INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

To search the parliamentary database, go to:

http://parlinfo.aph.gov.au
SENATE

JOINT SELECT COMMITTEE ON AUSTRALIA’S FAMILY LAW SYSTEM

Friday, 14 February 2020

Members in attendance: Senators Chandler, Hanson, O’Sullivan, Polley, Waters and Dr Aly, Mr Andrews, Dr Martin, Mr Perrett.
WITNESSES

ANDERSON, Mr Iain, Deputy Secretary, Legal Services and Families Group,
Attorney-General's Department........................................................................................................... 1

BENNETT, Mr Shane, Acting Deputy Secretary, Social Security, Department of Social Services .......... 16

GIFFORD, Mr Cameron, First Assistant Secretary, Families and Legal System Division,
Legal Services and Families Group, Attorney-General's Department .................................................. 1

HEFREN-WEBB, Ms Elizabeth, Deputy Secretary, Families and Communities, Department of Social
Services .................................................................................................................................................. 16

MATHEWS, Ms Alexandra, Assistant Secretary, Family Safety Branch, Families and Legal System
Division, Legal Services and Families Group, Attorney-General's Department ................................. 1

McLARTY, Ms Mary, Acting Group Manager, Participation Payments and Families,
Department of Social Services ................................................................................................................ 16

M itchell, Ms Mitchell, National Children's Commissioner, Australian Human Rights Commission .... 25

ORR, Ms Dianne, Assistant Secretary, Family Law Branch, Families and Legal System Division,
Legal Services and Families Group, Attorney-General's Department .................................................... 1

TOZE, Ms Cathy, Acting National Manager, Child Support Program Branch, Services Australia .......... 16

YOUNG, Mr Bruce, Acting General Manager, Child Support,
Indigenous and Tailored Services Division, Services Australia.............................................................. 16
ANDERSON, Mr Iain, Deputy Secretary, Legal Services and Families Group, Attorney-General's Department

GIFFORD, Mr Cameron, First Assistant Secretary, Families and Legal System Division, Legal Services and Families Group, Attorney-General's Department

MATHEWS, Ms Alexandra, Assistant Secretary, Family Safety Branch, Families and Legal System Division, Legal Services and Families Group, Attorney-General's Department

ORR, Ms Dianne, Assistant Secretary, Family Law Branch, Families and Legal System Division, Legal Services and Families Group, Attorney-General's Department

Committee met at 08:32

CHAIR: Good morning. I declare open this first public hearing of the Joint Select Committee on Australia's Family Law System. This inquiry has attracted a considerable amount of media and other comment, some of which has been inaccurate, so let me clarify at the outset a number of things. The committee relies primarily on written submissions. The purpose of the hearings is for the committee to ask questions about and examine the evidence put to the committee in submissions, and to clarify issues and proposals. No-one should assume that questions from committee members reflect any predetermined position by the committee. The committee will endeavour to ensure as best it can that the witnesses asked to appear at hearings reflect the cross section of views expressed to it about the terms of reference.

The committee has agreed to hear from individual witnesses in camera in accordance with its protocols in relation to submissions and hearings. This is to ensure the safety and privacy of witnesses and other parties to a family law dispute. Anyone reporting on the committee hearings needs to be aware of the obligations and constraints placed on them by parliamentary privilege and other legislation. While the Parliamentary Privileges Act provides a defence to an action for defamation where the defamation matter is contained in a fair and accurate report of proceedings, that defence is unlikely to apply where a person alters or adds to the report on proceedings—for example, in commenting on footage from a hearing which is posted on social media. Any person or organisation should seek their own advice about reporting hearings.

As chair of this inquiry I will not be providing a running commentary on the proceedings, nor on comments made by others. My role is to chair the inquiry in as fair manner as I can and to guide the committee in the consideration of the evidence and the drafting of the report. I do not intend to repeat this part of the opening statement at every hearing. However, the secretariat will have a copy available at each hearing.

Ladies and gentlemen, this is a public hearing. A Hansard transcript of the proceedings is being made, and the hearing is also streaming live via the web, which can be found at www.aph.gov.au. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

Before the committee starts taking evidence from the Commonwealth officers appearing today, I remind committee members that the Senate has resolved that an officer of a department of the Commonwealth or of a state or territory shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about how and when policies were adopted.

The committee is due to report on 7 October 2020. Where a witness takes a question on notice at this hearing, we ask that answers be provided by 28 February this year.

