



Australian Government

Australian Government response to the
House of Representatives Standing Committee on Social
Policy and Legal Affairs report:

A better family law system to support and protect those
affected by family violence

September 2018

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Introduction

The Australian Government welcomes the House of Representatives Standing Committee on Social Policy and Legal Affairs report on its inquiry into the family law system: *A better family law system to support and protect those affected by family violence*. The Australian Government takes the issue of family violence very seriously. All Australians deserve to live without violence, fear or coercion.

An increasing proportion of matters before the family law courts involve allegations, or substantiated reports, of family violence or child abuse. This situation must be met by targeted action to ensure the safety of those affected by family violence, and their children, throughout the family law system.

The Government is committed to improving the family law system for the benefit of Australian families, including those affected by family violence.

The Government is grateful to the Committee for identifying several areas where improvements to the family law system would help to ensure that people experiencing violent and controlling relationships are supported and protected, especially in the course of their engagement with the justice system.

The Government's response reflects the importance of a co-ordinated and considered approach to meeting the complex needs of separating families experiencing violence. The Government has already commenced work which, once completed, would address a number of the Committee's recommendations in whole or in part. The response highlights this and other related work, where relevant. The response also addresses ways in which existing Government initiatives and work agendas could be enhanced by considering and incorporating the Committee's recommendations.

On 30 May 2018, the Government announced major reforms to the structure of the federal court system (excluding the High Court) to dramatically increase the number of family law matters finalised each and every year, and reduce the backlog of unresolved cases on hand at any one time. The purpose of the reforms is to ensure Australian families experience shorter waiting times, and a reduction in the potential for conflict caused by prolonged and acrimonious family disputes. Subject to passage of legislation, the Family Court of Australia (Family Court) and the Federal Circuit Court of Australia (FCC) will be brought together as the Federal Circuit and Family Court of Australia (FCFCA) from 1 January 2019.

The proposed FCFCA will comprise two divisions: the FCFCA (Division 1) would be a continuation of the Family Court and the FCFCA (Division 2) would be a continuation of the Federal Circuit Court. As such, the FCFCA will preserve the current cohort of Judges of the Family Court and Federal Circuit Court, including their extensive family law and family violence expertise. The expertise of judges across both divisions of the FCFCA will continue to be utilised and developed over time.

In line with the Committee's considerations and recommendations, the FCFCA would become, in effect, the single point of entry into the family law jurisdiction of the federal court system and create a consistent pathway for Australian families in having their family law disputes dealt with in the federal courts.

Greater consistency in the exercise of family law jurisdiction will be driven under the leadership of one Chief Justice supported by one Deputy Chief Justice of the FCFCA, who will each hold a dual commission to both Division 1 and Division 2 of the FCFCA. Having a common head of jurisdiction will enable a common case management approach and more effective allocation of cases between the two Divisions. The consistent case management approach will provide opportunities for early identification of matters involving family violence and other risks and ensure those matters are prioritised and allocated to the relevant Judge and division with the right expertise and capacity to quickly hear and resolve the matter.

A new Family Law Appeal Division in the Federal Court of Australia will also be created to hear appeals in family law matters from the FCFCA and appeals from the Family Court of Western Australia.

As part of these reforms, the Federal Court and the two divisions of the FCFCA will, over time and following close consultation with the judiciary, legal profession and other stakeholders, update and consolidate their rules with a view to achieve consistency of practices and procedures.

These reforms will complement the comprehensive review of the family law system by the Australian Law Reform Commission (ALRC), announced by the Government on 27 September 2017. The review commenced on 1 October 2017 and is due to report by 31 March 2019. The Terms of Reference for the review are broad and far reaching, focusing on key areas of importance for Australian families. These include ensuring that the family law system prioritises the best interests of children, addresses family violence, and supports families to resolve their family law issues quickly and safely.

The Government considers that some of the Committee's recommendations should be considered alongside the outcomes of the ALRC's review and its recommendations for broader reform of the family law system.

Any recommendations made by the ALRC relating to court processes or procedures will be considered and implemented through the review and update of court rules. These changes will support the new, simplified court structure.

Further, some of the Committee's recommendations have financial implications that would need to be considered in a Budget context alongside competing priorities. Where the Government's response indicates in-principle agreement to a recommendation, this does not represent a Government commitment to future funding.

Government response

Recommendation 1:

The Committee recommends that the Australian Government considers extending the Family Advocacy and Support Services program, subject to a positive evaluation, to a greater number of locations including rural and regional Australia.

Agreed in principle.

Funding for the Family Advocacy and Support Services (FASS) pilot program is due to expire on 30 June 2019. The evaluation of the FASS, scheduled for completion in September 2018, will inform Government decisions about future funding. The Government agrees to consider options for extending the FASS, subject to a positive evaluation.

The FASS is currently delivered by legal aid commissions in fourteen of the sixteen permanent family law court locations across Australia; seven regional circuit court locations across Western Australia, South Australia and Tasmania; and two local court locations in the Northern Territory.

