to having a much more convivial experience with all the people there, parents having a chance to speak to the magistrate and others involved and have a reasonable discourse about what's happening, why it's happening and where we're trying to get to. It is a much, I think much more positive way for all the parents to if you like, communicate with the court.

According to a representative from the Court, the less adversarial process has led to better parental involvement and improved contact with children in each case that has entered CPIL, even where there has not been restoration. It was suggested that:

> We have not had a matter as a whole where that engagement has deteriorated… there hasn't been a proceeding after referral to CPIL where things have broken down to where it looks worse than what it would be in the traditional pathway.

As CYPS noted above, this is itself a beneficial outcome for children. Although the numbers to date are very small, on the basis of these limited experiences, it does appear that the therapeutic approach encourages parents to engage more constructively with CYPS and their children.

Court representatives also stressed the benefit of the less adversarial relationship for court professionals:

> You have all the parties [CYPS, Legal Aid and the Court] with a very similar end goal, as opposed to competing end-goals. So the general engagement, general compliance, general understanding of why these processes are being done is fairly consistent amongst all the parties.
>
> …When a matter first comes to us [in CPIL] the dynamics of how everyone interacts is very different to how the dynamics will be three-quarters of the way through and you quite often see that achievements are made in all areas.

There were positive comments about all of the organisations involved, including the effective collaboration in the program. A CYPS stakeholder commended the CPIL magistrate. The diligence of the CPIL co-ordinator was also commended, as someone who is 'passionate about the assistance that he can provide to this program. It works because he's there and makes it work…he's very good at what he does'.

One Court stakeholder hoped that the process was 'changing the mindset of CYPS' and described a case where a parent was able to change a senior practitioner's viewpoint about what change was possible, in terms of reducing drug use. This suggests that the architecture of the program is designed to support a less adversarial approach and this is valued by all of

the stakeholders we engaged with. Future research should confirm these findings with a larger pool of stakeholders, including CPIL participants.

It is harder to say definitively whether the program is changing outcomes. As the Legal Aid written comments noted, 'most of the matters [we've] been involved in as child representative have culminated in shorter-term orders being made for restoration, but whether the restoration has occurred is unknown as the CPIL process ends at the making of the shorter order'. One representative from Court likewise said they were unable to indicate whether the children who had been returned to their parents' care would have had a similar or different outcome in the traditional pathway. By contrast, another Court representative suggested that it was 'highly unlikely', in two of the three cases, that the children would have been restored to their parents in the traditional pathway, because of the adversarial nature of the proceedings in that context. This reaffirms the importance of including a comparison group, when conducting program evaluations of this nature, as well as reinforcing the comments above about the benefits of the non-adversarial environment that all stakeholders agreed on.

Finally, one stakeholder from the Court thought there were cost savings to the government and community, because of the perception noted above that the restorations would not have occurred in the traditional pathway. However, it was acknowledged that there was not currently data to support this. In this context, it should be noted that the costs for the program were considered to be limited and mostly met within existing court resources. The main additional cost is for the reports, which cost $10,000-$14,000 each.

3.3 Challenges of the program

Despite the comments above, there were a range of concerns about how the program is operating; indeed, one of the stakeholders was 'not a great fan of CPIL at the moment'. The principal issues appear to be around *time* and *timing*, which all three stakeholder organisations raised. This is important, as the evidence on FDTCs suggests that shortening the time a family spends within the child protection system is a key benefit.

One concern was about the time it takes for a case to be finalised in CPIL. It was suggested by CYPS that there have been cases that:

> have been before the CPIL for many months before a decision is made to send it for an eligibility assessment. In one particular matter, the matter has been before the CPIL magistrate for over 12 months, without an eligibility assessment. One is now being considered, despite the parent having taken the steps to engage in the services needed and undertaken other assessments as required.

Part of this issue arises because the 12-month period does not include the period during which suitability is being determined. A court stakeholder suggested that some of the delays relate to issues with obtaining reports and the lack of service providers in CYPS,

> so instead of getting swift turnaround family assessments at the beginning, they're taking many, many months, where the Act looks for 10 weeks orders,[3] that's rarely fulfilled, so things are dragging out and unfortunately the Act seems to have envisaged that there would really be final short-term orders, but they seem to be growing into 18-year applications, because of the length of the litigation…we have far too many files that have had way too many times before the Court, without things happening…the file's been kicked down the road for too long.

As shown in Table 3.2, analysis of the administrative data provided by the Court indicates that the time between an application being received, and an assessment report being completed, ranged between 36 and 262 days. However, there was one matter (Case 5) that took over 12 months to be listed. As set out in the notes, this parent had two children and these data relate to the child whose matter took longer to progress through the program. There was also one matter (Case 11) where the mother had been referred over 12 months previously and there had still not been any assessment report.[4]

Table 3.2: Time taken for matters to progress, by case (days)

	Referral to assessment	**Referral to first court listing**	**Referral to finalisation**	**Assessment to finalisation**
Case 1	36	42	127	91
Case 2[a]	93	-	-	
Case 3 (Parent 1 - Mother)	208	216	711	503
Case 3 (Parent 2 - Father)[b]	262	285	-	
Case 5[c]	178	373	700	522
Case 7	65	-	-	
Case 8	97	153	252	155
Case 11 (Parent 2 – Father)[d]	90	91	-	-
Range	36-262	42-373	127-711	91-522

Note: Sample limited to cases where an assessment was undertaken

a: Case was found unsuitable for CPIL.

b: Parent withdrew from participation before orders were made.

c: Parent had two children whose matters progressed at different times through the program. Times have been calculated based on the longer timeframes.

d: Information about date of cessation not available. Cf fn 3 above.

