Australian Government

Australian Government response to the inquiry of the Joint Select Committee on Australia's Family Law System

January 2023

Terminology used in this response

Term	Description
AFP	Australian Federal Police
AIFS	Australian Institute of Family Studies
ALRC	Australian Law Reform Commission
ALRC Report	ALRC Report 135: *Family Law for the Future – An Inquiry into the Family Law System*, March 2019
ANU	Australian National University
ATO	Australian Taxation Office
CCSs	Children's Contact Services
Committee	Joint Select Committee on Australia's Family Law System
Family Law Act	*Family Law Act 1975* (Cth)
FASS	Family Advocacy and Support Service
FCC	Federal Circuit Court of Australia
FCFCOA	Federal Circuit and Family Court of Australia
FCFCOA Act	*Federal Circuit and Family Court of Australia Act 2021* (Cth)
FCFCOA Rules	*Federal Circuit Court and Family Court of Australia (Family Law) Rules 2021* (Cth)
FFVO Bill	Family Law Amendment (Federal Family Violence Orders) Bill 2021
FFVO	Federal family violence order
FRC	Family Relationship Centre
Government	The Commonwealth Government of Australia
ICL	Independent Children's Lawyer
LACAFDR	Legally Assisted and Culturally Appropriate Family Dispute Resolution pilot
LAC Trial	Legal Aid Commission Trial
National Framework	National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems
National Plan	*National Plan to End Violence against Women and Children 2022-2032*
NDVOS	National Domestic Violence Order Scheme
PPP500 pilot	Priority Property Pools under $500,000 pilot

Introduction

The Australian Government (the Government) acknowledges the interim and final reports of the Joint Select Committee on Australia's Family Law System (the Committee), delivered between October 2020 and November 2021. The reports include:

- the first interim report (7 October 2020)
- the second interim report, providing the committee's views and recommendations of the family law system (15 and 16 March 2021)
- the third interim report, outlining the committee's views and recommendations regarding the child support system (22 November 2021), and
- the final report, with further recommendations on the family law system (22 November 2021).

The Government thanks the members of the Committee for their work in the course of the inquiry, and in delivering the four reports.

The Government also offers sincere thanks to all the individuals and organisations that engaged with the Committee's inquiry by providing submissions and attending hearings to tell their stories in person. The inquiry provided Parliamentarians with a valuable opportunity to consider the experiences of people going through family separation and navigating the family law and child support systems.

The evidence presented to the Committee highlighted a family law system that faces significant challenges, including in relation to costs to parties, legal assistance, addressing family violence and placing the best interests of children at its centre. The Government is committed to restoring the family law system so that it is accessible, safer, simpler to use, and delivers justice and fairness for all Australian families.

The Government is equally committed to ensuring that Australia's Child Support Scheme remains effective in the assessment and collection of child support to ensure children remain financially supported by their parents after separation.

The Committee's recommendations propose a significant number of reforms to the Family Law Act, the broader family law system and the child support system. This response addresses each of the recommendations of the Committee reports. It outlines actions already taken while the Committee's inquiry was ongoing, and areas in which the Government is considering and undertaking further action.

The Committee has made several recommendations in relation to legislative reform, including clarifying the presumption of equal shared parental responsibility, simplifying the provisions relating to compliance and enforcement of parenting orders and codifying certain requirements for Independent Children's Lawyers (ICLs). The Government notes that these areas of reform were also considered by the Australian Law Reform Commission (ALRC) in its 2019 report *Family Law for the Future - An Inquiry into the Family Law System (Report 135*). The Government will address priority recommendations from the ALRC inquiry and the Committee, in consultation with the community and the family law sector.

The Government is also considering the outcomes of recent consultations on simplifying the property provisions in the Family Law Act, developing an accreditation system for Children's Contact Services and improving the competency and accountability of family report writers.

The final report and the second interim report of the committee considered several pilot programs aimed at identifying and managing family violence risk, and achieving more equitable and affordable settlement of property disputes. The Government will closely consider the evaluations of these pilot programs, and in the 2022-23 Federal Budget, has confirmed $87.9 million over four years to continue and expand the Lighthouse Project for all 'parenting-only' and 'parenting and property' matters, and enhance culturally responsive support for First Nations Australians in family law matters.

Further measures in the 2022-23 Budget that relate to the recommendations of the Committee include:

- $169.4 million for 500 frontline service and community workers to support women and children experiencing family, domestic and sexual violence
- $12.6 million over five years from 2022-23 to support a nationally coordinated approach to education and training on family, domestic and sexual violence for community frontline workers, health professionals, and the justice sector, and
- funding for the Attorney-General's Department to undertake a national review of family and domestic violence order frameworks.

Response to Committee recommendations

The Government's position on each of the Committee's recommendations for improving the family law system and the Child Support Scheme are detailed below. The Government's precise response to each recommendation remains subject to ongoing consultation and consideration of stakeholder views. The Government remains open to alternative or additional means of addressing the underlying issues identified by the Committee.

Response to recommendations in the Committee's Final Report

Recommendation 1 The committee recommends that the three-year screening and triage pilot, known as the Lighthouse Project, be expanded to:

- all Federal Circuit and Family Court of Australia registries; and
- to include all parenting; and parenting and property matters.

The committee also recommends that the expanded Lighthouse Project be appropriately resourced with additional funding for Senior Registrars and Registrars, and relevant professional and technical support staff.

Agreed.

The Lighthouse Project pilot is a systematic approach to identifying and managing family safety risks in family law parenting matters. It was developed by the (then) Federal Circuit Court (FCC) in response to increasing concerns about family violence. The pilot has resulted in a fundamental shift in the way the Federal Circuit and Family Court of Australia (FCFCOA) identifies and manages family safety risks in family law parenting matters.

In the 2019-20 Budget, $13.5 million was committed over three years for the federal family law courts to pilot the approach in three locations – Adelaide, Brisbane and Parramatta. An interim evaluation of the pilot, commissioned by the FCFCOA was overwhelmingly positive and highlighted that the pilot is achieving its intended goals in relation to the early identification and management of family violence issues in family law matters.

In the 2022-23 Budget, the Government is providing $87.9 million over four years to continue and expand the Lighthouse Project for all 'parenting-only' and 'parenting and property' matters, and enhance culturally responsive support for First Nations Australians in family law matters. This funding includes:

- $63.75 million over four years for the Court to expand the Lighthouse Project pilot and culturally responsive support, and
- $24.2 million over three years for legal aid commissions to increase their capacity to provide representation services.

The Lighthouse Project pilot will be extended until 30 June 2026, and expanded to the Court's 15 primary family law registries. All new parenting matters filed at one of these 15 locations will be included in the pilot. Culturally responsive supports, including Indigenous Liaison Officers and specialist Indigenous Lists, will be also be expanded to all of the Court's family law registries. The funding for state and territory legal aid commissions will support the expanded Lighthouse Project by increasing the commissions' capacity to provide representation services to parties and appoint ICLs.

The FCFCOA has commissioned the consultancy organisation 'Nous' to conduct a final evaluation of the pilot, which is anticipated to be completed by late 2022.

Recommendation 2 The committee recommends that, subject to a positive evaluation, the Priority Property Pools under $500 000 pilot, also known as the PPP500, be expanded to all Federal Circuit and Family Court of Australia registries.

The committee also recommends that the expanded Priority Property Pools under $500 000 program be appropriately resourced with additional funding for Senior Registrars and Registrars, and relevant professional and technical support staff.

Noted.

The Government is considering future funding and expansion of the PPP500 pilot in light of the findings of the independent evaluation by the Australian Institute of Family Studies (AIFS), *Evaluation of the Small Claims Property Pilot – Priority Property Pools under $500,000 (PPP500),* August 2022.

The findings of the evaluation support the implementation of the PPP500 on an ongoing basis with a national rollout, as an efficient way of assisting parties with modest property pools to resolve post-separation financial matters. AIFS recommended some adjustments to the program to support effective implementation on a long-term basis.

To date, funding of $9.4 million has been provided over four years for four registries of the FCFCOA to conduct the pilot, through to 30 June 2023. The pilot aims to improve the economic security of women, by helping women with small value property disputes to achieve equitable, affordable and timely property settlements.

Recommendation 3 The committee recommends that if the Family Law Amendment (Federal Family Violence Orders) Bill 2021 is passed, the Australian Government continues to consult closely with the Federal Circuit and Family Court of Australia to ensure that it has sufficient resources to implement and enforce Federal Family Violence Orders.

Noted.

The Family Law Amendment (Federal Family Violence Orders) Bill was introduced on 24 March 2021 into the House of Representatives but lapsed with the prorogation of the 46th Parliament. This lapsed Bill would have established new criminally enforceable federal family violence orders (FFVOs) which states and territories agreed in principle would be recognised on the National Domestic Violence Order Scheme (NDVOS). As part of the 2020-21 Federal Budget, $1.8 million funding was provided over four years to support the implementation and enforcement of FFVOs. The Government is considering options concerning the lapsed Bill.

Recommendation 4 The committee recommends that the Australian Government, subject to a positive evaluation of the two-year trial of lawyer-assisted mediation by legal aid commissions, considers funding and establishing a national arbitration scheme, similar to Legal Aid Queensland's arbitration program, for property-only disputes in cases where net combined assets are valued at $500 000 or less.

Development and implementation of this program should be in consultation with the FCFCOA, legal aid commissions and other relevant stakeholders.

Noted.

The Government is supportive of programs that assist users to avoid costly and time-consuming litigation to resolve their family law disputes. This is a key aim of the lawyer-assisted property mediation trial (LAC Trial) being conducted by legal aid commissions across Australia.

While Legal Aid Queensland (LAQ) has included a new, streamlined arbitration model as part of the LAC Trial, and as an additional avenue for parties in Queensland to resolve their dispute, the arbitration program is not the focus of the AIFS independent evaluation (*Evaluation of the Lawyer-assisted Family Law Property Mediation: Legal Aid Commission Trial, August 2022).* Accordingly, separate consideration would need to be given to the merits of LAQ's arbitration program before Government could consider funding and establishing a national arbitration scheme for disputes involving net asset pools of up to $500,000 throughout Australia.

The Government is considering the findings of the evaluation to inform decisions regarding future funding of the LAC Trial.

Response to recommendations in the Committee's Third Interim Report

Recommendation 1 The committee recommends the Australian Government provides adequate resources to Services Australia to allow it to enhance its Child Support Scheme services, particularly to assist those clients who have a disability and/or low levels of English proficiency. The committee recommends these enhancements include, but are not limited to:

- simplifying the language used in correspondence;
- providing explanations of key concepts and technical terms;
- improving telephone wait times;
- improving information sharing with Centrelink; and
- improving the interpreter service by ensuring that, upon agreement by the client, interpreters can access documentation being referred to during discussions.

Agreed.

The Government agrees to identify options to further improve the accessibility of the Child Support Scheme for child support customers, particularly those with disability and/or low levels of English proficiency.

The Government notes that Services Australia has arrangements in place to support customers with disability and/or low levels of English. Services Australia continues to follow accessibility standards to ensure that all people, regardless of disability or other barriers, have equal access to information.