Recommendation 2:

The Committee recommends that the Australian Government progress, through the Council of Australian Governments, the development of a national family violence risk assessment tool. The tool must be nationally consistent, multi-method, multi-informant and culturally sensitive and be adopted to operate across sectors, between jurisdictions and among all professionals working within the family law system.

Noted.

The Government is currently working with the states and territories to strengthen family violence risk assessment and management practices across Australia.

As noted by the Committee, under the Third Action Plan of the *National Plan to Reduce Violence Against Women and their Children 2010-22*, the Commonwealth, states and territories agreed to develop and implement national principles for risk assessment for victims, perpetrators, children and other family members. This work is being led by the Commonwealth Department of Social Services and the principles were developed by Australia's National Research Organisation for Women's Safety (ANROWS). On 27 July 2018, the national principles were published on the ANROWS website.

National principles, rather than a national risk assessment tool, were developed. A 'principles' approach provides consistency and guidance with respect to best practice, but also much-needed flexibility, with each sector able to develop risk assessment tools that align with the principles but are specific to, and satisfy, their operational needs. The principles do not replace existing state and territory frameworks.

The Australian, state and territory governments are also progressing, through the Council of Attorneys-General (CAG), the development of best practice principles for family violence risk identification and assessment in the justice systems.

Recommendation 3:

The Committee recommends that the Australian Government introduces to the Parliament amendments to the *Family Law Act 1975* (Cth) to require a risk assessment for family violence be undertaken upon a matter being filed at a registry of the Family Court of Australia or the Federal Circuit Court of Australia, using the national family violence risk assessment tool. The risk assessment should utilise the national family violence risk assessment tool and be undertaken by an appropriately trained family violence specialist provider.

Noted.

Full implementation of this recommendation is contingent on the development and adoption of a national risk assessment tool or framework, as per recommendation 2. This recommendation, however, could be partially addressed by using existing, evidence-based, family violence risk assessment tools.

Under the FASS program, specialist family violence workers conduct comprehensive family violence risk assessments to help manage safety risks to those accessing the family law courts. However, such assessments are not undertaken for all parties upon filing, or for the purpose of informing the courts' management and triaging of cases.

The federal family law courts have existing processes for assessing and managing family violence risk. For instance, under section 11F of the *Family Law Act 1975* (Cth), the Court can order the parties to meet with a family consultant for a preliminary assessment such as a Child Dispute Conference or a Child Inclusive Conference. During these processes, the family consultant will assess family violence risk. The family consultant's assessment is provided to the Court to inform its decisions about case management and interim parenting arrangements for the child or children. Section 11F orders can only be made in parenting matters and assessments are not undertaken for all such matters or at the point of filing.

On 30 May 2018, the Government announced major reforms to the structure of the federal court system. . The purpose of the reforms is to ensure Australian families experience shorter waiting times, and a reduction in the potential for conflict caused by prolonged and acrimonious family disputes. The Federal Circuit and Family Court of Australia (FCFCA) would become, in effect, the single point of entry into the family law jurisdiction of the federal court system. With consistent internal approaches to case management, practices and procedures, the proposed structural reforms of the federal courts will also provide opportunities for early identification of matters involving family violence and other risks.

Recommendation 4:

The Committee recommends, subject to a positive evaluation of the recently announced legally-assisted family dispute resolution pilot, the Australian Government seeks ways to encourage more legally-assisted family dispute resolution, which may include extending the pilot program.

Agreed in principle.

The Government agrees to consider options for extending the legally-assisted family dispute resolution program. Funding for the legally-assisted family dispute resolution pilots is due to expire on 30 June 2019.

The evaluation of the pilots, scheduled for completion in December 2019, will inform government decisions about future funding.

Recommendation 5:

The Committee recommends that the Attorney-General considers how the Family Court of Australia and the Federal Circuit Court of Australia can improve case management of family law matters involving family violence issues, including:

- the adoption of a single point of entry to the federal family law courts so that applications, depending on the type of application and its complexity, are appropriately triaged, and actively case managed to their resolution in an expedited time-frame;
- the greater use of mediation or alternative dispute resolution by the federal family courts during proceedings to encourage earlier resolution of matters;
- the implementation of more uniform rules and procedures in the two federal family courts to reduce unnecessary complexity and confusion for families;
- the establishment of formal and expedited referral pathways between state and territory magistrates courts and the federal family courts; and
- the development of a stronger regime of penalties including cost orders to respond to abuse of process, perjury and non-compliance with court orders.

Noted.

As noted above in response to recommendation 3, the Federal Circuit and Family Court of Australia (FCFCA) would become, in effect, the single point of entry into the family law jurisdiction of the federal court system. The use of consistent internal approaches to case management, practices and procedures across both Divisions of the FCFCA, will provide opportunities for early identification of matters involving family violence and other risks. This approach will allow for these matters to be more appropriately triaged to the appropriate dispute-resolution mechanisms in a timely manner.