Source: ACT Courts CPIL administrative data 2021-2023.

[3] See *Children and Young People Act 2008* (ACT) s 449(b).

[4] Additional information provided by the Court confirmed that this was due a disputed clinical diagnosis that was being resolved before the CPIL independent family assessment could occur. We were also advised at this time that 'the matter has now completed by way of consent orders for both parents without the mother formally becoming a CPIL participant'. However, as we had already completed our analysis of the cases, we have not altered the data and discussion, in light of this additional information.

There was also a perception that it takes matters longer to be finalised in CPIL than in the traditional pathway. From time of referral to the first court listing, the number of days ranged from 42 to 373 days. From the date of assessment until finalisation (for those matters where a report was submitted and the matter had been finalised, at time of data extraction), the number of days ranged between 91 and 522 days. In two cases, the matter was finalised within six months of the report being received. In the other three cases, the matter was finalised within 18 months of the report being received, which is within the allowable timeframes for the program.

Although the program itself is intended to run for 12 months (or 18 months at most), CYPS suggested 'that's already after we've been involved in the matter for maybe six months or 12 months anyway. So it's taking two to 2½ years and that is just in my view not viable'. However, the data set out in Table 3.2 do not entirely support the comments made by CYPS. Two cases (Case 3 and Case 5) took 711 and 700 days respectively, i.e., nearly two years, from referral to finalisation, but the other two cases (Case 1 and Case 8) were much shorter, at 127 and 252 days respectively. Further data are required, based on a larger sample. There was unfortunately also no information available to the review team to determine the timeframes for matters in the traditional pathway.

Two stakeholders from the Court identified housing as a significant challenge. As one noted, some delays in finalising CPIL matters may be due to factors outside its control, including the lack of affordable and suitable housing. As one Court stakeholder noted, the issue was that, although housing is within the same Directorate as CYPS, 'it's not an area they have influence [over], it's its own beast'. The other Court representative also considered the housing issue to be a 'common theme' that has 'held up restoration, which is terrible'. It is worth noting that housing issues were also found to be an impediment to the success of another ACT therapeutic program, the DASL (see Rossner et al 2022).

Noting the caveats about the lack of comparison data, a CYPS stakeholder suggested that, in the traditional pathway,

> if we were looking at a restoration…we'd be looking at maybe 12 months tops. There are some where it goes beyond that…but it seems to be most of the ones generally we do within 12 months. And all the experts I've seen over the years, and there's many of them, have said if you're going to restore, you're going to do it reasonably quickly, if it's an appropriate thing to do at the time.

Accordingly, the CYPS stakeholders were concerned about the time it takes to resolve matters in CPIL and the implications for both children and parents. In particular, CYPS stakeholders expressed concern about 'the potential damage to that child of severing the attachments to their current carer'. This was also a concern expressed by a Court representative.

This is in turn linked to the principal concern identified by representatives from all three agencies, which is about the point in time at which a matter becomes eligible for CPIL. As set out in the Practice Direction (Appendix, cl 6(c)), eligibility for the program is dependent on there [being] an application before the Court for long-term orders under the CYP Act in relation to the child/ren'. As discussed in the introduction, these orders apply until the child is 18.

As Legal Aid put it in their written comments:

> While CPIL is supported by Legal Aid ACT, if the aim is to have less [sic] children in the system and children returned earlier, then perhaps making a matter eligible for CPIL at the time the DG makes an application for an order after taking emergency action may be more appropriate as it will allow decisions to be made for children earlier.
>
> Only having CPIL available if the DG is applying for orders to 18 means that decisions are being delayed for the children and a golden opportunity missed to potentially have had the children restored earlier.

CYPS took at a similar view, suggesting that the program is currently designed

> the wrong way around and we're looking at restorations for kids where we're applying for long-term orders …if we're deciding permanency for kids, we're doing it where we're seeking a short-term order, so they've been removed and we're trying to get them back in as quickly as possible…that's what I think is an issue with the way that the Practice Direction is framed… if we are looking to restore, we need to be doing it as close as we can to removal, rather than waiting 2½ years and then starting…[We] need to be focusing the efforts at the beginning, rather than leaving this kid to flounder in the system on a short order for one to two years and then bringing it back and starting the CPIL process, to me that just does not make sense and it never has made sense to me that we're only starting to try two or three years down the track.

According to two Court stakeholders, most cases in CPIL would not involve children who had been out of their parents' care for several years; more typically, this period would be 1-2 years. In addition, the Court suggested that there had been some cases where emergency action had been taken quite close to the referral to CPIL. It was acknowledged, however, that, in the general pathway, the DG would sometimes make an application for short-term orders, followed by an amended application for long-term orders, which is very different from the initial application, and then the Deputy Registrar or magistrate would suggest referral to CPIL, notwithstanding the Practice Direction suggesting this should occur by the first or second mention (see Appendix, cl 7). This may explain the perception that CPIL

matters take longer (as discussed above), because they may have already been in the traditional pathway for some time, before entering CPIL.

