

Opening statement made by Mr David Pringle, CEO and Principal Registrar, on behalf of the Family Court of Australia and Federal Circuit Court of Australia.

Additional Estimates, Legal and Constitutional Affairs, 23 March 2021

As outlined to Senators in November last year, the Courts' operations and initiatives are at all times centred on risk, responsiveness and modernisation. In a moment I want to briefly update you on the Courts' reforms and other matters, but first, I want to focus on one key issue.

There is a great challenge for our Courts, and for family law more broadly, but also for all organisations in the Australian community – and that is - protecting children and other vulnerable people from violence, abuse, and physical or psychological harm.

For the courts, these issues manifest in the high levels of family and domestic violence present in family law cases. They are also relevant in the context of modern courts such as ours, developing and implementing policies that ensure a safe and respectful court environment. I will briefly address both elements in turn.

First, in regard to family violence, we must not forget the gravity and scale of the challenge. Recent data from the Parliamentary Inquiry into Domestic Violence, shows that:

- most children in the child protection system have experienced abuse through witnessing family violence;
- 1 in 3 Australian women have experienced domestic violence before the age of 15 years;
- 2.1 million people have witnessed domestic violence directed towards their mother by a partner; and
- 820,000 people have witnessed violence perpetrated towards their father.

Data from the Australian Institute of Family Studies indicates that in judicially determined parenting cases, more than 70% of separated parents report that they have experienced family violence.

This is now corroborated by the Courts' own recent data:

Our new electronic harmonised Notice of Risk is showing that, in the Federal Circuit Court, 61% of parties allege that they have experienced family violence, 54% allege that a child has experienced family violence, and 52% allege that a child has been abused or is at risk of abuse. Similarly, the early data from the Court's ground-breaking government-funded Lighthouse Project indicates that 66% of parenting matters currently being filed are screening as 'high risk' cases.

And the risk factors do not stop at family violence. From our Notice of Risk data, 39% of parties allege that drug, alcohol or substance abuse has caused harm or poses a risk of harm to a child. The same proportion allege that mental health issues pose a risk of harm to a child. Quite extraordinarily, nearly 80% of our cases have at least one risk factor, and nearly one-half have 4 or more risk factors.

There can be no doubt as to the significance of this data and what it is pointing to. These cases are complex, and they need intensive case management and resourcing to manage the multi-layered risks posed to vulnerable litigants. The Courts have already commenced addressing these issues, including harmonising their Notices of Risk and rules, and launching the Lighthouse Project in Adelaide, Brisbane and Parramatta. But the courts intend to do more. We *must* do more. We are in the process of reforming our entire case management pathway so that the greatest protection is afforded to litigants by ensuring that family violence and other risk factors are identified early if they exist and can inform the entire litigation pathway, and that people are assisted in resolving their disputes more quickly and more effectively in a safe manner, including through alternative dispute resolution.

The second element is to ensure that our Court environment is safe and supportive for all those interacting with it, and within it. In this regard the Chief Justice is developing arrangements with a zero-tolerance approach to any inappropriate conduct, and has taken a number of important steps in recent times, including:

- Setting up a Joint-Court Judicial Conduct Committee of experienced judges, Chaired by Judge Kendall, who is highly qualified in the field of sex equality and anti-discrimination law, and supported by an independent committee member, the Honourable Jennifer Coate AO. This Committee has commenced operation, is reviewing all practices and protocols, and is working closely with the Federal Court of Australia entity that provides corporate services to the courts. The committee has made recommendations and is well advanced in its processes, and the courts are considering a number of new engagements to support this work. The Chief Justice has also set up a new judicial complaints mechanism, with a complaints handler and a Judicial Complaints Committee made up of three independent retired judges.
- The Courts have also embarked on a range of judicial training and support, both to ensure the latest and best training in family violence, but also to support judges and other judicial officers with the pressures of a high workload environment and the potential impact that can arise in being exposed to disturbing case evidence. This includes a comprehensive induction program for newly appointed judges, an assistance program to support judges with workload, including through registrar support or mentoring by senior judges if needed, and developing specialist training models with international experts, which will roll out shortly.