The Government notes the ALRC is due to report on a number of the issues raised in this recommendation as part of its comprehensive review of the family law system. The Government will consider the Committee's recommendation in the context of the ALRC's review and in conjunction with the major federal court structural reforms.

Recommendation 6:

The Committee recommends that the Attorney-General progress through the Council of Australian Governments an expanded information sharing platform as part of the National Domestic Violence Order Scheme to include orders issued under the *Family Law Act 1975* (Cth) and orders issued under state and territory child protection legislation.

Noted.

The Government is working with states and territories to improve information sharing between systems and jurisdictions through a CAG family violence working group of justice officials.

Recommendation 7:

The Committee recommends the Australian Government introduce to the Parliament amendments to the *Family Law Act 1975* (Cth) to require a relevant court to determine family violence allegations at the earliest practicable opportunity after filing proceedings, such as by way of an urgent preliminary hearing and, where appropriate, refer to findings made, and evidence presented, in other courts.

Noted.

Family violence is an increasingly significant factor in matters that come before the federal family law courts. The Family Court of Australia Annual Report 2016-17 identified that the number of family violence allegations in parenting cases has steadily increased since 2012-13, adding to the workload of the court and reflecting the increasing complexity of family law cases that come before the courts.

The ability of the family law courts to make an early finding of fact in relation to family violence is dependent upon the circumstances of the case and whether there is sufficient evidence before the court to allow it to make such a finding.

On 30 May 2018, the Government announced major reforms to the structure of the federal court system. As outlined at recommendation 3, the Federal Circuit and Family Court of Australia (FCFCA) would become, in effect, the single point of entry into the family law jurisdiction of the federal court system. Having a common head of jurisdiction across both Divisions of the FCFCA will enable a common case management approach and will provide opportunities for early identification of matters involving family violence and other risks. This approach will allow for these matters to be more appropriately allocated to the appropriate dispute-resolution mechanism in a timely manner.

The Government will further consider the Committee's recommendation in the context of the ALRC's review and its recommendations for broader reform.

Recommendation 8:

The Committee recommends that abuse of process in the context of family law proceedings be identified in the list of example behaviours as set out in section 4AB(2) of the *Family Law Act 1975* (Cth).

Noted.

The existing definition of family violence in section 4AB of the Family Law Act is broad and already captures a range of behaviours that would constitute family violence. This definition is non-exhaustive.

The ALRC, in its 14 March 2018 Issues Paper, invited submissions on whether changes should be made to the definition of family violence in the Family Law Act. The Government will consider the Committee's recommendation in the context of the ALRC's review.

Recommendation 9:

The Committee recommends that the Attorney-General develops stronger restrictions in relation to access by other parties to medical records in family law proceedings.

Agreed.

The Attorney-General's Department will work with the federal family law courts to ensure that appropriate procedures are in place to protect parties to family law proceedings, particularly when there are allegations of family violence and when parties are self-represented.

Recommendation 10:

The Committee recommends that the Attorney-General works with state and territory counterparts through the Council of Australian Governments to reach agreements (such as in relation to resources, education and court infrastructure) to encourage state and territory magistrates to exercise family law jurisdiction, particularly in specialist family violence courts and courts which deal with a high number of family violence matters.

Agreed.

The Government is working to encourage and support the increased exercise of family law jurisdiction by state and territory courts, where appropriate, when hearing family violence and child protection matters.

The Family Law Amendment (Family Violence and Other Measures) Bill 2017, which was introduced into the Senate on 6 December 2017, includes measures that expand and clarify the family law jurisdiction of state and territory courts.

The Government intends to pilot the increased exercise of family law jurisdiction at selected state or territory courts in up to three jurisdictions. These pilots would trial expanded use of family law jurisdiction of state and territory courts, subject to the successful passage of the Bill through the Parliament, as well as accompanying regulations.

The Government is working with the states and territories, through a CAG family violence working group of justice officials, to prepare for implementation of the Bill, subject to its passage by Parliament.

The Government is also funding the National Judicial College of Australia to develop and deliver family law training for state and territory judicial officers. The training includes face-to-face workshops on family law property and parenting matters, as well as corresponding online training modules. This training is being rolled out nationally over 2018 and 2019.

Recommendation 11:

The Committee recommends that the Attorney-General works with state and territory counterparts through the Council of Australian Governments to establish a trial in one or more specialist state or territory family violence courts (including reaching agreement in relation to resources, education and court infrastructure) enabling family law issues in family violence cases to be determined by the one court, including expedited pathways for breach and enforcement proceedings. One of the trial courts should ideally be located in an area of high Indigenous population.

Agreed.

As set out in Recommendation 10, the Government intends to pilot the increased exercise of family law jurisdiction at selected state or territory courts in up to three jurisdictions. These pilots would be evaluated to assess the benefits to the community relating to having family violence and family law issues resolved together by one court.