Nevertheless, the Court staff agreed that 'there is scope to review the eligibility criteria, mainly because the program wasn't in practice when the eligibility criteria were formed'. Another Court stakeholder strongly agreed with the views expressed by Legal Aid and CYPS above, stating:

> The Practice Direction is too narrow, in my view…there's a barrier created by the need for 18-year orders or long-term orders and there are many other families that I think would benefit from this type of approach early on… The Practice Direction should remove that criterion for long-term orders, because two years is long enough…and when you're looking at a restoration, in the life of some of these young people, two years is an extremely long time…The Practice Direction criteria stop matters being referred, but there have [also] been matters referred that don't fit in the eligibility criteria.

Accordingly, we **recommend** changing the model, to remove the eligibility criterion that there be an application before the Court for long-term orders. Eligibility for entry to the CPIL should instead be more closely aligned to when emergency action is taken, for a number of reasons. As a CYPS stakeholder noted:

> …a lot of parents describe… emergency action [as] being a wake-up call and the boot up the bum they needed. So, we need to grab that and push them into this rehabilitation or therapeutic intervention and use that wake-up call and boot up the bum to trigger that turn towards recovery.

A Court stakeholder supported this view, noting that:

> up to 18 months of engagement with the Court for restoration of your child, as opposed to losing that child until they're 18, that's probably an easier thing for most people to be able to grasp as a concept, as opposed to emergency action just having occurred.

Another CYPS stakeholder felt that 'we're missing an opportunity' and reinforced the need to ensure that the CPIL process is aligned with both the Practice Direction and the Act, 'because the legislation says the short-term order essentially is to promote the reunification of families'. This was strongly endorsed by a Court representative:

> When you see families coming through this system and you're at the emergency action stage, they're bamboozled, they're extraordinality distressed, they're generally not legally represented, so they're at a massive disadvantage, as well as dealing with whatever the underlying problem was for emergency action. So, they've

> got so much to try and cope with. To throw them into an adversarial system, particularly when they're unrepresented is just brutal, especially when you have an Act, like the *Children and Young People Act* is probably the biggest piece of legislation we have…it's a beast of an Act, so it's cruel to have those people at the early stage navigate court and the Act and try and work out how to oppose things and Legal Aid does a wonderful job providing first aid support, but I just don't think it's the right thing to do.

In this context, it is worth revisiting the following observation by Taplin et al:

> The timing and duration of the therapeutic care court was a polarising question in terms of how the pilot should be operationalised. Services that primarily serve the needs of parents wanted the program to allow enough time for the parents to address their problems and resume the care of their children. Services and organisations representing the children wanted the therapeutic program to commence early in the child protection process as they were concerned that permanency decisions would be delayed if the new TJ approach is not used at the start of the process. The care and protection system is working towards reducing the time within which permanency decisions are made and were concerned that delays would jeopardise these efforts. The contradictory nature of these views was highlighted by some: the reduction in time to make decisions about permanency versus the optimising the opportunities for parents to address their issues and continue parenting their children, all in the name of 'the best interests of the child' (2017: 22-23).

Now that the program has been in operation for some time and, given the consensus of views between Legal Aid and CYPS, we suggest that the eligibility for entry into CPIL be revised, to ensure the model 'makes sense' and does not miss a 'golden opportunity'. This may also reduce the time taken to resolve matters, given that they will be identified earlier on. We acknowledge that this recommendation, if adopted, may mean that the duration of participation in the program needs adapting. It is also recognised that it will likely have resource implications, particularly as more people will be eligible to participate. As one Court stakeholder put it, however, this would align with broader developments, as

> apparently there are sigificant changes coming to the way that the system approaches care and protection applications….there's a big change in the legislation coming,[5] with streaming and earlier applications and trying to deal therapeutically

[5] This is a reference to the *Children and Young People Amendment Act 2023* (ACT), which passed on 15 November 2023. One of its objectives is to 'enable diversion from the statutory child protection system into earlier support services': see Legislative Assembly for the ACT (2023: 3). This legislation is yet to come into effect.

> more, rather than litigiously, which is what I think is necessary…[and] consistent with the CPIL idea.

A number of other challenges were noted by stakeholders, including:

- the number of appearances required, without there being a clear idea of what needs to happen during adjournment periods;
- knowing what is expected of the child representative in CPIL;
- issues with the role expected of CYPS and the resource implications of this;
- instances where applications to CPIL appeared to be an attempt to delay proceedings, rather than a genuine desire to engage;
- resource issues for the court;
- understanding and managing the process where one parent is in CPIL and the other parent is not, including:
    - how to avoid unfairness to either parent;
    - whether the non-participating parent has access to documents filed in CPIL including assessment for eligibility;
    - the risk that the assessment process may constitute a form of systems abuse;
- in some cases, a lack of commitment to ensuring the young person's wishes and the best interests of the child/young person are taken into account (subject to their age and capacity); and
- the difficulties of the process for parents with significant mental health issues. Although it was considered that some mental health issues are eminently suitable for CPIL, others may not be and this may not always be something that the Court has the expertise and support to manage.

There was one case identified where a parent was able to lie to the Court throughout the program about their drug use and 'got the benefit of the process and the restoration'. This parent was timing their drug use and urine samples, but was ultimately caught out with a hair follicle test. This experience highlights the need to understand the complex issues and may point to the need for hair strand testing, in some instances. Even in this context, a different Court stakeholder spoke about the benefits of the therapeutic process in this case:

> say a matter has come to us and there's been a general hostility towards undertaking a hair follicle testing, opposition and absolute refusal to do so. In the course of a simple proceeding, the hair follicle testing may be done, there's a discussion about what it means, and then how it impacts participation in the program. But there isn't a 100% dire outcomes. The parent understands that yes, I undertook it, yes there was evidence that I'd been doing something I shouldn't have been doing…The world didn't end. Everyone's still working with me towards this goal. Yes, some things have tweaked a little bit, as a consequence of the actions, but

> I now understand that I can have honesty about lapses, I can have honesty about issues faced, and it's not weaponised or anything like that.

