

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
FAMILY COURT OF AUSTRALIA

**Question No. AE16/023**

**Senator McKim asked the following question at the hearing on 9 February 2016:**

Senator McKIM: There was some reporting done by The Monthly and Background Briefing. Perhaps I could ask you to take on notice this question. Are you satisfied that the concerns raised in those reports have been adequately addressed?

Mr Foster: Was that an article in The Monthly in November or October?

Senator McKIM: Yes, I believe so.

Mr Foster: I have seen that. What is your specific question?

Senator McKIM: Are you satisfied that the concerns raised in those reports have been satisfactorily addressed?

Mr Foster: I think we can always improve, but we can only do as much as we possibly can. We have good protocols in place. We have good recruitment processes. We have good supervision. We are a court that is very easy to complain about. People come to us with a fixed view.

Senator McKIM: A bit like parliament, perhaps!

Mr Foster: I'm not sure about parliament; no one would complain about parliament! But we are a court that is very easy to complain about, and people do have a certain amount of baggage to their complaints. But we take every complaint seriously and deal with it in an appropriate way. Sometimes you only get one side of the story as well, obviously.

Senator McKIM: I accept that. Would you take on notice the question and provide a brief response to the committee around that article in The Monthly and ABC's Background Briefing and whether or not you believe they have been satisfactorily addressed?

Mr Foster: We will do that.

**The answer to the honourable senator's question is as follows:**

*The Monthly* and ABC Background Briefing covered a number of different issues some of which have been addressed in response to Senator Heffernan's question, at the hearing on 9 February 2016, AE16/017.

Chief Justice Bryant AO has acknowledged that the reports caused alarm. In response, Her Honour took the opportunity to:

1. remind the profession, through the Family Law Section Executive and Legal Aid Commissions, that counsel appearing, in particular independent children's lawyers, as well as judges have an obligation to ensure that the reports from experts that are being admitted are consistent with the *Australian Standards of Practice for Family Assessments and Reporting* (February 2015). A copy of these Standards is available at: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/asp-family-assessments-reporting>). The Court would like to draw the Senate's attention particularly to item number 18 and indeed the entire section on 'Children in family assessments'.
2. remind the profession and judges of their obligation to carefully scrutinise expert reports and satisfy themselves that a report will stand up to close analysis. If not, further enquiries of the expert may need to be made or another report obtained. Once proceedings have commenced and cross-examination of the expert is occurring, it is

again the responsibility of those appearing and the judge to ensure that adequate scrutiny is given to the reports and that any departure from what is regarded as best professional practice queried.

Where cases are still before the Court, they will obviously be dealt with in the judicial process and Senators will understand that heads of jurisdiction would not, and should not, in any way interfere with the judicial process.