These pilots will depend on the successful passage of the Family Law Amendment (Family Violence and Other Measures) Bill 2017 through the Parliament and would trial the expanded family law jurisdiction of state and territory courts provided by that Bill and accompanying regulations.

The Government will prioritise a specific pilot site in an area with a high Indigenous population.

Recommendation 12:

The Committee recommends the Attorney-General introduces the Family Law Amendment (Family Violence and Cross-examination of the Parties) Bill 2017 into the Parliament for its urgent consideration such that perpetrators of family violence will be prohibited from cross-examining the other party, including in relation to the qualifications and funding of those appointed to undertake such cross examination.

Agreed.

On 28 June 2018 the Government introduced the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018 into the House of Representatives. The Bill will ensure that appropriate protections are in place for victims of family violence during cross-examination in all family law proceedings under the *Family Law Act 1975*.

The Bill will amend the Family Law Act to prohibit direct cross-examination where there is an allegation of family violence between the parties to the proceeding, and:

- either party has been convicted of, or is charged with, an offence involving violence, or a threat of violence, to the other party, or
- a family violence order (other than an interim order) applies to both parties, or
- an injunction under section 68B or 114 of the Family Law Act for the personal protection of either party is directed against the other party.

Where the circumstances do not apply, the court retains discretion to make an order that direct cross-examination is prohibited in any proceeding where an allegation of family violence has been made.

Where direct cross-examination is prohibited, the Bill requires that cross-examination must be conducted by a legal representative. The Government is working with the family law courts and National Legal Aid to ensure the measures in the Bill can be effectively implemented.

In circumstances where allegations of family violence have been raised, but direct cross-examination is not prohibited, the Bill requires that the court apply other appropriate protections.

Recommendation 13:

The Committee recommends that the Australian Government introduces to the Parliament amendments to the *Family Law Act 1975* (Cth) to enable:

- the impact of family violence to be taken into account in the Court's consideration of both parties' contributions; and
- the impact of family violence to be specifically taken into account in the Court's consideration of a party's future needs.

Noted.

Since the 1997 decision of *Kennon v Kennon*, the court has been able to take family violence into account where there is a course of violent conduct by one party that has impacted the other party's contributions to the relationship, or made them more arduous.

The ALRC has indicated it will consult widely on property matters as part of its comprehensive review of the family law system. The Government will consider the Committee's recommendation in the context of the ALRC's review.

Recommendation 14:

The Committee recommends that the Australian Government introduces to the Parliament amendments to the *Family Law Act 1975* (Cth) to include a requirement for an early resolution process for small claim property matters. This process should involve a case management process upon application to the Court for a property settlement, rather than a pre-filing requirement, which will provide greater certainty and more expeditious resolution.

Noted.

The Government supports consideration by the ALRC, in its review of the family law system, of options to provide for the early and cost-effective resolution of small claim property matters.

The ALRC has indicated it will consult widely on property matters, including about how dispute resolution processes could be modified to provide low cost options for resolutions of small claim property disputes. The Government will consider the Committee's recommendation in the context of the ALRC's review.

Recommendation 15:

The Committee recommends that the Attorney-General:

- develops an administrative mechanism to enable swift identification of superannuation assets by parties to family law proceedings, leveraging information held by the Australian Taxation Office; and
- amends the *Family Law Act 1975* (Cth) and relevant regulations to reduce the procedural and substantive complexity associated with superannuation splitting orders, including by simplifying forms required to be submitted to superannuation funds.

Agreed in principle.

The Government is actively considering options to facilitate the timely disclosure of financial information between parties following separation, as a way to support the quicker resolution of family law property disputes. The Government supports the consideration of opportunities to enable the swift identification of superannuation assets, and to reduce the complexities associated with valuing superannuation interests, for family law purposes.

Recommendation 16:

The Committee recommends that the Attorney-General's Department considers options for legislative amendment to the *Family Law Act 1975* (Cth) to enable the federal family courts to make greater use of court orders for the split or transfer of unsecured joint debt and shared liabilities following the separation of families, particularly those affected by family violence.

Agreed in principle.

The Government supports consideration of options to improve the clarity of the law to promote fair outcomes for property adjustment, such as the split or transfer of unsecured joint debt and liabilities.

The ALRC, in its review of the family law system, has sought feedback in its issues paper about unsecured joint debt and liabilities. The Government will consider the Committee's recommendation in the context of the ALRC's review.

Recommendation 17:

The Committee recommends that the jurisdictional limit on state and territory magistrates' courts hearing family law property disputes be increased and that the Attorney-General introduces to the Parliament the Family Law Amendment (Family Violence and Other Measures Bill 2017) to give effect to the increase.

Agreed.

The Family Law Amendment (Family Violence and Other Measures) Bill 2017 was introduced into the Senate on 6 December 2017. This Bill includes a measure to prescribe through regulations an increase to the property values under which state and territory magistrates' courts can hear contested family law property matters without both parties' consent. The Bill will retain the existing property value of \$20 000 as the default value and create a regulation-making power to prescribe a higher value.