Free interpreter and translation services are available for customers with limited or no English in over 200 languages (including Indigenous languages) and for customers who are deaf or hearing impaired. Services Australia uses the Translating and Interpreting Service (operated by Home Affairs) and the National Relay Service to connect staff and customers to qualified interpreters in the required language, in real time. Services Australia has a team of highly skilled, senior officers who provide intensive, specialised and tailored services to vulnerable and disadvantaged customers and those with complex issues.

Services Australia also undertakes ongoing work to simplify language and improve customer letters. Recently, Services Australia launched a new website to make interactions for customers simpler. Extensive research and consultation with people with disability, Aboriginal and Torres Strait Islander Australians and people from Culturally and Linguistically Diverse backgrounds informed the design of the new website.

Recommendation 2 The committee recommends the Australian Government fully implements recommendations 1 and 18 made by the House of Representatives' Standing Committee on Social Policy and Legal Affairs in 2015 in its report, *From Conflict to Cooperation: Inquiry into the Child Support Program*, by 31 December 2021.

Agreed in principle.

Recommendations 1 and 18 of the 2015 Inquiry were for Services Australia to assess demographic data to better target service delivery, and educate parents on their ability to nominate a preferred communication channel. The Government agrees to identify further

opportunities to improve the collection and use of demographic data and the information available to child support customers about nominating a preferred communication method.

Recommendation 1 of the 2015 Inquiry:

An assessment identified that Services Australia collects, manages and uses demographic data and information in line with established strategies to support specific customer groups. Data collected for child support customers includes Indigenous status; country of birth; languages spoken at home other than English; sensitive issue/s indicator; hearing, sight or speech impairment; literacy; and mobility issues.

Information collected by Services Australia has informed a number of key strategies including the Website Reform and Readability Project, the Multicultural Servicing Strategy, the Family and Domestic Violence Strategy, and updates to instructional materials with guided procedures tailored to a range of customer demographics (including those with disabilities or mental health issues).

Recommendation 18 of the 2015 Inquiry:

Services Australia provides a number of available methods for customers to nominate communication preferences, as well as messaging to encourage customers to keep their information/accounts up to date to avoid unwanted contact. A series of instructional material updates were published to increase staff awareness of customer communication options, including examples of circumstances in which Services Australia may contact customers via a non-preferred method.

Services Australia will review website content to ensure customers can easily find information about their option to nominate a preferred communication method (including exceptions to preferred contact methods).

Recommendation 3 The committee recommends the Australian Government reconvenes regular meetings of the Child Support National Stakeholder Engagement Group, or an equivalent forum, to ensure that all relevant stakeholders can have their voices heard. In doing so, the committee recommends that:

- the group reconvenes before the end of 2021;
- the group meets at least twice every year;
- the group publishes meeting minutes to promote accountability and transparency;
- the relevant departments provide ongoing updates to the group against action items and issues raised at prior meetings; and
- the relevant departments provide regular updates to their minister(s) on issues raised by the group and progress made in resolving those issues.

Agreed.

By June 2023, the Government will convene a consultative forum of stakeholders with expertise and interest in the Child Support Scheme. The forum, the Child Support Consultation Group is expected to meet biannually, and provide an opportunity for key stakeholders to collaborate with the Government on the Child Support Scheme.

Principal objectives of the Child Support Consultation Group will be to:

- enable key stakeholders to share information and expertise about the impacts of child support policy and services for families and children
- discuss and provide feedback on policy and systemic service delivery issues related to the Child Support Scheme
- discuss and provide feedback on data and research related to the Child Support Scheme, with a particular focus on achieving better outcomes for children of separated and separating families
- in response to Recommendation 5, provide feedback to the Government on their data needs, and
- in response to Recommendation 14, contribute to the Child Support Expert Panel's understanding of the implications of child support reform on separated families.

Recommendation 4 The committee recommends the Australian Government undertakes a twelve month pilot program of co-locating Child Support Scheme officers, as Court Liaison Officers, in a number of Federal Circuit and Family Court of Australia registries. Further, the committee also recommends that, subject to a positive evaluation of the pilot, the program be expanded to all Federal Circuit and Family Court of Australia registries and locations.

Agreed in principle.

The Government will consider options to enhance appropriate information sharing between the Child Support Scheme and the FCFCOA and the Family Court of Western Australia. Services Australia delivers child support services nationally, with different teams specialising in key areas including registrations, change of care, change of income and recovering debts. Given this, Services Australia does not consider the physical co-location of Services Australia staff within court registries will provide the desired quality advice to support them. The Government will consider leveraging existing mechanisms to address the intent of the recommendation.

Recommendation 5 The committee recommends the Australian Government engages with interested stakeholders to assess their data needs. Further, following such an engagement, the committee recommends the Australian Government publishes, to the extent possible, these requested datasets on an ongoing basis and in an anonymised way.

Agreed.

The Government agrees high quality data is essential to the evidence-based delivery of government programs, and agrees to engage with interested stakeholders to assess their data needs, and identify appropriate mechanisms for access and/or publication of relevant data.

The Department of Social Services publishes child support data on data.gov.au (Child Support Program Information - Datasets - data.gov.au).

Recommendation 6 The committee recommends the Australian Government regularly assesses the compliance rates of Private Collect arrangements and publishes the resulting information.

Noted.

The Government agrees to review the Child Support Scheme to identify any issues which affect private collect arrangements, and identify potential opportunities for reform. This review will specifically target circumstances in which private collect arrangements break down, and how to remove potential barriers for parents who want to change their payment arrangements from private collect to agency collect.

To support this review, the Government will undertake an evaluation of separated families. The evaluation will seek to understand the barriers that currently exist, which prevent a parent from asking Services Australia to collect their child support if their private collect arrangement is not working. The review will also consider if preventative measures exist such as identifying child support applications which may be at higher risk and where the applicant may be better off with an agency collect arrangement.

A key objective of the Child Support Scheme is that the overall arrangements of the scheme are non-intrusive, simple, flexible and efficient. For many parents, private collect arrangements ensure they are able to financially support their children, meet their Family Tax Benefit Part A maintenance action test requirement, and flexibly manage their child support arrangements, with minimal government involvement.

Where either parent is not complying with a private collect arrangement, administrative options currently exist to support parents including:

- a receiving parent (or carer) can elect for Services Australia to collect child support on their behalf at any time
- a receiving parent (or carer) can request Services Australia collect amounts of child support not paid by the paying parent in the preceding 3 months before the day they make an election for Services Australia to collect their child support, and
- where special circumstances exist, Services Australia may collect amounts not paid by the paying parent for up to 9 months before the day Services Australia was asked to collect. Special circumstances can include the paying parent pressuring the receiving parent to not ask Services Australia to collect payments on their behalf.

Services Australia provides social work services for parents and carers who are experiencing family and domestic violence. Services Australia social workers can arrange referrals to community services to meet the immediate and longer term needs of parents in matters such as accommodation, legal and family counselling, health, material assistance and training.

Recommendation 7 The committee recommends the Australian Government reconsiders the feasibility of conducting a trial of a limited financial guarantee for either vulnerable families or a randomised sample of Child Support Scheme clients.

Noted.

The Child Support Scheme was introduced to ensure that as far as possible children affected by a family breakdown remain financially secure. The Government is committed to ensuring child support customers and their children remain safe and financially supported.

The Government provides financial assistance to families with children through Family Tax Benefit Part A and Part B. In order to receive more than the base rate of Family Tax Benefit Part A, an individual must take reasonable action to obtain child support for children of a previous relationship. This is known as the maintenance action test. A parent is able to apply for an exemption to the maintenance action test if it is not reasonable to apply for child support (e.g. they are at risk of violence).

The *National Plan to End Violence against Women and Children 2022-2032* (the National Plan) recognises that women are at heightened risk of violence in the period leading up to, and directly following separation. The Government will review the interaction between the Child Support Scheme and family assistance payments to further ensure legislation and service delivery support vulnerable parents after separation. Services Australia has already commenced this work by expanding a pilot which aims to provide a more integrated service response to child support customers affected by family and domestic violence, as part of the Women's Safety 2021-22 Budget measure.

As noted in Recommendation 6, the Government will undertake an evaluation of separated families in 2023 to understand the experiences of parents with different child support arrangements, including those parents who do not have an arrangement in place (i.e. the parent fails the maintenance action test). The evaluation will target particular cohorts such as parents who are at risk of family and domestic violence, or who identify as Aboriginal and/or Torres Strait Islander, or culturally and linguistically diverse, or who are remotely located.

The findings of the evaluation in conjunction with the reviews which will be undertaken by the Government (of collection arrangements in Recommendation 6, of the interactions between the Child Support Scheme and family assistance payments, and of compliance with assessments in Recommendation 8) will allow the Government to identify risk factors and opportunities to better support vulnerable parents and families.

The Government recognises that sometimes parents choose to deliberately avoid making child support payments, and where this happens, Services Australia has a broad range of collection and enforcement powers to collect child support liabilities and debt. As noted during the Inquiry, Services Australia has collected around 95 per cent of all agency collect child support assessed to be paid since 1988.

Recommendation 8 The committee recommends the Productivity Commission undertakes an inquiry into the Child Support Scheme to review compliance with assessments of child support made by the Child Support Registrar.

Agreed in principle.

The Government agrees that compliance with child support assessments is essential to ensure that children from separated families are financially supported by their parents. This is particularly important for families during the current cost of living crisis.
The Government agrees to review compliance within the Child Support Scheme, with a particular focus on improved collection and enforcement. The Department of Social Services and Services Australia are best placed to review compliance with child support assessments.

The Government recognises Services Australia's collection and enforcement powers are effective, however, identifying opportunities to strengthen these powers are an ongoing responsibility. The Government intends to legislate three child support measures announced as part of the 2021-22 Mid-Year Economic Fiscal Outlook (MYEFO). The MYEFO package includes two debt measures which expand when unpaid child support can be collected from employers, and tightens Departure Prohibition Order rules to further encourage child support repayment. A third measure will improve the accuracy of assessments by simplifying income reporting arrangements for low-income parents who are not required to lodge a tax return.

Recommendation 9 The committee recommends the *Child Support (Assessment) Act 1989* be amended to allow the Child Support Registrar to accept applications for administrative assessments of child support using accredited DNA evidence, without requiring a declaration under section 106A**.**

Agreed in principle.

The Government agrees this proposed change could improve administrative simplicity for some parents, particularly where the parentage presumptions currently in the *Child Support (Assessment) Act 1989* (Cth) are not met.

The Government will consider amendments to the parentage presumptions in the Child Support (Assessment) Act to allow the Child Support Registrar to recognise accredited DNA evidence when deciding whether to accept an application for a child support assessment. Any requirement for a person to undergo a DNA test will continue to require a court order.

Any amendments would need to be considered in the context of the parentage provisions of the Family Law Act, to ensure that there is no inconsistency between the family law and child support regimes as to who is considered a parent in certain circumstances - for example, children born through artificial conception and donations of genetic material, and children born through surrogacy arrangements.

Recommendation 10 The committee recommends the *Child Support (Assessment) Act 1989* be amended to allow the Child Support Registrar to end administrative assessments using accredited DNA evidence.