I'll turn briefly now to the other key areas of focus for the Courts.

COVID-19

In 2020 and this year, the Courts have been impacted significantly by COVID-19. Notwithstanding the serious operational impacts of the global pandemic, I am proud to say that the Courts collectively maintained around a 90% clearance rate for the disposition of all cases throughout the pandemic, which is an outstanding effort. This is a considerable achievement, attained through the extraordinary hard work and dedication of our judges and staff who had to transition almost overnight to an electronic model of operation and who worked tirelessly to ensure access to justice during one of the greatest social and economic impacts in living memory.

Despite this great success, the impact of the pandemic has caused our caseload to grow and this will need to be addressed through reforms and further resourcing. A genuinely positive outcome though, is the fact that the Courts now have new skill and experience in operating electronically which will allow for better implementation of reforms and the potential to reach more litigants, particularly in rural and regional Australia.

Court reforms

Turning to our court reform agenda, even before the passing of the Court-merger legislation, the Courts have already embarked on:

- Ground-breaking reforms to implement a fully harmonised set of rules in family law across both courts. This is nearing completion, following consultation having been undertaken and feedback having been received.
- As part of a pilot program, some registrars have been deployed in three key focus areas to alleviate the pressure on judges in family law. The three areas are: (1) high volume duty lists, (2) interim or interlocutory disputes; and (3) undertaking dispute resolution in both property and parenting disputes where it is safe to do so. The results are very encouraging, with:
 - combined settlement rates of 75% for parenting mediations resolved in full or in part;
 - registrar run court lists, such as the PPP500, having finalised around three quarters of property matters in those lists without the need for judicial intervention; and
 - and the COVID-19 List having allowed for urgent disputes nationally to be dealt with initially within 3 business-days by a registrar.

Similar efficiencies are being attained by registrars in Fair Work and other general federal law areas, who preside over numerous court lists, and who are highly successful in mediating employment, commercial and IP disputes.

- For family law, much of these initiatives link in with the new arrangements required under the recent legislation. The Courts are intensively planning for the new arrangements, which commence on 1 September. This includes developing new case management pathways to cater for the single point of entry, a new case assessment process for transfers between divisions, and new appellate arrangements. It is also necessary for us to review all of all our rules, forms and practice directions, and to update certain technology and our court websites.

I note that there has been some suggestion in the past that under the new arrangements there might be some danger in family violence being addressed less effectively. I want to assure everyone that this will *not* be the case. Not only are our judges across both courts highly skilled and experienced in family law, but, as indicated earlier, the courts' arrangements will, if anything, be more focused on ensuring that family violence and risk to children is properly considered at every stage of the new litigation pathway.

There are, of course, other initiatives being implemented by the Chief Justice, including the callover campaigns which help to resolve many of the most entrenched cases within the courts. However, as there is limited time I will now move to the final issue I wanted to raise, that of resourcing.

Funding to ensure a successful set of reforms

As mentioned earlier, court pilots have demonstrated that registrar involvement in areas of judicial work, and indeed the expert involvement of family consultants for children's matters, is highly successful in reducing the load for judges and ensuring a quicker and less expensive pathway for litigants.

The government funding received by the Courts as part of the October budget and more recently was welcomed, as it included funding for some judges, registrars and support staff in migration and family law, as well as the expansion of the national COVID List. Significant additional funding of an ongoing nature will be necessary in order to sufficiently scale-up the successful initiatives mentioned earlier, enhance the way in which we address family violence, and to achieve lasting reform and efficiencies. This includes funding for Registrars, Family Consultants, Indigenous Liaison Officers, Judicial Associates and registrar support staff.

In that regard we note a number of the recommendations of the *Joint Select Committee on Australia's Family Law System* of 15 March 2021, including the universally supported recommendation that a further 25 to 30 additional registrars and support staff be funded. We are confident that the provision of such funding would allow the courts to continue with our important risk and responsiveness reform agenda so as to protect vulnerable parties and children, and to reduce delays, stress and costs for litigants and families.