Recommendation 18:

The Committee recommends that the *Family Law Act 1975* (Cth) be amended to extend sections 69ZN and 69ZX, which requires the Court to conduct proceedings in a way which safeguards the parties against family violence in parenting matters, to apply in property division matters.

Agreed in part.

The amendments in the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018 (see recommendation 12) will ensure that appropriate protections are in place for victims of family violence during cross-examination in all proceedings under the *Family Law Act 1975*. The amendments will partially implement this recommendation, by introducing additional safeguards for victims of family violence in both parenting and property proceedings.

The Government supports consideration by the ALRC, in its review of the family law system, of opportunities to provide better support at court to parties who have experienced family violence or abuse, and opportunities for less adversarial resolution of parenting and property disputes.

Recommendation 19:

The Committee recommends that the Australian Law Reform Commission, as part of its current review of the family law system, develops proposed amendments to Part VII of the *Family Law Act 1975* (Cth), and specifically, that it consider removing the presumption of equal shared parental responsibility.

Noted.

In its 14 March 2018 Issues Paper, the ALRC referenced the Committee's suggestion of removing the presumption of equal shared parental responsibility as a potential reform to the decision making framework of Part VII of the Family Law Act. The ALRC is seeking feedback on whether changes should be made to Part VII of the Act.

The Government supports consideration by the ALRC, in its review of the family law system, of whether changes should be made to Part VII, the definition of family violence, or any other provisions of the Family Law Act to produce best outcomes for children and better support decision making in relation to the safety of children and their families.

Recommendation 20:

The Committee recommends that the Attorney-General extends the Family Advocacy and Support Services pilot, subject to positive evaluation, to include a child safety service attached to the Family Court of Australia and the Federal Circuit Court of Australia, modelled on the United Kingdom's Children and Family Court Advisory and Support Service. The expanded service, which may require additional infrastructure, should:

- provide ongoing supervision of the safety of children following orders made by a court;
- bring applications to the Court where the risk of a child's safety is of concern and where an exercise of judicial power is required to ensure the child's ongoing safety; and
- refer matters to state and territory child protection agencies, where required.

Noted.

As noted in response to recommendation 1, the Government agrees to consider options for extending and expanding the FASS program, subject to a positive evaluation.

The Government notes that replicating the Children and Family Court Advisory and Support Service (CAFCASS) model in Australia's federal system may not be workable or appropriate. In the UK, cooperation between child protection authorities, the children's and family law courts and the police is more easily facilitated as they operate under a unitary model. While in Australia, state and territory governments have primary responsibility for child protection and there is separation between children's and family law courts. These differences would require careful consideration to successfully implement a child safety service in the family law courts.

There are existing services and arrangements in Australia that collectively perform functions similar to the CAFCASS model. The FASS provides specialist family violence support services for those affected by family violence who are accessing the family law system; independent children's lawyers appointed by the family law courts represent the best interests of children in proceedings; and family consultants interview the parties and the children, preparing family reports to inform the Court's interim and final decisions in parenting matters. The standout feature of the CAFCASS model is drawing these elements into a single independent service, for the purpose of promoting the welfare of children and families involved in family law proceedings.

In its 14 March 2018 Issues Paper, the ALRC invited submissions about how mechanisms to ensure children's views are heard in court proceedings, referencing the CAFCASS model. The Government will consider the Committee's recommendation in the context of the ALRC's review and the outcomes of the FASS evaluation.

Recommendation 21:

The Committee recommends the Attorney-General, through the Council of Australian Governments where necessary, works to improve the information available to courts exercising family law jurisdiction at the earliest possible point in proceedings by:

- implementing the Family Law Council's recommendations in its 2015 Families with complex needs and the intersection of the family law and child protection systems – Interim Report for information sharing protocols between the federal family courts and state and territory child protection departments;
- establishing a child safety service attached to the Court that operates as a liaison between the federal family courts and child protection departments to ensure all relevant information is available to the Court at the earliest possible stage; and
- consider the adoption of multi-disciplinary panels by state and territory governments for child abuse investigations which would assist the family law courts to determine whether family violence has occurred; and
- works with the Family Court of Australia to extend the Magellan program to all parenting matters where there are allegations of family violence.

Agreed in part.

The Government is working with states and territories to improve information sharing between systems and jurisdictions through the CAG family violence working group. This may include consideration of measures such as a child safety service.

The Government supports consideration of multi-disciplinary panels for child abuse investigations by states and territories. A more coordinated approach to investigations at a state level has potential to improve the information and support available to the federal family courts when hearing parenting matters involving allegations of child abuse. However, this is a matter for state and territory governments.

The Government agrees to work with the federal courts and consider options for extending the Magellan program or establishing a new case management program for matters involving allegations of family violence. This will be undertaken in the context of the courts reviewing and updating their rules as part of structural court reform.