Agreed in principle.

The Government agrees this proposed change could improve administrative simplicity for some people, particularly where DNA evidence from an accredited provider establishes a person assessed for child support for a child is not the biological parent of the child.

The Government will consider amendments to the Child Support (Assessment) Act to allow the Child Support Registrar to end some administrative assessments on the basis of accredited DNA evidence. Any requirement for a person to undergo a DNA test will continue to require a court order.

Consideration of reform in this area will need to take account of broader family law principles for determining parentage under the Family Law Act, noting that biological parentage is not always the sole consideration, and in some situations, the court will need to be the final decision maker on parentage matters.

Recommendation 11 The committee recommends that section 4 of the *Family Law Act 1975* be amended to recognise persistent underpayment and/or non-payment of child support as relevant factors in determining the existence of abuse.

Noted.

The Government notes this recommendation and recognises that persistent underpayment or non-payment of child support can have a detrimental impact on children and their families.

The Government notes that the current definition of 'abuse' in the Family Law Act is 'in relation to a child' and includes assault, sexual abuse and exploitation, causing a child to suffer serious psychological harm, including where the child is exposed to family violence, and serious neglect of the child. The definition is intended to be broad and capture a range of behaviours that would constitute abuse. The definition of abuse applies to various provisions in the Act. In some instances, it is used in a stand-alone manner, for example, in providing what gives rise to mandatory reporting requirements to child welfare authorities (section 67ZA) or in determining the exceptions to the admissibility of certain communications made in family counselling and family dispute resolution (sections 10E and 10J). In other instances, for example, in the primary considerations set out for determining the best interests of a child, the term is used in conjunction with references to other and broader types of harm.

The Attorney-General's Department is commencing preliminary discussions with states and territories to progress a national definition of family and domestic violence. Consideration of this recommendation may form part of this work, including to scope whether a change to either the definition of 'abuse' or 'family violence' in the Family Law Act is necessary.

Recommendation 12 The committee recommends that staff within Services Australia undertake enhanced training to ensure they can effectively identify child support cases where domestic or family violence may exist, and that they are equipped with the skills and knowledge to provide timely advice and assistance.

Agreed.

The Government agrees to consider further opportunities for Services Australia to increase capability to support customers and staff affected by family and domestic violence, noting this a priority area for the Government.

Services Australia has an ongoing commitment to support customers and staff affected by family and domestic violence through awareness raising, training and guidance on referrals and support options. Staff receive training facilitated by a social worker and undertake regular, mandatory refresher training to effectively identify child support cases where family and domestic violence may exist and assist affected customers. Services Australia also has a number of self-directed, voluntary training packages staff may undertake.

Services Australia is also running a Family and Domestic Violence Pilot which aims to provide a more integrated service response to child support customers affected by family and domestic violence so they only need to report this circumstance to Services Australia once.

Recommendation 13 The committee recommends the Australian Government considers the benefits of introducing lump sum child support payments into the child support legislation. The committee envisages such provisions would be equivalent to those within the *Family Law Act 1975* which allow for lump sum payment orders.

Agreed in principle.

The Government notes the Child Support (Assessment) Act currently allows lump sum payments to be taken into account when *calculating* child support assessments. These provisions allow the Child Support Registrar to credit lump sum payments specified in a binding child support agreement or court order, where the amount of the lump sum equals or exceeds the annual rate of child support payable under an administrative assessment.

The Government agrees to consider whether the existing provisions should be expanded to better encompass certain forms of lump sum payments, such as those that occur during the process of property settlement, similar to the spousal and de facto partner maintenance provisions in sections 77A and 90SH of the Family Law Act.

Recommendation 14 The committee recommends that the Australian Government convenes a Ministerial Taskforce, together with an Expert Working Group including a representative of both custodial and non-custodial parents, to examine any of the issues raised regarding the Child Support Scheme which the taskforce considers to have merit.

Agreed in principle.

The Government agrees to establish a Child Support Expert Panel to provide expert oversight and review of the Government's implementation of Committee recommendations 18 and 19.

The Child Support Expert Panel would consider updated costs of children research and make recommendations on how to integrate the findings into the child support formula, including consideration of figures used within the child support formula such as the self-support amount and the Costs of the Children Table.

The Child Support Consultation Group, which will be established under Recommendation 3, will work closely with the Child Support Expert Panel. The membership of the Child Support Consultation Group will bring diverse experience and expertise in relation to the circumstances faced by separated parents. The Child Support Expert Panel and the Child Support Consultation Group will bring a strong voice to Government on child support issues. This will include understanding the implications of child support reform for parents and children, including the interaction of the Child Support Scheme with other Government programs.

The Government is aware of the importance of updating the Costs of the Children Table to ensure child support payments provide children from separated families with an adequate level of financial support. The Child Support Expert Panel would be asked to develop a methodology enabling the Government to update the Costs of the Children Table more regularly when routine expenditure research such as the Australian Bureau of Statistics' Household Expenditure Survey is made available.

As part of the Government's implementation of Recommendation 5, the Child Support Expert Panel would be consulted on child support data needs.

Recommendation 15 The committee recommends that Services Australia updates and enhances its public information relating to the three-year additional income exemption, with a view to making the information more prominent and accessible. Further, the committee recommends the exemption be clearly brought to a payee's attention at the earliest opportunity, preferably from the first communication by Services Australia.

Agreed.

Services Australia has enhanced the post separation income information available on its website to make it easier for customers to find and understand how this may affect their child support assessment and their options. Services Australia also has a range of instructional materials that guide staff to advise child support customers (particularly new customers) of their post separation income options.

The Government agrees to explore further options to ensure post separation income information is available to new and existing customers – noting that implementation activities (such as ICT enhancements to include post separation income information in letters) may require funding.

Recommendation 16 The committee recommends that the Australian Government considers whether child support assessments should be automatically changed to reflect amended court orders.

Agreed in principle.

The Government agrees to review the implications of automatically applying court orders to child support assessments, and identify potential opportunities for reform.

The Government considers the requirement for parents and carers to notify Services Australia of any changes to care arrangements is an important principle that ensures assessment accuracy and procedural fairness in decision-making.

Most child support cases do not involve court ordered care arrangements, with approximately two per cent of child support assessments having a court ordered care arrangement recorded with Services Australia. It is the responsibility of parents to advise Services Australia of these arrangements and any changes in these arrangements. Furthermore, under the Family Law Act, parenting orders are generally made subject to any subsequent parenting plan agreed between the parties. Therefore, parents can vary the care arrangements by written agreement, without needing to return to court for new or varied orders. Legally enforceable changes to a court order would require the parties to return to court.

Under current rules, unless there is evidence that a court ordered care arrangement is not being followed; the care recorded in the child support assessment will reflect the order, provided Services Australia is aware of the arrangements. Any changes to court ordered care arrangements are also able to be reflected in child support assessments under existing legislative provisions.

Where there is evidence that the care of a child is not occurring in line with existing written arrangements, including court orders, and interim period provisions do not apply, the child support assessment will reflect the actual care of the child to ensure the child continues to be financially supported. The ongoing financial support of children according to need is the fundamental principle of the Child Support Scheme and this principle should only be departed from in limited circumstances.

Recommendation 17 The committee recommends that the Australian Government reviews the interim care provisions so that they better support compliance with family law orders and do not operate to undermine the court's decision in relation to the best interests of the children, including requiring a parent or party who has varied interim parenting orders or contact time to approach the court to seek a variation of interim orders prior to seeking any variation or amendment to the child support assessment.

Agreed in principle.

The Government agrees to review the interim care provisions in the *Child Support (Assessment) Act 1989* and identify opportunities for reform.

The Government acknowledges the concerns the Committee raised in relation to the nexus within the Child Support Scheme between the care of a child and the financial impact on a parent's child support assessment.

The Government recognises the complexity in balancing the need for the Child Support Scheme to meet its objective to ensure children from separated families receive adequate financial support, with the objectives of the family law system to help people resolve the legal aspects of family separation, including disputes about parenting arrangements for children.

The Government agrees court ordered parenting arrangements for children should be followed, subject to safety concerns or subsequent agreements between the parties. Likewise,

payment of child support should generally reflect and support court ordered arrangements. The Government also acknowledges that the drivers of non-compliance with court ordered care arrangements are complex and the proposed requirement to seek a variation of court orders may have unintended consequences in particular scenarios.

The interim care provisions enable the care recorded in a child support assessment to reflect a court order (or other written care arrangement) even where the actual care is not occurring in line with that arrangement.

From 1 July 2018, the Government implemented new interim care provisions in response to Recommendation 8 of the House of Representatives Standing Committee on Social Policy and Legal Affairs Report, *From Conflict to Cooperation: Inquiry into the Child Support Program.*

The new interim care provisions extended the maximum period an interim determination could apply where a court order is in place. The safeguard of a longer interim period will be complemented by efforts by the FCFCOA to more promptly resolve contravention applications through its National Contravention List, which commenced on 1 September 2021.

Recommendation 18 The committee recommends the Australian Government urgently updates the Costs of the Children Table to reflect the current costs of raising children in Australia. This would include a thorough assessment of whether the costs of raising children in Australia are a function of parental income and whether other factors, such as geographical location, should also be considered.

Agreed.

The Government agrees to review the Costs of the Children Table to ensure that it reflects the current costs of raising children.

In 2023, the Government will commission research into the costs of raising children in Australia. The Child Support Expert Panel (recommendation 14) will support the Government by providing expert oversight of the research and make recommendations on whether and how to update the Costs of the Children Table.

The Government notes the Costs of the Children Table will be updated as soon as practicable, subject to the recommendations made by the Child Support Expert Panel. The findings of the research and recommendations made by the Child Support Expert Panel will require a thorough assessment to prevent adverse outcomes for parents and children. The Government also notes that the implementation of recommendations may also require legislation and have service delivery implications.

Recommendation 19 The committee recommends the Costs of the Children Table be amended to better reflect the costs of raising four or more children.

Agreed in principle.

The Government agrees to consider whether the Costs of the Children Table should be amended to incorporate different cost amounts for separated parents with four or more children. The Government will ask the Child Support Expert Panel to consider this recommendation.

Response to recommendations in the Committee's Second Interim Report

Recommendation 1 The committee recommends that, subject to a positive evaluation, the Australian Government fund and expand the following pilot programs across the family law system:

- the three-year screening and triage pilot, known as the Lighthouse Project, currently being undertaken in the Federal Circuit Court of Australia, which involves the screening of parenting matters for family safety risks at the point of filing;
- the Priority Property Pool 500 small claims property pilot in the Federal Circuit Court of Australia;
- the legally-assisted property mediation pilot being undertaken by Legal Aid Commissions;
- the legally-assisted Family Dispute Resolution pilot for Culturally and Linguistically Diverse and Aboriginal and Torres Strait Islander families; and
- the co-location of state and territory officers, such as child protection practitioners and policing officials, in family law courts across Australia.

Agreed in part.

The Lighthouse Project pilot

Please see comments against Recommendation 1 of the final report.

Priority Property Pool 500 small claims property pilot (PPP500)

Please see comments against Recommendation 2 of the final report.