In relation to the role of CYPS, the following discussion highlights some of the issues with the current process:

> CYPS1: I get the feeling the court still expects CYPS to undertake the coordination of all of that….It's sort of like a restoration program where the bench is the case management decision-maker and we are the implementing body of those decisions. So, we're expected to find the resources, get the supports, but I suppose we don't have that same level of autonomy that we do under an order where we get the short-term order, we put our own restoration plan in place and we try and do that ourselves…. the feeling I get - is there an expectation on the Director-General [of CYPS] to still fund everything, organise it, get transport for people, all those sorts of things?...
>
> CYPS2: We have a bottom bottomless pit of money…
>
> CYPS1: It's like we hand the steering wheel to the bus over to the court, but we're still there on the bus with everyone, going. 'We used to be the driver, but now we're just a passenger'.

Another issue was around the resource implications for CYPS to attend court. The stakeholders we spoke to acknowledged that they do not keep specific data on CPIL cases and 'you're either in CPIL, you're doing it somewhere else'. However, there was a perception that CPIL results in

> more court attendances [for caseworkers]. So [that] does eat into their days, in terms of what else they can do on that day that the CPIL is listed, because they can't then go out and do a home visit in the morning. And then like if it's listed at 11, their whole day is pretty much written off. Whereas, if it's court, it's usually 9:30 or 10 o'clock they're done. They can by lunchtime, they can go out and do something else in the afternoon. And they're only there every now and again…[and] it's not just the case manager, it's usually their team leader as well. So, the two of them are down at court, because the case manager can't make a decision on their own. They need the endorsement of a team leader, if they're changing contact or moving urinalysis or whatever. So there needs to be the two of them there, so again, it takes two people out of action for some time.

To minimise resourcing impacts, there may need to be some careful consideration of CYPS' requirement to attend court when CPIL matters are listed. For example, it may be appropriate for the caseworker to call their team leader, to get appropriate approval for any decisions of this nature, rather than having the team leader in court. The experience in the

DASL may be instructive, to ensure that a therapeutic process of this nature operates as efficiently and effectively as possible.

The resource implications for the Court were also raised. For most aspects of the program, 'we steal resources from the Court'. As noted above, however, the assessment reports cost more than $10,000 each and this cost is borne by the Court. The reports are 40-50 pages long and comprehensive (covering housing, addiction, restoration plans etc).

In the context of resources, it should be noted that the program does not have the benefit of any mental health support. Here, the contrast with DASL was noted:

> They have a great team, which I'd love to have. We don't have that wraparound support, so we rely on self-reporting from the parents and also reporting to [the CPIL co-ordinator] or Director-General or back from rehabilitation centres or the case-workers. It would be great if we had clinicians, who could do some of that work and if the Court is able to expand the list, then there would definitely be a call for that.

As set out in the Practice Direction (Appendix, cl 34), 'alcohol and other drugs clinicians, mental health supports, domestic violence case-workers … may request or be requested to attend these conferences'. A psychologist attended on one occasion, which led to a 'gold star restoration' (both Court and CYPS stakeholders spoke about this case and the value of hearing from the psychologinst in this case). More generally, however, there does not appear to be any involvement from people with expertise in AOD, mental health, domestic violence etc. It was confirmed by a Court representative that 'no one from Housing has ever come'. This likely limits the holistic outcomes that can be achieved by the program and should also be the subject of further consideration. review.

Another concern raised by CYPS was that there are some cases where the focus is too much on the parent and their wishes and needs and not enough on the children. Even though the program purports to operate in their best interest, it was suggested to be

> a naive assumption that an improvement in parenting capacity means best interest of the child to be restored and the two don't equate to each other all the time. So, even if you've got an addiction problem or a mental health issue and you manage to get up to a level of recovery, that doesn't automatically mean that it's in the child's best interest to go back and live with that parent…. that might be perhaps an error sitting underneath, that, well, if the parent recovers therefore it restoration must be the best thing for that child, and that is not always the case.

This was particularly considered to be an issue in circumstances where the child had been living with another carer for a long time, so is in turn linked with the time issues discussed above. However, a Court representative felt that:

> the focus on the parent is to address the issues to make them capable of being in the best interests of the child. So, I guess it's one that's very open to perception, but that probably stems from the fact that there is so much focus on the parent in these proceedings, because that is the party that needs to engage, address their issues, as opposed to a more traditional one, which is focused more around the child and the parent as a party….[Anyway] what progress [the parent has] made, what they need praise for, […] it's not there for the interest of the parent, or the[ir] best wishes, that's still in the best interests of the child.

Some of the issues set out above may be resolved, as more cases go through the system. Other issues, such as the protocol where one parent is involved in CPIL and the other is not, likely need to be the subject of specific practice guidelines. There may need to be further training and clarification around what the program entails (including what is expected to occur between court dates) and expectations of each agency, as well as participants. Finally, it was noted that all of the cases that have progressed through the program have involved a combination of mental health, substance abuse and domestic violence issues. Employment issues have also been relevant in some instances and, as noted above, housing is also an issue. Accordingly, the success of the program requires adequate resourcing to respond to these complex issues.