I now welcome representatives from the Attorney-General's Department. You've lodged submission No. 581 with the committee. Are there any amendments or additions or modifications to that submission?

Mr Anderson: No, there's not.

CHAIR: Information on parliamentary privilege and the protection of witnesses and giving evidence to parliamentary committees has been provided to you as part of the invitation to appear. Can I now invite one or
more of you to make an opening statement. At the conclusion of remarks, I'll invite members of the committee to ask questions.

**Mr Anderson:** I'll make a brief opening statement. Thank you for inviting the department to give evidence to the committee. This inquiry, of course, follows some very significant recent reviews. In particular, in 2017, the House of Representatives Standing Committee on Social Policy and Legal Affairs, chaired by the now senator the Hon. Sarah Henderson conducted a review which made 33 recommendations, and last year the Australian Law Reform Commission made 60 recommendations for reform, centring on the legal aspects of the family law system. That review was the first root-and-branch review of the family law system since it was established.

The department thinks that an effective approach to reform should focus on the minimisation of harm. A continued focus on developing primary, secondary and tertiary interventions would help families resolve matters in a safe, timely and affordable way, whether that's through the court system or not. In that regard, it's important to always bear in mind that actually a very small proportion of separating families have their disputes resolved by the courts. For those who are resolving matters outside the courts, we think that reforms must ensure that those families have access to quality information and support, including support to resolve their disputes themselves. The reforms that are directed at those who are having their matters resolved by the courts need to focus on making sure the families before the courts have their matters handled in a safe, efficient and effective manner, bearing in mind that a number of those matters resolved by the courts present with very complex problems, including family violence, child safety concerns, mental health concerns and substance abuse. The Law Reform Commission chose to limit itself to a legal focus, so the committee may wish to consider particularly the use of non-legal mechanisms to address systemic family problems.

In terms of the department's evidence, we're responsible for family and relationship services, Commonwealth funded legal assistant services and the resourcing and form of the federal family law courts. We're progressing a number of very significant reforms at the moment, including developing a national information sharing framework—that is, sharing information across the family law system, the state child protection system and the state domestic violence system, which was agreed to by the Council of Attorneys-General last year and now needs to be operationalised over the next 12 months. We're developing legislation for state and territory police to enforce breaches of federal family law protection injunctions, and we're about to commence a risk screening triaging and specialist family violence list. It's being piloted in Brisbane, Parramatta and Adelaide. It's at only three court locations but together they pick up 42 per cent of court filings. Attachment A to the department's submission lists 17 different streams of current reform that we're progressing. There's an eighteenth stream that's not listed in that attachment but is covered in the body of the submission—namely, the development of an online dispute resolution system.

Outside the department there's housing support, financial support, medical and health services, and drug and alcohol services delivered by other Commonwealth or based state and territory bodies. Importantly, the child support system, which is referenced in the terms of reference for the inquiry, is administered by the Department of Social Services. In particular child protection systems and criminal law responses to family violence are the purview of the states and territories. We welcome any questions.

**CHAIR:** Thank you, Mr Anderson. Family law, by its very nature, involves the most personal aspects of any matter I suspect that comes before courts. It is of its nature likely to be highly emotive, at least for many of the individuals who are concerned. I wonder whether the adversarial system that we have in place is really suited to dealing with these sorts of issues—and you talked about primary interventions—and whether or not a more inquisitorial approach might actually lead to some diminution of the level of emotion that's obviously involved in these sorts of proceedings.

**Mr Anderson:** Absolutely. It's a time in people's lives when they're going through emotional turmoil. To expect people to be able to then, when children are involved, maintain a relationship for up to 18 years of a child's life is asking a lot. The Law Reform Commission made a number of findings about the adversarial process exacerbating those conflicts and whether people are receiving the kinds of guidance and support that's going to help them make better decisions. The legal process itself can be quite disempowering and alienating. So there is a less adversarial process that the courts have themselves developed, and the Law Reform Commission recommends that that be used more. But then there's also the ability to place more emphasis on family dispute resolution or on legally assisted dispute resolution—so forms of mediation. The ALRC also recommended exploring greater use of arbitration as well, whether it's arbitration by the court or outside the court. We certainly think that measures that will take people away from the conflict and help them focus on the best interests of children, where children are involved, and on harm minimisation will help people get to a better position more quickly.
CHAIR: When the Family Court was established back in 1975 or 1976, it was meant to be a much more informal process. As I recall, it was one in which lawyers weren't meant to be the primary people appearing in these courts. The best interests of the child, which you mentioned, was the key underlying factor of how this was to be approached. But it does seem to me that, over the decades since, we've become more and more adversarial. That may just be the nature of things once they get into the court process. I would like the department—you don't have to answer this now—to think about in subsequent appearances or material for this committee how we could actually strive to better remove some of the adversarial aspects of the system. I invite you to be as radical as you like in submissions you might like to put to us. There's no point having this inquiry if we're not prepared to consider a whole range of matters which may in the end not be adopted but that we at least should give some consideration to. So I invite you and anybody else who is listening to this and coming before the committee to consider this and to think a little bit outside the square on how these matters might be approached. On that note, I will hand over to the deputy chair for questions.