Legally assisted property mediation pilot (LAC Trial)

The Government is considering future funding of the LAC Trial following an independent evaluation by AIFS.

The findings of the evaluation support the implementation of the LAC Trial on an ongoing basis, as an efficient way of assisting parties with modest property pools to resolve post separation financial matters. AIFS recommended some adjustments to the program to support effective implementation on a long-term basis.

To date, funding of $17.5 million has been provided over four financial years, through to 30 June 2023, for all legal aid commissions to trial legally-assisted property mediation. The LAC Trial aims to improve the economic security of women, by helping women with small value property disputes to achieve equitable, affordable and timely property settlements.

Legally assisted and culturally appropriate family dispute resolution

The Legally Assisted and Culturally Appropriate Family Dispute Resolution pilot (LACAFDR) was designed to trial new and enhanced models to assist separating or separated Culturally and Linguistically Diverse and Aboriginal and Torres Strait Islander families experiencing family violence to resolve their family law disputes in a safe and empowering way, without going to court. The Australian National University (ANU) was commissioned

to independently evaluate the pilot. The pilot and evaluation began in 2016-17 for three years, with additional funding provided to extend both, to the end of 2019-20. The ANU submitted its evaluation report to the Attorney-General's Department on 1 February 2021. The results of the evaluation were mixed and the program has not been extended.

As part of the Closing the Gap Statement on 5 August 2021, $8.3 million in funding over three years (2021-22 to 2023-24) was allocated for selected Aboriginal Community Controlled Organisations to assist Aboriginal and Torres Strait Islander families resolve post-separation parenting and property disputes. This measure progresses key recommendations made by a number of reviews and reports, including the LACAFDR evaluation, and is an important initiative to foster cultural diversity in family law service delivery for Aboriginal and Torres Strait Islander people. New services will be selected prior to the end of 2022, with services to be run and evaluated by 30 June 2024. Extension of this program will be considered in due course.

The Co-location Pilot

In the 2019-20 Budget, $10.4 million was provided to states and territories to pilot the co-location of State and Territory child protection and policing officials in family law courts across Australia until June 2022. A further $9.6 million (over three years from 2022-23) was allocated as part of the 2021-22 Budget to continue the co-location of child protection and policing officials in family law courts until 30 June 2025. This additional funding was part of the 2021-22 Budget measure to support information sharing under the *National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems* (the National Framework).

ARTD Pty Ltd was commissioned to independently evaluate the co-location pilot. ARTD submitted its evaluation report, *Evaluation of the Co-location Pilot*, to the Attorney-General's Department in March 2022. Key findings in the evaluation indicate that the pilot is increasing the quality and timeliness of family safety information sharing by improving existing information sharing processes, developing new information sharing pathways, and facilitating deeper relationships between co-located officials and the courts. The nine recommendations of the final report, which are directed to all participants of the co-location pilot, will be considered in due course.

Recommendation 2 The committee recommends that the Australian Government work closely with the Family Court of Australia and the Federal Circuit Court of Australia to broaden the role of registrars through the delegation of judicial power or specific legislative amendment to further assist with the case management and hearing of appropriate matters in family law proceedings, including (but not limited to):

- in property matters, having authority to check a party's compliance with financial disclosure requirements and to make orders for compliance where disclosure has not been provided;
- in the case of senior registrars, the power to make a final order or declaration in appropriate circumstances in relation to property interests, maintenance or financial agreements, where the gross value of the property is no more than $2 000 000; and
- the provision of dispute resolution for parenting matters and expanded availability of conciliation in property matters.

Agreed in principle.

As detailed in response to Recommendation 3 below, an increase in resourcing was provided to support the FCFCOA to transform and harmonise its case management processes, principally by expanding the role performed by appropriately trained and qualified registrars.

The legislation provides broad capabilities for courts to delegate judicial powers to registrars in the applicable Rules of Court. The delegation of powers and functions to registrars is then a matter for the courts. This is consistent with the separation of powers and the independence of the courts.

The Government will continue to work closely with the FCFCOA to support improvements in case management practices, including the broadening of the functions performed by registrars, and consider any legislative changes needed to facilitate such reforms.

The Government is supporting a number of measures that expand the role of registrars through the new court lists, including the Discrete Property List, the Priority PPP500 List, the National Contravention List and the COVID-19 List.

On 1 September 2021, the Family Court of Australia and the FCC were brought together under a single administrative structure, the FCFCOA. To complement these structural reforms, funding was provided to the FCFCOA to support the harmonisation of the rules of court for family law matters. The Chief Justice of the FCFCOA (Division 1) and Chief Judge of the FCFCOA (Division 2), in turn, has made a single set of harmonised court rules for family law and child support matters that will apply to both divisions of the FCFCOA. Prior to being made, these rules were voted on and approved by the Judges of the FCFCOA. These new court rules retain the amendments which were made to the *Family Law Rules 2004* and *Federal Circuit Court Rules 2001* (on 26 September 2020) to expand and harmonise the delegation of powers to registrars.

<u>Disclosure</u>

The Government will consult the FCFCOA about whether changes should be made to the Family Law Act to enable registrars to check a party's compliance with financial disclosure requirements and to make orders for compliance where disclosure has not been provided. This is appropriate, as the delegation of judicial power to its registrars is a matter for the FCFCOA. The Government notes the *Federal Circuit Court and Family Court of Australia (Family Law) Rules 2021* (Cth) (FCFCOA Rules) delegate the power to Judicial Registrars and Senior Judicial Registrars to make orders in relation to disclosure in proceedings and to Senior Judicial Registrars to stay or dismiss all or part of a party's case if a party fails to disclose a document as required under the FCFCOA Rules.

To support improved disclosure of superannuation information in family law property proceedings, the Government recently implemented amendments to the Family Law Act to enable family law courts to request superannuation information from the Australian Taxation Office (ATO) on behalf of parties to family law property proceedings through a secure electronic information-sharing system. This is discussed further in response to Recommendation 21.

Property orders

The Government notes that delegation of judicial power to registrars is a matter for the FCFCOA. The FCFCOA Rules harmonise the Rules of Court for the former FCC and the former Family Court of Australia. Under the FCFCOA Rules, both Judicial Registrars and Senior Judicial Registrars can make declarations as to the title and rights that a party has in respect of property and final orders under section 79 or section 90SM of the Family Law Act with respect to property in some circumstances (for example, in undefended proceedings or with the consent or all parties to the proceedings). These delegations are provided for in Schedule 4 of the FCFCOA Rules.

Spousal maintenance

The Government supports the appropriate use of Senior Judicial Registrars and Judicial Registrars to make interim spousal maintenance a more accessible and cost-effective option for parties.

Dispute Resolution for Property Matters

The Government supports in principle the expansion of dispute resolution for parenting and conciliation in property matters. It is desirable for the family law system to support any outcomes agreed between separating couples in appropriate cases. The Government notes this aspect of the recommendation is consistent with the case management processes implemented by the FCFCOA. The Government also notes immunity applies to registrars when they conduct case conferences for family law property matters.

Recommendation 3 The committee recommends that the Australian Government provide appropriate funding to support the engagement of 25 to 30 additional registrars as well as support staff to assist the Family Court of Australia and the Federal Circuit Court of Australia to address backlogs and delays.

Agreed.

Funding provided in the 2021-22 Budget implemented this recommendation. Funding of $60.8 million (over four years) supported the engagement of 25.4 full-time equivalent (FTE) additional registrars and 54.5 FTE support staff positions. This has enabled the FCFCOA to give effect to a new approach to managing and resolving family law cases, in particular through an enhanced role for registrars in case management and in conducting certain hearings. There are early indications that this is addressing backlogs and delays in the family court system. Since the commencement of the case management approach under the new FCFCOA structure on 1 September 2021, the pending caseload has fallen by 17.8 per cent (as at 2 September 2022). The Government will continue to monitor the implementation of these reforms.

Recommendation 4 The committee recommends that a single point of entry into the family law system be established to facilitate effective triage and streamlined case management. The committee also recommends that the rules, forms and case management of the Family Court of Australia and the Federal Circuit Court of Australia be harmonised as a matter of priority. If necessary, the Australian Government should amend the *Family Law Act 1975* to authorise the Chief Justice/Chief Judge and the Deputy Chief Justice/Deputy Chief Judge to draft and finalise the harmonised rules, forms and case management for both the Family Court of Australia and the Federal Circuit Court of Australia.

Agreed.

A single point of entry into the family law system occurred through the commencement of the FCFCOA on 1 September 2021. Matters are filed in the FCFCOA (Division 2) (being the continuation of the then FCC) and subsequently transferred to the FCFCOA (Division 1) (the continuation of the then Family Court of Australia) as appropriate.

Dedicated funding was provided to the federal family law courts in the 2021-22 Budget context for a Central Assessment Team to centralise the processing of family law applications, on a national basis, to support the single point of entry. The funding also facilitated the engagement of additional registrars and court staff to streamline case management in particular, with registrars having an enhanced role in triaging matters upfront.

The family law jurisdiction of the FCFCOA also has common rules of courts, practice notes, directions and forms, creating an effective internal case management approach in family law. The Chief Justice and Chief Judge have made harmonised rules of court for family law and child support matters that apply to both divisions of the FCFCOA. Prior to being made, these rules were voted on and approved by the Judges of the FCFCOA.

The Government will continue to monitor the implementation of these changes.

Recommendation 5 The committee recommends that the Australian Government amend the *Family Law Act 1975* to include the proposed provisions set out in Appendix 4 of this second interim report.

Agreed in part.

The Committee has recommended various amendments to the Family Law Act in Appendix 4 of its second interim report that would introduce a requirement for parties to property proceedings to take genuine steps to resolve a dispute prior to filing; amend the arbitration and mediation provisions; and place a cap on legal fees that can be charged for family law property proceedings. The Government agrees with some, but not all, of these recommended changes.

Genuine Steps

The Government encourages greater use of non-court-based avenues to resolve property and financial matters where appropriate, and agrees access to courts should be retained to resolve matters where proportionate and justified. The Government agrees in principle that some system of incentives to resolve matters prior to filing an application for court orders and/or disincentives for filing an application for court orders without proper effort prior to this point is appropriate.

The Government notes that the FCFCOA Rules and related *Central Practice Direction – Family Law Case Management*, which commenced on 1 September 2021, implements a requirement for parties to file a Genuine Steps Certificate when they commence proceedings in the FCFCOA. The certificate must detail the steps that parties have taken to resolve their dispute by complying with the pre-action procedures in the FCFCOA Rules, including engaging in dispute resolution and exchanging financial information. It is open to parties to raise exemptions to this requirement, for example where a matter is urgent or there are safety concerns. The pre-action procedures apply to financial and parenting proceedings in the FCFCOA (whereas they previously only applied to matters commenced in the FCC).

The Government's view is that legislative changes to the Family Law Act to implement this particular aspect of Recommendation 5 are unnecessary at this time, as the genuine steps requirement is substantially implemented in the FCFCOA Rules and FCFCOA's Central Practice Direction. The Government will continue to monitor the implementation of these changes.