3.4 Analysis of the Practice Direction

In order to supplement the stakeholder comments, we also examined the Practice Direction, summarised in Section 1 and set out in full in the Appendix. Based on our analysis, it requires review and revision. Most of the following comments relate to the form of the Practice Direction, but any revision should also reflect any substantive changes that flow from the stakeholder comments discussed above, especially as to the eligibility requirement around long-term orders.

The Practice Direction as a whole should be simplified. In the first instance, it should be amended to correctly refer to the Act. It is also overly complex in its wording, e.g., Clauses 6(e) and (h) could be presented together. In addition, it is at times confusing. For example, there is a reference to the CPIL coordinator in clause 21, but this position is not described further until cl 28. Furthermore, the provision about the process where a parent is unable to comply with the requirements of the program (cl 6(j)) is under the heading 'Eligibility', but this presumably applies throughout their involvement in the program.

The eligibility criterion set out in cl 6(b)(i) lacks precision; it refers to cases where 'the risk of neglect or harm arises particularly because of a dependency on alcohol or other drugs, family violence *or* parenting capacity' (emphasis added). This should read *and/or*, to ensure that cases where more than one of these issues arise fall within the eligibility criteria. We were advised that this is what does occur in practice, as all of the families that have

proceeded through CPIL have in fact experienced more than one of these issues. This was evidenced by a court stakeholder who noted that 'it's stability, it's housing, it's domestic violence. This is where it really deviates from the DASL in that. Whilst with the DASL a pervasive drug and alcohol substance disorder is the driving force for different behaviour […] the spectrum of issues [in the CPIL] is way broader'.

One of the findings of the Court representatives commented on a conflation between the Practice Direction for practitioners and guidance for parents, which may require separate practice/guidance manuals for each:

> I think the purpose of the Practice Direction has obviously been traditionally for practitioners […] I think it would be worth looking at other material that's available for parents also, and practitioners, because […] it requires a culture shift. And so I think just material generally that's available could certainly be either improved or looked at.
>
> The parents' manual, the initial version of the parents' manual[6] was constructed around that initial early phase pre-rollout, so in reality it doesn't entirely line up with […] what we've found works and doesn't work, so that area definitely needs updating. And it's currently referred to as a parents' manual, but it does also contain a lot of information that we give practitioners.

The Practice Direction should therefore reflect this.

There are also some aspects of the eligibility criteria that may unnecessarily exclude parents on the basis of mental health conditions, particularly given that up to 80% of parents in the child protection system are estimated to have an current mental health condition (Suomi et al 2019). For example, at the London FDAC, the only exclusion criterion on the basis of parents' mentally ill health is 'where the target parent is experiencing florid psychosis' (Taplin et al 2017: 15). In addition, some of the wording in the Practice Direction remains open to interpretation, and we therefore suggest more detailed and standardised wording that would allow for consistent assessment across families.

In addition, there is no detail on what constitutes 'serious plausible allegations of physical or sexual abuse by a parent' (Appendix, cl 6(g)). It would also be beneficial to have more detail included on how a parent progresses from one phase to the next; in this context, the behavioural contract for DASL and observations in the recent evaluation of that program (Rossner et al 2022) may be instructive.

Clause 22 indicates that the family recovery place 'will identify and engage supports required to assist the parent, child or family'; this should also be *and/or*. More

[6] The review team was not provided with this.

substantively, this provision indicates that the plan will be developed in collaboration with the parent. It is worth noting that, although clauses 17-20 refer to the voice of children and young people, this does not permeate throughout the process. For example, there is no requirement that the recovery plan include the child's collaboration (to the extent possible, subject to their age and capacity). There is also no explicit reference to the plan being underpinned by a commitment to the best interests of the child. This aligns with the comments of CYPS above, suggesting that there may at times be too much emphasis on the parent's interests, rather than considering whether restoration is in the child's best interest, in line with sections 8 and 349 of the Act. In this context, we also note Taplin et al's observations that 'whatever decision is taken at the end of the proceedings may not work if the child does not like it' and the perception that it is 'vital that everyone involved in the court proceedings ha[s] the appropriate training and understanding of the importance of hearing the children's voices' (2017: 26).

It is recognised that this document is geared towards legal practitioners. Nevertheless, it forms the basis for CPIL's operation and many of its terms are directly replicated on the Court's website, which constitutes the information parents are likely to access. In particular, the frequent references to *parent/s*, *is/are* (see Appendix) etc make it difficult to understand. It should therefore be rewritten in terms that can be readily understood by parents who participate in the program and, where applicable, young people subject to proceedings. Clause 6(b)(j) in particular requires simplification. There should also be greater consistency between what appears in the Practice Direction and on the website. For example, the latter states that:

> This program will ensure case finalisation and permanency decisions are made by the sitting CPIL Magistrate to reduce the uncertainty of making permanent care orders, whilst ensuring the process is as least protracted as possible.
>
> While this program is being undertaken, interim care orders will be in effect and care of the children or young people will be in accordance with those orders (ACT Magistrates Court 2023: np).

However, this information does not appear anywhere in the Practice Direction. It is therefore not clear what the source for these statements is and what authority they have.