Recommendation 22:

The Committee recommends the Attorney-General pursues legislation and policy reform to abolish private family consultants, with family consultants to be only engaged and administered by the Court itself. Further, the Committee recommends the development of an agreed fee schedule to regulate the costs of family reports and other expert witnesses.

Noted.

The Australian Government acknowledges the need to ensure that independent assessments prepared by family consultants are of a consistently high quality. The Government will work with the family law courts on improvements in this area.

Family consultants can be employees of the court, or private practitioners appointed by the court under Regulation 7 of the *Family Law Regulations 1984*. All reports prepared by family consultants are funded by the court at no cost to the parties.

A party in family law proceedings may elect to pay a private practitioner to provide an expert opinion to the court by way of a written report, which may be admitted to the court as evidence. The court may also order that expert evidence be given by a single expert witness with specialised knowledge. The Australian Government does not currently regulate the fees charged by private practitioners.

Recommendation 23:

The Committee concludes that the Court must be better informed of children's views, concerns and matters affecting their welfare, and recommends that the Australian Law Reform Commission in its ongoing review of the family law system, examines and propose alternative mechanisms that would ensure children's perspectives are heard in court.

Agreed.

On 27 September 2017, the Government provided the ALRC the terms of reference for its comprehensive review of the family law system. The Government asked that a particular focus of the review include the best ways to inform decision-makers about the best interests of children, and the views held by children in family disputes.

Recommendation 24:

The Committee recommends that, as a matter of urgency, the Australian Government implements the Family Law Council recommendations from both the 2012 Improving the family law system for Aboriginal and Torres Strait Islander clients report, and the 2016 Families with complex needs and the intersection of the family law and child protection systems – Final Report, as they relate to Aboriginal and Torres Strait Islander families, including those recommendations addressing:

- community education;
- cultural competency;
- service collaboration;
- culturally diverse workforce;
- early assistance and outreach;
- legal and non-legal services;
- interpreters;
- cultural reports;
- family group conferences;
- participation of elders or respected persons in court hearings; and
- consulting with Aboriginal and Torres Strait Islander representatives in the development of any reforms.

Noted.

The Australian Government is progressing work across a broad range of themes to address this recommendation and the reports of the Family Law Council. The Australian Government is continuing to work with relevant stakeholders to progress this work.

As part of the terms of reference for the comprehensive review of the family law system, the Government requested that the ALRC have regard to existing reports relevant to the family law system, including on surrogacy, family violence, access to justice, child protection and child support; and to interactions between the Commonwealth family law system and other fields, including family law services, the state and territory domestic and family violence, child protection, and child support systems. The Government supports the ALRC's consideration of the recommendations from the 2012 and 2016 Family Law Council reports.

Recommendation 25:

The Committee recommends that, as a matter of urgency, the Australian Government implements recommendations from both the 2012 Improving the family law system for clients from culturally and linguistically diverse backgrounds report, and the 2016 Families with complex needs and the intersection of the family law and child protection systems – Final Report, as they relate to culturally and linguistically diverse families, including those recommendations addressing:

- community education;
- cultural competency;
- service integration;
- culturally diverse workforce;
- consultation with culturally and linguistically diverse communities in service evaluation;
- interpreters;
- cultural connection for children; and
- family group conferences.

Noted.

The Australian Government is progressing work across a broad range of themes to address this recommendation and the reports of the Family Law Council. The Australian Government is continuing to work with relevant stakeholders to progress this work.

As part of the terms of reference for the comprehensive review of the family law system, the Government requested that the ALRC have regard to existing reports relevant to the family law system, including on surrogacy, family violence, access to justice, child protection and child support; and to interactions between the Commonwealth family law system and other fields, including family law services, the state and territory domestic and family violence, child protection, and child support systems. The Government supports the ALRC's consideration of the recommendations from the 2012 and 2016 Family Law Council reports.

Recommendation 26:

The Committee recommends the Attorney-General extends the Family Advocacy and Support Service pilot to include collaboration and referral pathways to specialist support services for families with additional challenges, using the Children and Family Court Advisory and Support Service model.

Noted.

As noted in response to recommendation 1, the Government agrees to consider options for extending and expanding the FASS program, subject to a positive evaluation.

CAFCASS provides referral pathways in matters where domestic abuse is present and for matters concerning parental contact with children, following a court order.

The Government notes that the FASS support workers screen victims for diverse service needs and refer clients to other legal, specialist family violence or family support services to meet these needs, including assistance with child protection issues.

While there may be potential for the FASS to incorporate additional referral pathways, the Government notes that it may not be possible to replicate the same mechanisms used by CAFCASS in the Australian context. This is due to both the unitary system in the UK, as well as differences in applicable services and their availability.

Recommendation 27:

The Committee recommends that the Australian Government develops a national and comprehensive professional development program for judicial officers from the family courts and from states and territory courts that preside over matters involving family violence. The Committee recommends that this program includes content on:

- the nature and dynamics of family violence;
- working with vulnerable clients
- cultural competency;
- trauma informed practice;
- family law; and
- ‘The Safe and Together Model’ for understanding the patterns of abuse and impact of family violence on children.