Arbitration

The Government supports strengthening arbitral processes and encourages parties to use arbitration in their family law matters, where appropriate. This is consistent with the Government's overarching objective of encouraging timely and more cost-effective methods of resolving family law disputes outside the court system.

The ALRC addressed arbitration without the consent of parties in Recommendation 29 of its Report. The Government notes, consistent with the ALRC Report (at para 9.53), that when arbitration was introduced into the Family Law Act in 1991, the court was given power to refer parties to arbitration without their consent. In 2000, legislative amendments removed this power, in part due to concerns about the constitutional validity of such a power in light of a High Court decision. In September 2008, the Family Law Council released *Family Law Council Advice on Arbitration of Family Law Property and Financial Matters* which provided a possible model for court-ordered arbitration, but noted that there was little support for implementing court-ordered arbitration for financial disputes at that time.

Further policy development and consultation with the federal family law courts, the legal profession and relevant bodies will be required to inform Government decision-making about the possible introduction of compulsory arbitration and what model would best support parties to efficiently and effectively resolve their family law matters.

Legal Costs

The Committee recommends a legislated limit on the fees a legal practitioner may charge a party to a proceeding set at either $50,000 or 10% of the combined value of the asset pool (including superannuation), whichever is higher. The recommendation provides that greater fees may be charged in exceptional circumstances, with leave of the court.

The Government shares the Committee's concern with reports of excessive legal costs experienced by parties that are disproportionate with the value of the property pool in dispute. This is a complex issue as there are a number of contributing factors to the cost of family law matters, such as delays in court processes, the issues in dispute, the behaviour and attitude of the parties, timely access to support services and alternative forms of dispute resolution, the duration of proceedings and the number of court events.

The FCFCOA Act provides that the overarching purpose of family law practice and procedure is to facilitate the just resolution of disputes according to the law and as quickly, inexpensively and efficiently as possible. As required by the legislation, the overarching purpose is reflected in the harmonised family law rules and the FCFCOA's practice directions. The FCFCOA Act also places a duty on parties to act consistently with the overarching purpose and a party's lawyer to assist them to comply with the duty. Breach of the duty will have costs consequences for the person who fails to act in accordance with the overarching purpose.

The Government also acknowledges the concerns raised by stakeholders in submissions to the Committee's inquiry that a cap on legal fees may result in an increase in self-represented litigants and cause delays in the court system. There are also a number of practical difficulties with the proposed fee cap, including that the size of the property pool is not indicative of legal complexity; the composition of the property pool and the value of assets can be in dispute between parties up until the final hearing; a lack of clarity about what costs should be included or excluded from the cap; and uncertainty about when courts should allow the cap to be exceeded by a party.

Further policy development and consultation with the FCFCOA, the legal profession and the relevant professional oversight bodies would be required before the Government could commit to progressing a regulatory reform of this nature.

The Government will continue to consider this element of the Committee's recommendation amongst other potential means of reducing the cost associated with family law proceedings. The Government will also monitor the impact of court reform and other recent developments in considering what future action would be most appropriate.

The Government notes that lawyers operate under professional regulatory schemes established under state and territory laws, including with respect to costs. Complaints of overcharging can be raised with the relevant oversight body in each state or territory.

Recommendation 6 The committee recommends the prohibition of the use of disappointment fees in family law matters.

Noted.

The Government notes the Committee's concerns about disappointment fees (also known as cancellation fees) being charged by family law barristers or solicitor advocates in some jurisdictions.

In making this recommendation, the Committee acknowledged that such fees and the regulation of legal practitioners, including the nature of the fees charged, are a matter for state and territory governments. As with other legal fees, disappointment or cancellation fees are subject to existing state and territory laws and regulated by oversight bodies. It is generally required that all legal fees are fair, reasonable and proportionate.

There was no specific data available to, or referenced by, the Committee about how prevalent and widespread the charging of disappointment fees is in practice.

The Government understands that disappointment fees are charged by a sub-set of barristers or solicitor advocates and are set out in agreements entered into with an instructing solicitor and their client. The practice of charging fees for the late cancellation of services is not limited to the practice of family law, nor to the legal profession.

Nevertheless, the Government is seriously concerned about the idea of substantial disappointment fees being charged for the cancellation of a hearing, particularly where the cancellation is not due to any fault of the client. Also of concern is where disappointment fees may discourage the settlement of matters by lessening the incentive for parties to reach a negotiated outcome prior to trial, if they would incur a portion of the legal cost in any event.

The Government will continue to monitor this issue and consult with stakeholders on the Committee's recommendation.

Recommendation 7 The committee recommends that the Family Court of Australia and the Federal Circuit Court of Australia include the requirement for proportionality of costs currently included within Schedule 1 of the *Family Law Rules 2004* within their new harmonised rules of court.

Noted.

This recommendation is appropriately directed to the federal family law courts, now Division 1 and Division 2 of the FCFCOA.

The Government notes that the Chief Justice of the FCFCOA is empowered to make the respective Rules of Court to be applied by both Divisions, in consultation with other Judges. The Government agrees with the Committee's conclusions concerning proportionality of costs in family law proceedings and can confirm that this recommendation has been addressed by the FCFCOA in the FCFCOA Rules.

Rule 12.08 of the FCFCOA Rules provides for 'legal costs to be fair, reasonable and proportionate' both in how costs are incurred and in their amount. The Rules set out a number of considerations the court may have regard to in determining whether costs are fair, reasonable and proportionate, including the actions of the parties' legal representatives, the complexity of the matter and efforts to settle or narrow the issues in dispute.

Recommendation 8 The committee recommends that the Commonwealth, states and territories, through the Council of Attorneys-General, expedite the work on uniform rules to support the provision of unbundled legal services by private family lawyers which commenced in May 2017.

Agreed in principle.

The Government supports unbundling of legal services provided by private family lawyers where appropriate. It notes the Committee's recognition that regulation of the legal profession is a matter for states and territories and that a uniform approach to unbundling across all states and territories is required. The Government is supportive of the work of the former Council of Attorneys-General Unbundled Legal Services Working Group – as led by Victoria – being reinstituted should the now Standing Council of Attorneys-General so decide.

Recommendation 9 The committee recommends that the Australian Government lead the establishment of mandatory accreditation, standards and monitoring processes, including complaints mechanisms and ongoing professional development requirements, for:

- family consultants, including family report writers employed by the court and engaged under Regulation 7 of the Family Law Regulations and privately engaged family report writers; and
- Children's Contact Services.

Agreed in principle.

Family Report Writers

The Government considers it is essential that all professionals who prepare family reports in the family law system are appropriately qualified, trained and accountable. The Attorney-General's Department ran a public consultation process from October to December 2021 on *Improving the competency and accountability of family report writers*. The Government, informed by the submissions received, will establish a framework for the introduction of regulations that will set standards and requirements for the competency and accountability of professionals who write family reports. The Government will continue to engage with stakeholders in the development of the regulations, to explore the most effective options to improve the competency and accountability of professionals who write family reports. This will include, but will not be limited to, consideration of an accreditation scheme.

Children's Contact Services (CCSs)

The Government supports the establishment of an accreditation system for CCSs. The regulation of CCSs through the development of an accreditation framework would require all

CCS services to comply with a minimum standard that would professionalise the service and ensure the safety and well-being of children, their families and staff. The Government will seek to amend the Family Law Act to define what a CCS is and what minimum standards are required for the delivery of such a service.

Work has already commenced to determine the requirements of an accreditation scheme. The Attorney-General's Department published a consultation paper in March 2021, to seek industry input. The Attorney-General's Department also held targeted workshops on specific topics early in 2022, to assist in the development of options for a scheme for Government's consideration.

Recommendation 10 The committee recommends that the Australian Government re-constitute the Family Law Council and that the Family Law Council be tasked with determining how to make the family law courts less adversarial. In the interim, the committee recommends that courts better utilise the less adversarial trial approach in Division 12A of Part VII of the *Family Law Act 1975*.

The committee also recommends that in considering how to make the family court less adversarial, the re-constituted Family Law Council should consider how best to involve the voice of children in parenting proceedings in appropriate cases. This should include consideration of the establishment of a Children's and Young People's Advisory Board.

Agreed in part.

On 7 December 2021, the then Attorney-General made 11 appointments to reconstitute the Family Law Council (Council), including the appointment of the Hon Robert McClelland AO, Deputy Chief Justice of the FCFCOA, as Chair of the Council. The Council advises and makes recommendations to the Attorney-General on:

- the workings of the Family Law Act and other legislation relating to family law
- the working of legal aid in relation to family law, and
- any other matters relating to family law.

The Terms of Reference for the Council were endorsed by the Attorney-General on 13 September 2022, and are available on the Attorney-General's Department website (https://www.ag.gov.au/families-and-marriage/family-law-council).

In terms of the Committee's recommendation for the family law courts to better utilise the less-adversarial trial approach in Division 12A of Part VII of the Family Law Act, it is primarily a matter for the court in terms of how they conduct family law proceedings, with Division 12A of the Act providing a range of principles and powers for conducting child related proceedings in a less adversarial manner.

The Council's Terms of Reference do not include specific consideration of less adversarial trial approaches, but do include consideration of the following:

- ways to enhance the availability and use of family dispute resolution and mediation for both parenting and property matters, and
- addressing barriers to the use of family law arbitration including whether, and in what circumstances, arbitration could be used in parenting matters.

The Council's Terms of Reference also include consideration of how to support children to participate in family law processes, freely express their views and be accurately heard. The Council has provided the Attorney-General with a letter of advice on the establishment of a Children and Young People's Advisory Board. Government is considering this advice.

Recommendation 11 The committee recommends that the Australian Government implement a three year pilot of an inquisitorial tribunal model similar to that proposed by Professor Patrick Parkinson and Mr Brian Knox for deciding children's cases, and which was formerly considered by the Australian Parliament as parenting management hearings, but with adequate safeguards for families and which addresses the concerns raised about the previous model.

Not agreed.

The Committee refers to the Family Law Amendment (Parenting Management Hearings) Bill 2017 and accompanying proposal to trial a multi-disciplinary tribunal to resolve parenting disputes. Support for the Parenting Management Hearings trial was mixed, with stakeholders raising a number of concerns about the Bill and the proposed tribunal model. The Bill lapsed on 1 July 2019 at the end of Parliament and was not reintroduced.

Given the range of stakeholder concerns with the Parenting Management Hearings Bill and recent developments to case management and risk screening processes in the family law courts, the Government does not consider it necessary to revisit the trial.

Recommendation 12 The committee recommends that the Family Court of Australia and the Federal Circuit Court of Australia establish a mechanism by which allegations of a person wilfully misleading the court in family law proceedings can be reviewed, and where appropriate, referred for investigation for perjury.

Noted.

The Committee directed this recommendation to the federal family law courts as it concerns administrative practices for managing allegations of perjury raised in proceedings. Therefore, the FCFCOA is the appropriate body to consider this recommendation.

The FCFCOA has various powers to ensure parties provide truthful and complete evidence in the course of family law proceedings. These include punishing a person for contempt of court, awarding costs orders where there are appropriate circumstances in the opinion of the court, and varying or setting aside orders if they were obtained by fraud or in circumstances where there was a miscarriage of justice.