In order to promote best practice, it is desirable that any revision of the Practice Direction, website and other associated documentation, especially material intended for use by parents, be undertaken in consultation with relevant stakeholders, e.g., the ACT Law Society's Access to Justice Committee and/or Family Violence and Children's Committee, as well as the ACT Court Disability Liaison Officer.

4. Conclusions and recommendations

This rapid review involved interviews with three CYPS staff and three Court staff, written comments from Legal Aid and analysis of a limited dataset from the Court. Based on these data, we are able to draw some tentative conclusions about CPIL.

There is a clear need for a program of this nature, that is, a therapeutic approach to dealing with care and protection cases in the Court. All stakeholders commented on the perceived benefits of the program, including the less adversarial approach, which promotes collaborative relationships amongst all parties, including the parents. However, all stakeholders supported significant changes to the model, so that families are able to participate *before* long-term orders are sought. From the current data available it is also difficult to ascertain whether CIPL is implemented as intended, or as described in the literature of 'what works' (see evidence summary in Taplin et al., 2017).

There have been relatively few referrals to the program, fewer than were envisaged by Taplin et al (2017). This is in part due to the eligibility criterion, in relation to the need for an application for long-term orders and potentially to other exlusion criteria currently included in the Practice Direction, for example, in relation to mental health. Based on this, it is recommended that the Practice Driection be thoroughly reviewed for wording and content. In addition, the program may not be reaching its full potential, as there is no involvement of mental health support, despite this being a key issue amongst participants.

Overall, it is not yet possible to say what impact the program is having. This is in part because of the small number of cases. It also because there is limited information on the program's operation and no comparison group.

The review team suggests that any future evaluation of CPIL should prioritise the collection of primary data, to inform a more detailed assessment of the program, both in regards to its implementation and impact. Data should also be collected on the reasons why some families are deemed ineligible/not suitable at each step of the referral process. Consistent with the methodologies used by Taplin et al (2017) and de Bortoli et al (2018), the data should involve court observations and interviews with program participants (including parents). To determine program impact, it is important that information is collected from families at multiple points, using validated assessment tools (on entry, during program participation, at program exit, and, ideally, after program completion). Other data sources would include administrative data (including outcomes, such as reunification), as well as intake forms, assessor reports and family recovery plans). There should ideally also be linked administrative data from other relevant agencies (e.g., justice, health).

Table 4.1 sets out the key information we suggest the Court collect.

Table 4.1: Key information to be collected by the Court for future evaluation

Data domain	**Data item**
Parent sociodemographic characteristics	* Indigenous status
	* Culturally and linguistically diverse status
	Date of birth
	Gender
	Marital status
	Number of children (including those not currently living with them)
	* Highest level of education completed
	* Employment status at time of application
	* Housing status
Child characteristics	Date of birth
	Gender
	Placement and contact arrangements (if relevant)
	Care and protection status
	Educational engagement (if relevant)
	Health issues (if relevant)
Application details	Application date
	Date of first contact with CYPS (in relation to the current matter)
	Main presenting issues, for each parent: • * AOD issues • * family violence issues • * mental health issues • any evidence of physical/sexual abuse against child
	Other issues within the family unit
Program participation and outcomes	Date of referral
	Date independent family assessment report submitted
	Suitability assessment outcome and reason not suitable (if relevant)
	Commencement date (first formal listing as a CPIL participant)
	Date family recovery plan developed
	Key aspects of family recovery plan
	* Referral to other support services (for each service): • Type • Date referred • Date engagement started • Participant engagement period
	Date of program exit
	Reason for program exit
	Final order type
	* Rate of reunification
	* Any subsequent reports to CYPS

We were advised that the Court currently collects information on the number, gender and age of (a) parents and (b) children and the time taken to (a) finalise a matter and (b) reunification. The information indicated with an asterisk (*) above 'may be able to be pulled from reading through the material in each file' (Email from Court, 29 November 2023). We therefore **recommend** that the staff involved with the delivery of CPIL should work collaboratively with researchers to improve their capacity to monitor the implementation and impact of the program on an ongoing basis

The Victorian FDTC and UK FDAC data collection tools should be considered. The Victorian FDTC uses two assessment tools with each participant:

- a self-assessment tool, the 'Self complete initial screen for alcohol and other drug problems'; and
- the 'AOD comprehensive assessment', which is completed by the FDTC intake and assessment staff member.

Both tools are standardised tools from the Victorian Government and are used by the AOD sector. There are additional standardised assessment tools that can be used if required. The Victorian FDTC has offered to provide copies of their tools if needed.

The inclusion of a comparison group in any future evaluation is necessary, to assess the impact of the CPIL against a 'business as usual' approach to care and protection matters (i.e., the traditional pathway). Collecting data that allows for comparisons with other FDTC courts and systems. This would therefore greatly enhance any future evaluation and improve the evaluators' ability to compare the models and determine whether the ACT program has an impact on outcomes compared to the traditional pathways. With that in mind, decisions about appropriate comparison sites will inform this decision. It may be appropriate to coordinate data collection tools with CYPS and the health assessment tools used in the ACT (e.g. AOD, mental health, etc). A combination of tools that would allow comparisons with other FDTCs and tools that are used in the ACT is highly recommended (see Taplin et al 2017).

Recommendation 1: Clause 6(c) of the Practice Direction be amended, to remove the eligibility criterion that there be an application before the Court for long-term orders.

Recommendation 2: The Practice Direction be reviewed and revised, to promote accuracy, consistency and clarity.