Senator HANSON: You have made a couple of points about it being adversarial. Chief Justice Alastair Nicholson actually viewed courts overseas. They said it was better for the courts to take an inquisitorial approach to it and that that's what they were doing. In that case I think for the people listening to this we should explain what 'adversarial' and 'inquisitorial' are so that people know which direction we're going and about whether the courts take control of it or the acting parties.

Mr Anderson: The essence of the adversarial process is that the court is reliant upon the parties to themselves advance their causes, to argue their cases. The essence of an inquisitorial process is that a court or a mediator or whoever is actively asking questions themselves to uncover what they believe are other facts in the matter rather than relying upon the parties to establish facts.

Senator HANSON: In that case, then, what happens when someone actually perjures themselves in court? How is evidence then presented to the courts to actually find out what the truth of the matter is? That issue has been raised about perjury.

Mr Anderson: Concern about perjury is quite widespread but as a matter of fact seems to occur relatively rarely. It is an offence to perjure yourself, to give false evidence.

Senator HANSON: I believe in the criminal courts it's up to a five-year jail term. What is the case in the family law courts?

Mr Anderson: Perjury is in fact a criminal offence. I can't think of the exact penalty.

Ms Orr: Up to five years.

Senator HANSON: Have there been any cases of perjury in the family law court that have been carried through?

Ms Orr: I'm not aware of any where there's been a conviction in recent times, but that's certainly not to say that there has never been.

Senator HANSON: Can you actually find out if there has been and tell us on notice, please.

Ms Orr: We'll take it on notice.

Mr Anderson: We will take that on notice. If someone believes that false evidence has been given, they can raise that matter with the court. The court can refer the matter to the Federal Police for investigation. The family courts themselves don't independently investigate criminal allegations, so they would refer that to the police. But the court would need to be satisfied that there was sufficient evidence that someone appeared to have in fact perjured themselves. It will often be the case in a family law proceeding that there will be disputed views as to the facts. That in itself doesn't mean that someone has in fact lied under oath.

Senator HANSON: In your opening statement you said you want a 'safe, efficient and effective manner'. Do you believe that is the case with the courts now?

Mr Anderson: We think that there are a number of things that aren't working as well as they should. One of those is the fact that we've got three separate systems—the federal family law system, the state child protection system and the state family violence system. We think it's the case that information sharing doesn't occur as well as it should. There might be evidence that's given in family violence proceedings or in child protection proceedings that is not necessarily available to a family law court and vice versa. We think that each of those different courts should be able to be better informed so that parties don't have to tell their stories multiple times and so that evidence that's given once can be considered in those other contexts. We're working on that. That's one aspect.
We also think that—and I know that different submissions to the committee have different views on this—the fact that we have two different federal courts both dealing with the same subject matter of family law while they have different rules and processes and proceedings is not helpful either. Then we think that there are some questions about the approaches that different courts take and whether those approaches are going to again focus on the best interests of the child and harm minimisation or sometimes potentially exacerbate the dangers in different situations. A judge based approach can be what's required when it's a very complex case. But, in other situations, it will be better to have registrars and others carrying out inquisitorial and mediation types of processes. We think there's still more of a focus on the adversarial processes than there should be.

**Senator HANSON:** What's the backlog of cases still waiting to be heard?

**Mr Gifford:** I don't have the exact number for you right now. We can take it on notice and provide it to you. Mr Anderson was outlining some of the changes that are proposed in bringing the two federal family courts together, and there is a PricewaterhouseCoopers report that estimates that, with those reforms progressing, up to an additional 8,000 cases would be advanced through the family courts to address that backlog that you are referring to.