Agreed in principle.

On 7 December 2016, the Attorney-General’s Department entered into an agreement with the National Judicial College of Australia for the development and delivery of training for judicial officers to increase their awareness and understanding of family violence. This training is being rolled out nationally in 2017 and 2018, and builds on the National Domestic and Family Violence Bench Book.

On 16 June 2017, the Attorney-General’s Department entered into an agreement with the National Judicial College of Australia for the development and delivery of family law training for state and territory judicial officers, to complement the family violence training package.

‘The Safe and Together Model’, developed in the United States for child welfare agencies, has been demonstrated to have positive effects for professionals. Further consideration will need to be given to determine whether training in this model is necessary and appropriate for judicial officers, or whether the core elements of the model are already delivered to judicial officers in the course of other training.

Recommendation 28:

The Committee recommends that the Australian Government develops a national, ongoing, comprehensive, and mandatory family violence training program for family law professionals, including court staff, family consultants, Independent Children's Lawyers, and family dispute resolution practitioners. The Committee recommends that this program includes content on:

- the nature and dynamics of family violence;
- working with vulnerable clients;
- cultural competency;
- trauma informed practice;
- the intersection of family law, child protection and family violence; and
- 'The Safe and Together Model' for understanding the patterns of abuse and impact of family violence on children.

Agreed in principle.

The Government agrees that all family law professionals should have the necessary skill-set and competencies for responding to family violence.

The Government has funded Legal Aid NSW to redevelop the national training scheme for Independent Children's Lawyers, including family violence content. The Government also committed funding in the 2017-18 Budget for the federal family law courts to improve the training available to family consultants, with a focus on family violence competency.

The Government is working with states, territories and stakeholders on options to improve the family violence competency of professionals working in the family law and family violence systems, through the CAG family violence working group. The working group will consider the Committee's recommendation as part of its forward work program.

Recommendation 29:

The Committee recommends the Australian Government undertakes an evaluation of the Addressing Violence: Education, resources and training (AVERT) family violence training program, with consideration of its content, format, uptake, reach and effectiveness.

Noted.

The CAG family violence working group is considering options for improving the family violence competency of professionals working in the family law and family violence systems.

The Government notes the Committee's recommendation for the Government to develop a national, ongoing, comprehensive, and mandatory family violence training program for family law professionals (recommendation 28). Any update or review of AVERT would be considered in conjunction with this recommendation.

Recommendation 30:

The Committee recommends that the Australian Government develops a national accreditation system with minimum standards and ongoing professional development for family consultants modelled on the existing accreditation system for family dispute resolution practitioners. This system should include a complaints mechanism for parties when family consultants do not meet the required professional standards.

Noted.

As noted in response to recommendation 22, the Government acknowledges that the quality of expert evidence such as family reports is of great importance in the family law system.

The Government is working with states, territories and stakeholders on options to improve the family violence competency of professionals working in the family law and family violence systems, through a CAG family violence working group.

The Government acknowledges that a national accreditation system for family report writers is one way of addressing the concerns noted in the Committee's report. Accreditation provides an avenue for ensuring minimum standards, core competencies, ongoing professional development and accountability through an appropriate complaints mechanism.

Establishing an effective and robust accreditation scheme with all of the above features would be a significant undertaking that could not be achieved in the immediate to short term. Accordingly, the Government will consider the Committee's recommendation in the context of the ALRC's review and its recommendations for broader reform.

Recommendation 31:

The Committee recommends that the Australian Government considers the current backlog in the federal family courts and allocates additional resources to address this situation as a matter of priority.

Noted.

The resourcing of the federal courts is a matter to which the Government gives careful consideration. However, court resourcing can never be simply a matter of government providing additional funding injections without also looking for other appropriate efficiencies within the system, consistent with its obligation to the community to use public resources efficiently and effectively. To this end, the Government has undertaken considered steps to improve the sustainability and effectiveness of the role of the federal courts in the civil justice system.

On 30 May 2018, the Attorney-General announced the Government's intention to bring forward legislation for significant structural changes to the federal courts (excluding the High Court). Subject to passage of legislation, the Family Court of Australia (Family Court) and the Federal Circuit Court of Australia (FCC) will be brought together as the Federal Circuit and Family Court of Australia (FCFCA) from 1 January 2019. The FCFCA would become, in effect, the single point of entry into the family law jurisdiction of the federal court system and create a consistent pathway for Australian families in having their family law disputes dealt with in the federal courts.

A new Family Law Appeal Division will also be established in the Federal Court of Australia (Federal Court) to hear appeals in family law matters from the FCFCA and from the Family Court of Western Australia (FCWA).