Recommendation 3: There is a need for training and guidelines about the program, to ensure a clear understanding of stakeholders' and participants' roles.

Recommendation 4: Consideration be given to including a wider range of stakeholders in progress review conferences, including people with expertise in mental health, AOD and domestic violence.

Recommendation 5: Staff involved with the delivery of CPIL should work collaboratively with researchers to improve their capacity to monitor the implementation and impact of the program on an ongoing basis. This should include use of a comprehensive data collection protocol with families on commencement, during the program and on completion, as well as information about families who are initially referred but deemed ineligible.

Recommendation 6: The CPIL should be evaluated in more depth, to determine its impact on participating families and agencies. This should involve:

(a) the inclusion of a comparison group, to assess the CPIL against the traditional care and protection pathway; and
(b) consultation with a larger pool of stakeholders, including CPIL participants and members of the ACT Aboriginal and Torres Strait Islander community.

Recommendation 7: If the other recommendations are implemented, it is likely that additional resources will need to be allocated to the CPIL, to ensure that the program is able to respond effectively to a larger case load; facilitate the engagement of key services (e.g., mental health); and support the development of data collection systems, to monitor the program's implementation and impact.

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Appendix

Childrens Court

Practice Direction Childrens Court No. 1 of 2021

Care and Protection Intensive List

1) This practice direction sets out procedures for the care and protection intensive list (CPIL) in accordance with section 288(1)(d) of the *Magistrates Court Act 1930.* It commences 2 March 2021.
2) The CPIL is a proceeding within the Childrens Court (the Court). The legislative framework is provided in the *Children and Young Persons Act* 2008 (CYP Act).
3) CPIL is an alternative to regular care and protection proceedings. The process will ordinarily take 12 months but an earlier determination may be made in certain circumstances or the process may be extended but to no longer than 18 months in total.
4) CPIL will provide an opportunity for parent(s) in respect to whose child/ren or young people (children) CYPS has made application for long-term orders to participate in a court-mandated process with the aim of either immediate restoration of children to their parent/s care at the completion of proceedings or short-term orders with planned restoration where that is found to be in the best interests of the child/ren.
5) At any point during the proceedings where the court forms the opinion that restoration cannot foreseeably be ordered in the child/ren's best interests, the process will be terminated, and long-term orders made.

Eligibility

6) Eligibility for participation in CPIL is based on the following criteria:
   a. the parent/s is/are committed to change and enter/s the program voluntarily;
   b. the child/ren is/are assessed by the Director General for Community Services Directorate (the DG) as in need of care and protection and:
      i. the risk of neglect or harm arises particularly because of a dependency on alcohol or other drugs, family violence or parenting capacity:
      ii. the child/ren is/are in out of home care (regardless of placement- kinship, foster or residential care) or is/are at risk of removal;

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c. there is an application before the Court for long-term orders under the CYP Act in relation to the child/ren;
d. the parent/s accept/s that there is a need for therapeutic intervention and consents to interim care or protection orders in a form approved by the Court;
e. the parent/s consent/s to participate in the CIPL eligibility and suitability assessment processes;
f. the parent/s with pending criminal matters before a court
    i. will be assessed on a case by case basis for suitability and may be deferred entry into the program until the criminal matters are resolved;
    ii. parents currently engaged in Warrumbul, Galambany or Supreme Court Drug and Alcohol Sentencing List processes will be assessed on a case by case basis in consultation with the co-ordinator of those processes to ensure their suitability for participation and that services are appropriately co-ordinated;
g. there are no serious plausible allegations of physical or sexual abuse by a parent;
h. the parent/s consent to eligibility and suitability assessors accessing their mental health records as required;
i. the parent/s has/have no mental health conditions which in the opinion of the eligibility assessor would prevent the parent/s from complying with the program obligations;
j. in the event that the parent/s are unable to comply with the requirements of the program such that the magistrate determines that the process must be terminated, all parties consent to the magistrate determining the application on the papers, consisting of affidavits filed in the proceeding to the point of termination, reports prepared by the co-ordinator for review conferences, reports received during the process from any support agencies, rehabilitation facilities, program or treatment providers and the transcripts of review conferences.

Referral Process

7) If all the above eligibility criteria above are met, a parent or their lawyer may apply for a suitability assessment at the second mention of an application following discussion between the registrar and parties.
8) An application is made by filing an 'Election for the Care and Protection Intensive List'. The form is available at (hyperlink to form). A copy of the completed form is to be provided to the DG and the children/s lawyer.

9) Parent/s electing for CPIL may be referred for a clinical screening eligibility assessment on the day of their election or as soon thereafter as it can be facilitated by the co-ordinator.
10) If ordered, the clinical screening eligibility assessment will be conducted by mental health, social work and/or drug and alcohol workers employed by ACT Health but allocated to provide support to the courts. The assessors will review the parent/s ACT mental health records and any reports provided to them at the direction of the registrar.
11) Once the eligibility form and assessment are prepared, the matter will be listed at the first available time before the CPIL magistrate. Any objection by the DG or child/children's lawyer to the parent's application to have their matter dealt with in the CPIL may be ventilated at this mention.