**Senator HANSON:** There have been numbers raised of about 20,000 to 26,000 cases backlogged. Is that reasonable?

**Mr Gifford:** I'd have to check the numbers to confirm that for you, but there is a significant backlog within the family courts. As I say, part of the exercise with the proposed reforms to the structure of the courts is to address the backlog.

**Senator HANSON:** What is the average time of handing down a decision by a judge?

**Mr Gifford:** From what point in the process?

**Senator HANSON:** From the end of the trial to the time the judge hands down his determination.

**Mr Gifford:** I'm happy to take on notice to give you the exact numbers and durations, but, again, it depends on what point in the proceeding you're talking about. At the moment, it varies across registries and between the Federal Circuit Court and the Family Court. I think over the last 12 months, though, there has been an improvement in the periods in which those matters have been resolved.

**Mr Anderson:** To add to that, when PricewaterhouseCoopers did their study of how the processes will work in the two different federal family law courts they found that between 2012-13 and 2016-17 the number of pending family law matters in the Family Court and the Federal Circuit Court had moved up to 21,000. So up to 2016-17 there were 21,000 pending matters. In terms of the time it takes, we've talked quite a lot about the two federal courts. It's important to bear in mind there's also the Family Court of Western Australia as well. That has slightly different processes in some regards. I think that actually has the longest time to get to judgement when a matter is fully resolved by the court. I have in mind just over two years, but we'll check that and take it on notice.

**CHAIR:** I read reports that the Chief Justice and his deputy have been involved in a process of trying to clear a lot of the backlog, but we can follow that up with the Family Court, obviously.

**Mr Gifford:** That's right. I think you're referring there to the number of callovers or blitzes that the Family Court is holding. That's directed towards using their resources as best they can to try and address the backlog that Senator Hanson's referring to.

**Senator HANSON:** How many judges are there in the Federal Circuit Court and how many judges are in the family law court please?

**Mr Anderson:** The Family Court has 38 judges, but five of those have dual commissions to the Family Law Court of Western Australia. So they actually primarily sit in the Western Australian family court.

**Senator HANSON:** Five in the Western Australian court.

**Mr Anderson:** So that would leave 33 primarily in the federal family law court. The Federal Circuit Court has 69 judges, and of those 50.4 full-time equivalent judges are allocated to family law.

**Senator HANSON:** In section 6 of your submission, Access and the use of the federal family courts, on page 42 the last comment is:

The Attorney-General has committed to prescribing a minimum of 25 judges, as previously recommended by the Semple Report. Can you explain that please?

**Mr Gifford:** Certainly. That's a variation that has been introduced to the bills since they were previously introduced in the last parliament and reintroduced in this parliament. There were concerns raised through the last
Senate committee process that looked at that bill about any suggestion that the Family Court could effectively be starved of its judges. To address that concern, the Attorney has committed, by regulation, to have a statutory minimum number of judges that would be appointed or maintained within division 1 of the proposed new structure, which is the equivalent of the Family Court, and the number that has been suggested for that is a minimum of 25 Family Court judges.

Mr PERRETT: Has he made the regulation?

Mr Gifford: No. It's a proposed regulation, should the bills before parliament be passed.

Mr PERRETT: How has he indicated the proposed regulation?

Mr Gifford: This has been through public statements that the Attorney has made that there is a commitment that that would be the number that would go through a regulation should the bills pass parliament.

Mr PERRETT: And that's based on the Semple review that was completed in 2008—is that right?

Mr Gifford: It's not directly from Semple, but, certainly, it is addressing stakeholders' concerns about any suggestion that there would be a diminution of the number of Family Court judges. It's not directly from Semple; it more relates to the stakeholder conversations in terms of concerns about the number of Family Court judges that would be remaining after the bringing together of the Federal Circuit Court and the Family Court.

Mr PERRETT: Do you have figures for the amount of matters filed in 2008 compared to 2019, in terms of the judicial resourcing and that recommendation?

Mr Gifford: We can certainly provide that on notice, if that's okay. To be clear, you're looking for the number of matters that are filed within the Federal Circuit Court and the Family Court for 2008 versus 2019, and the number of judges for both courts at the same time.

Mr PERRETT: Yes. I thought the 25 came from that analysis.