The Government notes that the FCFCOA has existing processes in place for reviewing and referring matters to the Australian Federal Police (AFP) for investigation for perjury. The AFP is responsible for investigating allegations of perjury as it is a Commonwealth criminal offence. The AFP is operationally independent from Government and has authority to make decisions about whether or not to investigate an alleged offence. While the AFP considers all reports of Commonwealth crimes, it does not have the resources to investigate every reported crime. The AFP's policy is to prioritise its resources towards investigating crimes that have the greater impact on society. After investigation, the AFP may refer a matter of perjury to the Commonwealth Director of Public Prosecutions.

The Government notes the Committee's consensus view that parties in family law proceedings do not frequently set out to deliberately misrepresent facts, but can often have different perceptions and recollections of what has occurred.

Recommendation 13 The committee recommends that the Commonwealth, states and territories, through the CAG, undertake a review of the state and territory family violence order framework to consider what may be done to address the concerns raised in this inquiry, particularly in relation to the following issues:

- how police respond to requests for family violence orders or enforce breaches of existing orders where a family law matter is on foot;
- how breaches of federal personal protection orders can be acted upon by state and territory police promptly to ensure protected persons, including children, are not left without protection;
- what actions should courts take to discourage improper applications, such as those made based on allegedly false allegations not ultimately upheld on review of the evidence (including whether any record of such application should be removed from the alleged perpetrators record);
- the length of time between an interim order and a contested hearing;
- does the ability to 'consent without admission' to a family violence order have unintended consequences on family law proceedings, and if so, should any state or federal amendments be made;
- whether state and territory legislation should require a court making a family violence order to inquire about any relevant *Family Law Act 1975* orders and then take such steps as is necessary so as to avoid inconsistencies between the two orders;
- whether there should be a power for a magistrate to make changes to family law orders where one party has been convicted of a family violence offence but there are no family violence orders in place (noting that this is a matter for discussion between the states/territories and the Commonwealth and would require an amendment to the *Family Law Act 1975*); and
- whether judges of the family law courts can or should be able to amend a family violence order that is in existence between the parties before it to ensure consistency with family law orders.

The committee also recommends that the Council of Attorneys-General undertake a review of the definitions of domestic violence to ensure a uniform approach by Commonwealth, state and territory governments.

Agreed in part.

The Government recognises that there are multiple challenges for people engaging with the family law and family violence systems and supports suitable safeguards and clarity to minimise trauma and ensure that processes and outcomes are appropriate and safe.

The Government is funding the Attorney-General's Department as part of the 2022-23 Budget to undertake a national review of family and domestic violence order frameworks, including penalties for breaches and relevant definitions, and of the scope of the NDVOS. The purpose of this review is to help achieve greater consistency between jurisdictions and ensure that domestic violence order frameworks remain fit for purpose and reflect the

complex nature of family and domestic violence.

The Attorney-General's Department is also commencing preliminary discussions with the states and territories on progressing a national definition of family and domestic violence. Recommendation 13 also identifies issues with respect to the interaction between family violence orders and the family law system. To the extent that the issues raised relate to other potential reforms to the Family Law Act, the Government will consider these further in the context of broader family law reform.

Recommendation 14 The committee recommends that, subject to the finalisation of the information-sharing regime currently being progressed through the Council of Attorneys-General, that the Australian Government lead the development of an appropriate technology platform for information-sharing between family law, child protection, and family violence systems at a Commonwealth, state and territory level.

Agreed.

As part of the 2018-19 Budget, funding was allocated to scope a national technological solution to facilitate information sharing. Commencement of the scoping study was delayed awaiting finalisation of the National Framework, which was endorsed by the Meeting of Attorneys-General (now Standing Council of Attorneys-General) on 12 November 2021. In June 2022, the Attorney-General's Department commenced a procurement process to engage a suitable consultant to conduct the scoping study. The scoping study is expected to commence in the second half of 2022 and will assist with providing further advice to Government on the cost and feasibility of developing a technology platform to support information sharing.

Recommendation 15 The committee recommends that all family law professionals, including judges, undertake regular professional training, including in the areas of:

- family violence and child abuse, including coercive control;
- complex trauma/ trauma informed practice, including child responses to trauma and abuse;
- characteristics of systems abuse;
- unconscious bias;
- family systems;
- parental alienation dynamics;
- engaging and communicating with children; and
- disability awareness.

Agreed in principle.

The Committee's recommendation reflects that responsibility for ensuring adequate training and support for family law professionals is shared by the Government, the courts, service providers and the professional bodies.

The Government agrees that all family law professionals, including judges, should undertake regular professional training. The Government does not have direct control over the training requirements of all family law professionals, but provides measures where appropriate and

supports the professions and state and territory governments establishing relevant training programs and requirements.

For example, as noted in the Committee's second interim report, the Government has been co-funding, with states and territories, a Family Violence in the Court training program for judicial officers across Australia, delivered by the National Judicial College of Australia. This program covers all of the matters listed by the Committee. In addition, the FCFCOA has contracted additional training for family consultants, registrars and judges, to be delivered by the Safe and Together Institute. For constitutional reasons, judicial training cannot be made mandatory.

Similarly, the Government has been co-funding, with states and territories, a National Domestic and Family Violence Bench Book. The Bench Book is primarily written for judicial officers, but is publicly accessible and is used by a range of other family law professionals, including lawyers. The Bench Book is updated annually, and in 2021 was updated to include a new section on coercive control.

The 2022-23 Women's Safety package measure *Accredited Training for Sexual Violence Response* includes funding for the development and delivery of education resources and training to the justice sector, including the judiciary and legal sector practitioners. This training is intended to build understanding and capability around engagement with victim-survivors of family, domestic and sexual violence.

The Government is providing $12.6 million over five years from 2022-23 to support a nationally coordinated approach to education and training on family, domestic and sexual violence for community frontline workers, health professionals, and the justice sector. This includes $2.6 million from 2022-23 to develop and extend resources and training for the justice sector, including the judiciary and legal practitioners, to build understanding and capability around engagement with victim-survivors and their families when they are navigating the criminal justice and family law systems. This funding includes resourcing for the following activities:

- development and delivery of a new national education and training package for the criminal justice sector on the nature and impacts of sexual assault
- training for legal practitioners on coercive control, and
- continuing funding for enhanced judicial education on family violence.

The Government is also working with states, territories and stakeholders on options to improve the family violence competency of professionals, through the Standing Council of Attorneys-General's Family Violence Working Group (FVWG). The FVWG is currently focussing on the competencies of legal practitioners, including the coverage of family safety in the requirements for Continuing Professional Development (CPD), university law degrees and Practical Legal Training.

The Government also recognises that it is important to have competent professionals, such as family report writers and ICLs, advising the court in determining parenting matters. Such assurance of competence is primarily the responsibility of the FCFCOA, which appoints family consultants to prepare family reports, and legal aid commissions who facilitate the appointment of ICLs. However, the Government has provided funding to support these entities to establish training programs, particularly training targeting family violence

awareness and response. Further, the Government is exploring, as part of a public consultation process, the competencies and accountability mechanisms that are necessary for family report writers who advise the court on parenting arrangements for children (see response to Recommendation 9 for further information).

The Government is supportive of maintaining contemporary knowledge and practices by other professionals within the family law sector. Accredited Family Dispute Resolution Practitioners must meet minimum ongoing professional development (OPD) requirements, and similar requirements will be considered in the context of developing an accreditation scheme for CCSs (see Recommendation 9).

This recommendation aligns with activities under the National Plan, which promotes training and workforce development across support sectors such as the police, justice systems, health and frontline services for staff to receive ongoing specialist education, training and professional development. It promotes training related to the drivers of violence against women and children, how to identify domestic, family and sexual violence, and trauma-informed responses to victim-survivors.

The DV-alert program, funded since 2007, provides free, nationally accredited training. The two-day workshops for frontline workers are available to a range of health, allied health and community frontline workers including legal professionals and policy officers, to recognise, respond to and appropriately refer domestic and family violence. Free Accredited Training for Sexual Violence Responses has been developed and is available online to frontline workers.

Australia's Disability Strategy 2021-2031 (the Strategy) sets out where governments across their portfolios will focus on improving outcomes for people with disability over the next 10 years. The Strategy provides Australia's national overarching policy framework to improve outcomes for all people with disability and reflects the need for greater awareness of disability among some parts of the judiciary, legal professionals and court staff.

Recommendation 16 The committee recommends that the Australian Government increase funding to Legal Aid and community legal centres, including funding to enable Legal Aid Commissions to relax their means tests so as to increase legal assistance to vulnerable families.

The committee also recommends that Legal Aid Commissions then review their means and merits policy to allow funding of both parties in appropriate circumstances.

Agreed in part.

The Government is committed to strengthening the legal assistance sector so that it can deliver valuable assistance to Australians most in need.

The National Legal Assistance Partnership 2020-25 (NLAP) will deliver more than $2.4 billion over five years of Australian Government funding to all states and territories for legal assistance services delivered by legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services. The NLAP delivers baseline funding for those organisations, as well as specific funding for the specialist Domestic Violence Units, Health Justice Partnerships, and Family Advocacy and Support Services (FASS) that some legal aid commissions and community legal centres operate. Providers also receive funding

from the states and territories, which share responsibility for funding the legal assistance sector with the Commonwealth.

The Government is investing approximately $150 million over four years in measures impacting the legal assistance sector through the 2022-23 Budget, including:

- $52.4 million over four years to ensure legal aid commissions are able to meet expected demand for support under the Family Violence and Cross-Examination of Parties Scheme
- $24.2 million over three years in additional funding to legal aid commissions to meet increased demand resulting from the expansion of the Lighthouse Project
- $16.5 million in 2022-23 for legal aid commissions to meet increased demand for legal representation to support the FCFCOA's case management reforms,
- $12 million over four years to boost funding for community legal centres in New South Wales and Queensland, in areas that were affected by the 2022 floods and 2019-20 bushfires
- $9.8 million over four years to the Environmental Defenders Office and Environmental Justice Australia, and
- $2.5 million over two years for the Financial Rights Legal Centre's Insurance Law Service.

The Government notes that legal aid commissions are independent statutory bodies established under state and territory legislation. Commissions determine eligibility for their legal services, and the extent of assistance they provide in individual cases. Applications for grants of legal aid are means and merits tested against guidelines determined by each legal aid commission. The Government does not intervene in, or influence, the decisions made by legal aid commissions in setting their means and merits tests and other guidelines. Legal aid commissions already fund both parties in appropriate circumstances, when each party meets their means and merits tests. Where a conflict of interest may exist, legal aid commissions will utilise panel lawyers to ensure that each party has access to representation.

Recommendation 17 The committee recommends that the Australian Government urgently draft and release an exposure draft of legislation which would amend section 61DA of the *Family Law Act 1975* to address the current misunderstanding of the provision that equal shared parental responsibility equates to equal time with the children.

Agreed in part.