Suitability Assessment Process

12) Parent/s identified as eligible will be referred by the CPIL magistrate to an independent family assessor (an appropriately qualified and experienced expert practitioner) for assessment. The assessor will provide an independent family assessment report.
13) The terms of reference for an independent family assessment report will be determined by the CPIL Magistrate pursuant to s442 of the CYP Act. A copy of the report will be provided to all parties.
14) The independent family assessment report will contain a recommendation that the parent/s is/are either suitable or unsuitable for the CPIL. The CPIL magistrate will ordinarily follow the report recommendation. If not, the CPIL magistrate must provide reasons for not doing so.
15) The independent family assessment report will focus on the child/ren's needs in consideration of their age, developmental ability and psycho-social factors and any other matters identified in the terms of reference. Parenting issues will be identified. The report will make recommendations for short, medium and long-term goals for families and recommendations around interventions or support services to support the family in achieving these goals. The report will form the basis of a family recovery plan.
16) If a parent is found unsuitable for CPIL, they will be informed of this outcome and the matter will be listed for a care and protection case conference for progression in the regular Childrens Court list.

Views of Children or Young People

17) In accordance with the CYP Act and *Court Procedure Rules* (ACT) 2004, children are entitled to have their views and wishes considered by the Court and to participate in the proceedings before the Court.

18) Children will be represented by a lawyer and may participate in the CPIL as is consistent with their best interests having regard to their wishes and their capacity.

19) Participation in the proceedings in CPIL may include the magistrate meeting with the child or inviting them to attend or participate in progress review conferences.

20) The CPIL may engage an intermediary to assist at any point.

Progress of matters after referral

21) If the parent/s is/are found suitable by the assessor for CPIL, a family recovery plan will be developed by the co-ordinator for presentation before the CPIL magistrate.

22) The family recovery plan will be developed from the independent family assessment report and any clinical or health recommendations available to CPIL. It will have regard to the care concerns of the DG under the CYP Act. It will identify and engage supports required to assist the parent, child or family.

23) The family recovery plan will be developed in collaboration with the parent.

24) Where alcohol and other drugs are identified as risk factors, CIPL will adopt a harm minimisation approach.

25) The family recovery plan will be provided to all parties and any support service or individual given leave to participate to consider prior to a conference with the CPIL magistrate.

26) The CPIL magistrate will make necessary orders.

27) The parent/s must sign their commitment to compliance with the orders at that conference.

28) The co-ordinator will be the conduit for communication between the court, parties and referred services and will assist with co-ordination of services for the participating family.

29) The Director General will be responsible for ensuring funding and access to identified support services.

30) Progress review conferences will be held as schedule set by the CPIL magistrate.

31) Progress reports will be provided to parties two (2) business days before progress review conferences by the co-ordinator. Progress reports may include information provided to the court from support services.

32) Progress review conferences are intended to be an informal meeting between the court and the parties, with the aim of supporting the family achieve identified recovery goals.

33) The following persons are expected to attend progress review conferences:

i. CPIL magistrate
ii. parent/s
iii. parent's lawyer
iv. CYPS dedicated CPIL lawyer
v. CYPS case worker
vi. child/ren's lawyer
vii. co-ordinator

34) Alcohol and other drugs clinicians, mental health supports, DVCS case worker or support people may request or be requested to attend on an ad hoc basis.

35) In some matters it may be appropriate for the child and/or extended family members to attend conferences or provide information to the CPIL.

36) The Public Advocate may attend any proceeding within the CPIL in accordance with their statutory function under the *Human Rights Commission Act 2005* and the CYP Act.

CPIL Phases

37) The CPIL process will be broken into three (3) phases:

i. stabilisation and compliance monitoring (minimum 4 months),
ii. building foundations and progression (minimum 3 months), and
iii. consolidation and restorative phase (minimum 3 months).

38) The child/ren may be restored to the parent/s during any phase of the program however while an application remains before CPIL, parent/s is/are required to complete the program.

39) The CPIL magistrate may direct family group conferencing between the parties or other individuals during any of the CPIL phases.

Completion of CPIL Phases

40) Upon successful completion of all phases of the CPIL, the CPIL magistrate will decide the application in accordance with the CYP Act.

41) If a parent takes longer than 12 months to complete the program, the CPIL magistrate may extend the time to complete the program by up to 6 months. The maximum time a parent has to complete the CPIL process is 18 months from the date of the first progress review conference.

Exiting from the program

42) A parent may withdraw from CPIL or be exited at the CPIL magistrate's direction.

43) If no parent remains in CPIL a date will be set for parties to make submissions, noting that the application will be determined on the evidence already before the CPIL magistrate, unless leave is given for the filing of further evidence.

Orders

44) CPIL proceedings are concluded by orders being made by the CPIL magistrate for the care and protection of the Child or young person pursuant to s 464 of the CYP Act.

By direction of the Chief Magistrate and Magistrates.

HMBanks

Helen Banks
Acting Registrar
ACT Magistrates Court

2 March 2021

Questions for CPIL magistrate

1. What do you think are the key benefits of the program?
2. What are the key challenges?
3. Have there been any unintended outcomes (either good or bad)?
4. Does the program function well from an administrative/organisational perspective?
5. Do you think it is reaching the intended participants? Why/why not?
6. Once cases are referred to CPIL, at what point are they excluded (ie, deemed ineligible/unsuitable) and why?
7. What do you think would be the optimal entry point into the program? Would you support changing the point of entry into CPIL, so that it is closer to when emergency action is taken, rather than when long-term orders are being sought? Why/why not?
8. Can you please comment on the Practice Direction? What aspects work well? Do you think anything needs changing?
9. Are there any lessons learned you would like to talk about?