The structural reforms will improve access to justice for Australian families; improve the efficiency of the family law system; reduce the backlog of family law courts; and drive faster, cheaper and more consistent resolution of disputes for Australian families. The creation of a common structured initial case management process and managed case listing associated with the reforms will enable the courts to significantly increase the number of family law matters finalised each year. This will enable the courts to clear more cases than they receive in applications each year and reduce the backlog of pending cases they have on hand at any time. In turn, this will reduce delays in the family law system and improve the time it takes for families to have the matters dealt with. In recognition of the implementation costs of the reforms, the Government has committed an additional \$4 million in funding to the federal courts during 2018-19. The reforms will result in savings of around \$3 million to the courts over the forward estimates, which will be reinvested in the federal courts to further improve their performance.

These reforms build on previous Government initiatives. The 2015-16 Budget contained a number of measures to put the federal courts on a sustainable financial footing, including: an injection of an additional \$22.5 million over four years to enhance the capacity of the federal courts to provide services in areas such as family law; efficiency dividend relief for the component of the courts' appropriations attributable to judges' salaries, worth \$13 million over four years; and the merger of the federal courts' corporate services functions from 1 July 2016 to ensure the efficient and effective delivery of shared services. Savings from this measure are estimated to be \$9.4 million over the six financial years to 2020-21 and \$5.4 million annually afterwards. These savings are to be reinvested in the federal courts, enhancing their capacity to provide services, particularly in family law.

Further, as part of the 2017-18 Budget the Government announced targeted, cost effective measures to reduce the backlog in the family law courts and assist with the early finalisation of matters. The package of measures to improve the family law system included the additional funding to the family law courts including: \$10.7 million over four years to the family law courts to engage additional family consultants to assist complex parenting matters, and improve risk identification and management; and \$12.7 million over four years to establish Parenting Management Hearings, a new, non-adversarial forum for resolving less complex family law disputes between self-represented litigants which will reduce the caseload of the family courts.

The Government notes that the Chief Justice of the Family Court and the Chief Judge of the FCC are responsible for allocating available judicial resources within their courts and have undertaken a number of initiatives to substantially improve the efficiency and effectiveness in all areas of the family law jurisdiction to achieve better outcomes for families using the Courts. While decisions of internal court management are a matter for the Courts, the Government will continue to support the Heads of Jurisdiction in streamlining their family law jurisdiction.

The Government is committed to ensuring that the family law courts have the resources they need to provide access to justice and help families resolve their disputes with a minimum of delay. The Government continues to monitor the ongoing resourcing and funding of the federal courts to ensure that separating families are supported during difficult times.

Recommendation 32:

The Committee recommends the Attorney-General works to introduce ‘wrap-around’ services co-located in the federal family courts, modelled on the provision of these legal and non-legal support services in the specialist family violence courts of the states and territories.

Agreed in principle.

The establishment of the FASS program mentioned in some of the Committee’s recommendations partially addresses this recommendation. The FASS integrates duty lawyer and specialist family violence services, co-located at the family law courts, to address clients’ legal and non-legal needs, including making effective referrals to other support services.

An objective of the FASS is to provide continuity of support for families moving between the family law, family violence and child protection systems. To achieve this objective, the FASS replicates and works with services available in state and territory courts that deal with family violence.

The evaluation of the FASS, scheduled for completion in September 2018, will help inform future government decisions about these services. As mentioned in response to recommendation 1, the Government agrees to consider options for extending and expanding the FASS, subject to a positive evaluation. This will include considering whether there are other support services co-located in state specialist family violence courts that merit inclusion in the FASS.

Recommendation 33:

The Committee recommends the Attorney-General works to establish a systematic court referral mechanism to evidence-based, evaluated, best practice behaviour change programs, through an expanded Family Advocacy and Support Services program, which includes systematic reporting from behaviour change program providers to advise the Court on ongoing risks to families' safety. Further, the Committee recommends that the Attorney General work with state and territory counterparts to ensure adequate funding of evidence based, evaluated, best practice behaviour change programs to support the mechanism.

Agreed in principle.

As noted in response to recommendation 1, the FASS is currently being evaluated. Following this evaluation, the Government will be in a position to consider future funding arrangements and the potential expansion of the FASS program.

As mentioned by the Committee in its report, a structured referral mechanism would need to be supported by accessible and well regarded behaviour change programs. Currently, behaviour change programs are funded by state and territory governments and their availability varies across Australia.

The FASS program includes legal and social support services for intervening with perpetrators of domestic and family violence. At some locations, legal aid commissions have partnered with organisations that offer behaviour change programs to deliver these integrated services. For example, Victoria Legal Aid has partnered with No to Violence Men's Referral Service at the Melbourne Family Law Courts Registry, and Relationship Australia (Victoria) at the Dandenong Family Law Courts Registry. The FASS also provides referrals to specialist family violence and family support programs.

The Australian Government is supporting the development of evidence-based, best-practice perpetrator interventions by funding ANROWS \$3 million to implement a dedicated Perpetrator Interventions Research Stream.

Under this stream, ANROWS has contracted 12 research projects which fall into four themes – system effectiveness; effectiveness of interventions; models to address the diversity of perpetrators; and interventions developed by, with and for Indigenous communities.