The Government acknowledges that the operation of the 'presumption of equal shared parental responsibility' in section 61DA of the Act (and its associated provisions relating to consideration of 'equal time') are commonly misunderstood as an entitlement that parents have a right to spend equal time with their children after separation – something that has been raised in a number of inquiries into the operation of the family law system. This can lead parents to agree to unsafe and unfair arrangements, or encourage abusive parties to litigate matters on the false expectation that they are entitled to equal time with their children.

The Government will give further consideration to necessary amendments to the parenting framework in the Family Law Act, alongside recommendations made by the ALRC in its

2019 *Report No.135: Family Law for the Future.* The Government will consult with the community on any such changes.

Recommendation 18 The committee recommends that the Australian Government consider amendments to the *Family Law Act 1975* to require Independent Children's Lawyers to:

- comply with the Guidelines for Independent Children's Lawyers;
- provide a child with the opportunity to express a view in relation to the matter; and
- seek to meet with a child, unless there are extenuating circumstances.

Agreed in part.

The Government supports that children should be provided the opportunity to express their views in parenting matters that affect them, where it is safe and appropriate to do so. Facilitating child participation is a key expectation of the ICL's role, reflected in the Guidelines for ICLs 2022. The Government agrees that the Family Law Act should be amended to include a requirement for an ICL to seek to meet with a child and to provide the child with the opportunity to express a view, unless exceptional circumstances apply. These legislative amendments would assist in putting children at the centre of family law issues and facilitate their participation in issues that affect them. This approach is consistent with children's rights under the United Nations *Convention on the Rights of the Child*.

The Government does not consider it necessary to legislate an additional requirement for ICLs to comply with the Guidelines in its entirety. The Guidelines are extensive and provide guidance on expectations, skills, methodologies and processes to assist in undertaking this unique role. There is a risk that introducing a legislative requirement could lead to protracted disputes about an ICL's compliance with elements of the Guidelines that are intended to be discretionary and case-dependent. The legal aid commissions appoint and oversee ICLs and are responsible for enforcing compliance with the Guidelines. The family courts are responsible for establishing and overseeing court processes. These authorities are best placed to update, oversee and enforce ICL compliance with the Guidelines.

Recommendation 19 The committee recommends that the Australian Government establish and provide funding for a registrar-driven National Contravention List to deal with parties breaching court orders in the family court, with formal delegation of power to registrars to preside over contravention of order applications.

The committee also recommends that this should include funding for the appointment of an additional seven registrars to deal with the 1600 applications annually and an anticipated increase once the list is established, as well as to ensure that all contravention applications can be triaged within 14 days.

Agreed.

On 1 September 2021, a National Contravention List commenced in the FCFCOA funded by a 2021-22 Budget measure for implementation of a new approach to family law case management.

The courts have established an electronic National Contravention List across all registries to better utilise registrars and quickly hear and address contravention matters within 14 days of filing. The National Contravention List builds upon the registry-based contravention lists that operate in four registries of the FCFCOA: Brisbane (since 2010), Newcastle (since 2017), Melbourne (since 2018) and Sydney (since 30 July 2020), whereby contravention applications are listed before a registrar as the first court event. These contravention lists have improved the efficiency of the courts, reducing the number of applications accepted for filing and the number of applications referred to a Judge. Where contravention applications previously took many months to be heard, contravention applications accepted for filing are now given a first return date before a contravention judicial registrar as near as practicable to 14 days after the date of filing. If the application is filed in proceedings that are listed for final hearing within eight weeks from the date of filing, the application will be listed to the judge or a senior judicial registrar for hearing.

In terms of the Committee's recommendation for a formal delegation of power to registrars to preside over contravention applications, this is primarily a matter for the courts. However, there are some legislative limitations on the extent of powers that can be delegated to registrars, such as the making of final parenting orders and orders for children to spend 'make up' time with a parent. This means that some contravention applications need to be referred to a judge. The Government will give further consideration to whether legislative change is warranted to broaden the powers available to registrars and better support the National Contravention List.

Recommendation 20 The committee recommends that the Australian Government review Division 13A of Part VII of the *Family Law Act 1975* with a view to:

- simplifying the operation of this Part; and
- considering whether additional penalties for non-compliance should be included to deter the contravention of orders, including specific penalties for repeated non-compliance.

Agreed in part.

The Government supports re-writing the compliance and enforcement provisions (Division 13A of Part VII of the Family Law Act) to achieve simplification and assist parties to understand the consequences of non-compliance with parenting orders and the types of remedies that can be sought. This was also recommended by the ALRC in its inquiry into the family law system (Recommendation 42).

In relation to the Committee's recommendation for the Government to consider additional penalties as a deterrent to non-compliance, AIFS, commissioned by Australia's National Research Organisation for Women's Safety (ANROWS) and funded by the Government via the Department of Social Services, recently completed a two-year study examining parents' compliance with parenting orders, how the enforcement regime operates, and how well the legal options for responding to non-compliance with parenting orders work. The report urges policy makers to exercise caution if looking to strengthen penalties for non-compliance, noting that punitive responses are often incompatible with a child-focused family law system and may have unintended consequences for children and young people. The Government notes that the family law courts are already empowered to order bonds, fines and imprisonment in serious cases of non-compliance with child-related orders without reasonable excuse. Therefore, the Government does not propose to introduce additional penalties at this time.

Recommendation 21 The committee recommends that the Australian Government consider expanding the current information-sharing mechanism between the Australian Taxation Office (ATO) and the Family Court of Australia and the Federal Circuit Court of Australia to include all financial information held by the ATO.

Noted.

The Government is implementing measures to improve disclosure of financial information to support quicker resolution of family law property disputes. Since 1 April 2022, parties to family law property proceedings have been able to apply to the FCFCOA or the Family Court of Western Australia to request their former partner's superannuation information, held by the Australian Taxation Office (ATO).

The Government acknowledges that non-disclosure of other financial information is a commonly occurring problem in family law property matters, despite this being a legal requirement in the FCFCOA Rules. The Government considers that implementing second interim report recommendations 2 and 22 would help to improve parties' compliance with the duty to fully and frankly disclose all relevant financial information to the Court and to each other.

Expanding the current information sharing mechanism to include all financial information held by the ATO would involve complex legal considerations including jurisdictional, integrity and privacy issues. There are intricate secrecy provisions in place that provide particular restrictions and protections over the sensitive information held by the ATO. The sharing and use of this information through such a mechanism would require careful consultation and complex legislative amendments.

At this time, the Government does not propose to expand the current information-sharing mechanism to include all financial information held by the ATO.

Recommendation 22 The committee recommends that the Australian Government consider amendments to the *Family Law Act 1975* to relocate disclosure duties regarding financial circumstances from the Family Court Rules 2004 and Federal Circuit Court Rules 2001 to the *Family Law Act 1975*, and to further include:

- the cost consequences for a failure to disclose financial information, and reflect that non-disclosure of financial information may be taken into account in apportioning the property pool; and
- an application of this provision beyond court proceedings to include alternative dispute resolution.

Agreed.

The Government strongly supports ensuring parties comply with their obligation to provide full disclosure of their financial assets. The Government considers that disclosure obligations are fundamental to the principle of transparency, and to the fair resolution of property disputes. The duty to provide full and frank disclosure is now contained in the FCFCOA Rules, which commenced on 1 September 2021, and applies to financial proceedings from the start of proceedings and until finalised. The Government considers timely compliance

with this duty will assist parties to narrow issues in dispute on a transparent and fair basis, whilst also reducing time and costs for both parties. The Government also notes the expectation that parties provide disclosure before applying for orders and ahead of court-referred dispute resolution, contained in the FCFCOA Rules and related *Central Practice Direction – Family Law Case Management*.

Consistent with Recommendation 25 of the ALRC Report, the Government will consider the appropriateness of including the disclosure obligations and the consequences for a failure to discharge these obligations, within the Family Law Act, to make them more prominent and visible to users, legal practitioners and other relevant advisers.

Recommendation 23 The committee recommends that the Australian Government amend the *Family Law Act 1975* to better reflect the impact of family violence on property settlements.

Agreed in principle.

The Government is considering this recommendation, along with the recommendations in the ALRC Report, which propose amendments to clarify and simplify the property division framework of the Family Law Act.

The Government is considering the scope of legislative amendments to implement the relevant ALRC recommendations, including how to specify the steps a court should take when considering whether to order an alteration of property interests. In this context, the Government will also consider how the impacts of family violence might be addressed through the family law property division framework.

Recommendation 24 The committee recommends that the Family Law Council be asked to examine and report on enhancing the use of binding financial agreements, and how parties can be encouraged to consider entering into pre-nuptial agreements.

Noted.

The Government notes the Committee's view that binding financial agreements can be effectively used in appropriate circumstances, but also acknowledges various concerns raised by stakeholders about these agreements.

The recently endorsed Terms of Reference for the Family Law Council do not contain consideration of the use of binding financial agreements. The Government may consider asking the Family Law Council to consider this issue at a later date.

Recommendation 25 The committee recommends that the Australian Government through the Council of Australian Governments lead a review of family violence and family law services to ensure that there are adequate support services available for all victims of family violence—male and female—and that existing services review their public information platforms to ensure that it clearly highlights that the service is available to support men and their children.

The committee recognises the need for continued funding for non-legal support services for men and women in the family law system and recommends that the Australian Government continues to fund these services in registries where there is demonstrated need.

The committee also recommends that the Australian Government work closely with state and territory governments to develop workforce planning initiatives which will encourage a more gender-balanced workforce in professions that service family violence and family law systems.

Agreed in part.

The Government is conscious of the need to ensure victim-survivors of family and domestic violence are able to access appropriate supports. Non-legal frontline family and domestic violence response services are delivered at the local level by states and territories, and local government, and are supported at Commonwealth level with national programs and investment. This includes the Commonwealth's 2022-23 commitment to fund an additional 500 frontline service and community workers to support people experiencing family, domestic and sexual violence, as an ongoing measure. Flagship Commonwealth programs, such as 1800RESPECT, are available to all victim-survivors of family, domestic and sexual violence regardless of gender, gender identity or sexuality.

The Government funds a range of services to provide holistic legal and non-legal supports to those who have experienced domestic and family violence and are engaging with the family law system, including:

- Family Advocacy and Support Services: FASS provides integrated legal and non-legal supports to users navigating the family law system. This program includes increased mental health supports and dedicated men's support workers who support male victim-survivors and alleged perpetrators, including through referrals to men's behavioural change programs.

- Specialist domestic violence units and health justice partnerships: Located in all states and territories, these services provide tailored legal assistance and other holistic support. In addition to legal support, they can assist clients to access services such as financial counselling, tenancy assistance, trauma counselling, emergency accommodation and employment services.

- Family Violence and Cross-Examination of Parties Scheme: Provides legal representation to parties, via their state or territory legal aid commission, where the ban on direct cross-examination in certain circumstances involving family violence applies. This ensures that victim-survivors of family violence are not retraumatised through cross-examination by their perpetrator.

- Family Law Services: Family Law Services conduct comprehensive intake, screening and assessment processes to help identify risks, including to recognise, respond and refer clients that are experiencing family, domestic and sexual violence, and determine the needs of each individual attending the service. As far as possible, Family Law Services work in collaboration with other services and have established referral relationships with mental health services, family violence services, drug and alcohol intervention services, financial counselling, housing and legal services. These referral relationships help the service to create the most appropriate support pathways for families.

The Government is committed to ensuring that support services for victim-survivors of family violence, and for users of the family law system more generally, are accessible to all people who need them. While there will always be competing priorities, Government decisions on further funding for key services will always consider the demonstrated need for a particular service.

In future reviews of Government-provided family law services, the Government will also consider issues of accessibility, which may include the effectiveness of communications on eligibility for support.

The Government is committed to continued collaboration with states and territories to ensure that the varied needs of victim-survivors are met, including through the two-year National Partnership on Family, Domestic and Sexual Violence Responses (2021-23) with state and territory governments to support frontline family, domestic and sexual violence services and to trial new initiatives to support people experiencing violence.

The response to Recommendation 15 of the second interim report details training and development investment across key elements of the family law workforce to ensure that family violence can be better identified and addressed in the family law system. Building capability across the system will ensure that all victim-survivors of family violence receive appropriate responses when they reach out for help or engage with the family law system.

The National Plan includes a focus on the need to build the workforce in multiple sectors to both prevent and respond to gender-based violence.

Recommendation 26 The committee recommends that the Australian Government expand the Family Advocacy and Support Service (FASS) program to all Family Court and Federal Circuit Court registry and circuit locations with:

- ongoing funding to be provided for all FASS locations; and
- appropriate resourcing in rural and regional areas.

The committee also recommends the Australian Government implement case management services within either the FASS or Family Relationship Centres (FRCs), with a view to also building closer associations between the FASS and FRCs so that case management is available to clients of both services.

Agreed in part.

In the 2021-22 Budget, $85 million was provided over three years, commencing 2022-23, to continue the FASS at existing locations, and expand the service to an additional 26 locations

in Queensland, Victoria and New South Wales. This will ensure that the FASS is available in all family law court registry and/or circuit court locations, meeting the first part of this recommendation. As part of this funding, the FASS will also be enhanced through the inclusion of additional social and mental health supports to assist families as they navigate the family law system, recognising the significant impacts this process can have on their mental health and wellbeing. FASS locations provide elements of case management for clients, particularly those involved in the social support aspects of the program. However, further consideration would need to be given to the capacity for the FASS to provide expanded case management and the overlap with the role of Family Relationship Centres (FRCs).

The Government supports in principle the proposal to introduce a case management function in FRCs. There would be several benefits to separating or separated families where case managers provide continuity of care for a family as they navigate the family law system, and manage access to complementary services to meet a diverse range of needs. However, embedding this function within each of the 65 FRCs would require additional funding. Consultation would be required to identify how this proposal could best be implemented within FRCs to achieve improved outcomes for vulnerable families.

Recommendation 27 The committee recommends the Australian Government expand Legally Assisted Family Dispute Resolution to:

- family and domestic violence cases, to be carried out by specialist family and domestic violence and trauma informed practitioners; and
- parties who do not qualify for legal aid.

Agreed in principle.

The Government supports in principle the proposal that legally assisted Family Dispute Resolution should be more readily available to vulnerable families, including those that are experiencing family and domestic violence and parties who do not qualify for legal aid. This will require additional funding and consideration in the context of future budget processes.

The Government's response to Recommendation 1 of the second interim report also addresses the status of two relevant pilots:

- the legally assisted and culturally appropriate Family Dispute Resolution pilot, and
- the legally assisted property mediation pilot.

Recommendation 28 The committee recommends that the Family Law Council be tasked with considering how to best document agreements made with respect to property arrangements following Family Dispute Resolution in order to reduce litigation while still protecting the rights of the parties.

Noted.

The Government notes the Committee's recommendation that the Family Law Council consider how to best document property agreements, and may give consideration to asking the Family Law Council to consider this issue at a later date.

The Government also notes that there are several ongoing initiatives that aim to assist separating couples to finalise their property and financial arrangement.

Since June 2017, the Government has provided $4.9 million to the Legal Services Commission of South Australia to develop, launch and operate 'amica'. amica is a national online dispute resolution tool that enables amicable separating couples to negotiate and formalise agreements about their parenting and property arrangements without the need for legal representation or going to court.

In relation to property matters, amica uses artificial intelligence to suggest a fair division of assets based on the separating couple's assets and circumstances, agreements made by couples in comparable situations and how the federal family law courts generally handle disputes of the same nature. Separating couples may accept the suggested property split or make counter-offers. Once an agreement is reached, amica assists separating couples to formalise their agreement by creating a property agreement or application for property consent orders, which if filed with and accepted by the court will become legally binding. amica provides a low-cost option for families to resolve their parenting and property arrangements during separation without going to court. Amica can also help better inform individuals about how the family law system will approach the division of property, even if both members of the separating couple are not willing to agree a division without going to court.

In addition, in May 2021, the Attorney-General's Department published the '*Property and Financial Agreements and Consent Orders – What You Need to Know'* Guide. This is a practical resource to assist separating couples to understand the legal framework and options available for finalising their financial arrangements after separation without needing to go to court, with a focus on resolving their dispute by consent. It provides information on how to negotiate and draft consent orders in property matters, providing practical support to help families avoid the time, expense and emotional cost of litigation and has been translated into several different languages.

Recommendation 29 The committee recommends that the Australian Government request the Productivity Commission to investigate the direct and indirect costs to individuals and Australia of family dysfunction, and marriage and relationship breakdown and the adequacy of preventive measures, including measures to prevent family violence.

Noted.

While the Government agrees that further research and investigation could be commissioned into the topics raised within the Committee's recommendation, the Government does not consider a further inquiry of this breadth to be a priority at this time.

The Government notes that research has already been conducted into some aspects of the Committee's recommendation. For example, AIFS has examined the short and longer-term financial impact of relationship breakdown on men and women in Australia and in comparison to other OECD countries. The Department of Social Services has also previously commissioned KPMG to calculate the economic cost of violence against women and children in Australia, which is published at www.dss.gov.au. Further, on 1 April 2021, the House of Representatives Standing Committee on Social Policy and Legal Affairs reported on its inquiry into family, domestic and sexual violence. The Committee's report has a chapter

dedicated to primary prevention with recommendations which the Government has considered and addressed under the National Plan.

The National Plan has a key focus on prevention of family, domestic and sexual violence through evidence-based strategies. The National Plan will be supported by an Outcomes Framework that will support the ability to track, monitor and report. The Domestic, Family and Sexual Violence Commission will promote coordinated and consistent monitoring and evaluation frameworks by all governments for the National Plan.

The Government has committed additional funding through the 2022-23 October Budget for Our Watch to build the evidence base and develop key frameworks for prevention. Further funding for ANROWS will also ensure policy interventions continue to be evidence-based, open and accessible.

Response to Greens dissenting recommendations – Second interim report

Greens Dissenting Recommendation 1 Repeal the *Federal Circuit and Family Court of Australia Act 2019 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2019.*

Noted.

Greens Dissenting Recommendation 2 Urgent appointment of specialist family law judges to fill current vacancies and five additional specialist family law judges, to be assigned to registries according to current needs.

Noted.

Greens Dissenting Recommendation 3 The Government ensures that future judicial appointments are made within a reasonable time of a vacancy becoming available.

Noted.

Greens Dissenting Recommendation 4 The Government provides adequate resources for the appointment and retention of appropriately experienced registrars, family consultants, independent children's lawyers, and other staff to provide culturally safe, wrap-around, and responsive support for parties before the court.

Noted.

See also the response to Recommendation 4 of the second interim report.

Greens Dissenting Recommendation 5 The Government commit to, at least, additional funding of $310 million per annum for legal assistance providers as identified by the Law Council to make up the shortfall of successive cuts to Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres, Women's Legal Services, and Legal Aid Commissions.

Noted.

Greens Dissenting Recommendation 6 The next National Plan for Reduction of Violence Against Women and Children include $12 billion funding over the life of the plan for prevention programs, and social and support services for families and survivors of family and domestic violence.

Noted.

An effective response to family, domestic and sexual violence requires a whole-of-society approach with efforts across the continuum of prevention, early intervention, response, and recovery and healing, reflected in the National Plan.

To support the National Plan, the Commonwealth is making an investment of over $1.7 billion over five years. Together with ongoing funding from previous Budgets for key programs such as 1800RESPECT, and work underway to develop an Aboriginal and Torres Strait Islander Action Plan, these collective commitments represent significant investment in women's safety.

Response to Australian Labor Party interim recommendations – First Interim Report

Labor Interim Recommendation 1 The Government should urgently respond to the Australian Law Reform Commission *Family Law for the Future—An Inquiry into the Family Law System: Final Report*.

Noted.

The former Government released its response to the ALRC inquiry on 21 March 2021.

Labor Interim Recommendation 2 The Government should immediately respond to a longstanding concern of lawyers, academics and users of the family court system and implement the bipartisan recommendation of the *Parliamentary Inquiry into a better family law system to support and protect those affected by family violence* to repeal section 61DA of the *Family Law Act 1975*.

Noted.

See also the response to Recommendation 17 of the second interim report.

Labor Interim Recommendation 3 The Government should also immediately implement the recommendation of the Australian Law Reform Commission *Family Law for the Future – An Inquiry into the Family Law System: Final Report* to repeal section 65DAA of the *Family Law Act 1975*.

Noted.

Labor Interim Recommendation 4 The Government should immediately implement the bipartisan recommendation of the *Parliamentary Inquiry into a better family law system to support and protect those affected by family violence* and the recommendation of the Australian Law Reform Commission in its *Family Law for the Future—An Inquiry into the Family Law System: Final Report* and commence development of a mandatory national accreditation scheme for family report writers.

Noted.

See also commentary on family report writers in the response to Recommendation 9 of the second interim report.

Labor Interim Recommendation 5 The Government should immediately bring on debate for the Family Law Amendment (Risk Screening Protections) Bill 2020 to allow the Lighthouse Project to commence in the Family Court of Australia and the Federal Circuit Court.

Noted.

The *Family Law Amendment (Risk Screening Protections) Act 2020* commenced on 27 November 2020.

Labor Interim Recommendation 6 The Government should immediately introduce legislation to give courts access to superannuation information held by the Australian Taxation Office as announced by the Government in November 2018 and accompanied by funding of $3.3 million.

Noted.

Since 1 April 2022, parties to family law property proceedings have been able to apply to the FCFCOA or the Family Court of Western Australia to request their former partner's superannuation information, held by the ATO. The *Treasury Laws Amendment (2021 Measures No. 6) Act 2021*, the legislation enabling this measure, received Royal Assent on 13 September 2021.

Labor Interim Recommendation 7 The Government should immediately allocate additional resources, including judicial resources, to address the delays being experienced by families accessing the family law system.

Noted.

See also the response to Recommendation 4 of the second interim report.

Labor Interim Recommendation 8 The Government should not proceed with the Federal Circuit and Family Court of Australia Bill 2019.

Noted.

The FCFCOA commenced on 1 September 2021, following the enactment of the Federal Circuit and Family Court of Australia Bill 2021 (Cth). The Government continues to monitor the implementation of this reform.