Mr Anderson: The Semple review did talk about the figure of 25, but that's not where the Attorney is coming from with his willingness to make regulations for a figure of 25. He's talking about if legislation that's before the parliament is passed, to bring together the Family Court and the Federal Circuit Court. Then, to address any concerns that he's going to let the Family Court part of that new court wither away, he would commit to there being a minimum of 25 judges at all times in the division of that new court that would correspond to the Family Court. It is also important to bear in mind that the vast majority of federal family law cases are heard in the circuit court, not in the Family Court.

Mr PERRETT: So the merger bill would change the way that appeals are heard—division 1 judges would hear the appeals, rather than a specialist appeals division, as exists now? Is that right?

Mr Anderson: That's correct. The idea is that judges, rather than being dedicated to doing appeals, would be able to do both appeals and first instance trials. It's first instance trials where the vast number of cases are that need to be resolved.

Mr PERRETT: But the expertise?

Mr Anderson: The expertise requirement for appointment would still be there for appointment to division 1, and a new expertise requirement would be introduced for division 2, which corresponds to the current Federal Circuit Court.

Mr PERRETT: Currently it's normal practice for three judges to hear appeals, unless the Chief Justice says otherwise?

Mr Anderson: That's right.

Mr PERRETT: So the merger bills would flip that. There would be a reduction in specialisation, because rather than three specialised judges from the current appeal division, an appeal would be heard by any one judge.

Mr Anderson: I don't think it's a reduction in specialisation; it's a reduction in the number of judges, but the judges themselves would have the same specialisation requirement for appointment to division 1—for being qualified to hear appeals. It actually aligns the process for dealing with family law appeals with that that applies in the Federal Court for dealing with general federal appeals. The Federal Court deals with the most complex non-family related federal civil matters below the high court, and they can have appeals heard by a single judge or by a bench of three, depending upon what the Chief Justice thinks is appropriate for a particular case.

Mr PERRETT: Can I bring your attention to the last paragraph in your submission about the court merger bills on page 24. It's the paragraph recommending that no other improvements, including resourcing, be implemented until the court merger bills have passed and have been implemented. Can you see the bit I'm referring to?
Mr Anderson: Yes.

Mr PERRETT: Can you tell me what time frame you envisage before the benefits of the reforms are realised. Can you explain why you think it is important to freeze all other possible reforms, including extra resourcing, until the government can implement this—and only this—one reform. I've heard the Attorney-General say that he does not believe appointing more judges without structural reform is the answer. But this is the department's view, isn't it?

Mr PERRETT: Your submission is the department's view. As I'm sure you're very aware, the APS is apolitical, performing its functions in an impartial and professional manner. So why this focus on the merger first and foremost before we can do anything?

Mr Anderson: Mr Perrett, I mentioned in my opening that there are 18 different streams of current family law reform that the department is progressing. Along the way, in different budgets and MYEFO processes, there have been additional resources given to the federal Family Court. Since 2015, there have been a number of different streams of resources for more money for family consultants and things like that, and there have been some additional judges appointed. Often when there's a public discussion about what's needed in family law, the call that comes from some sectors is that it's all about resourcing. The department's view is that that's actually not the correct focus. We think that resourcing is part of the focus, but we think that having two separate federal family courts dealing with the same matters but with very different processes and rules is a fundamental problem that needs to be addressed.

Mr PERRETT: You keep saying very different processes. You've been a practitioner previously? You've been to the family courts?

Mr Anderson: Yes.

Mr PERRETT: You keep saying 'very different processes', but that's not the case, is it?

Mr Anderson: I believe that's a correct description.

Mr PERRETT: Very different processes?

Mr Anderson: Yes. I think that both processes can vary between individual judges and individual registries, as well as between the courts. Processes can vary within the courts as well as between the courts. I'll invite my colleague Ms Orr to expand on that.

Ms Orr: Certainly in terms of the way the Federal Circuit Court uses registrars is different, for example, to the way the Family Court uses registrars, in terms of the processes that they follow.

Mr PERRETT: Okay.

Senator WATERS: Just on that commitment for a minimum level of 25 specialised judges in this proposed new court, pardon my ignorance, but can you just clarify, if you said the existing numbers of judges are: 33 in the Family Court and of the 69 on the circuit court, 50.4 I think you said were dedicated to family law matters. That's 83, not including the five from Western Australia. Is 25 an increase or in fact quite a step down?

Mr Anderson: Twenty-five is aimed at addressing concerns that were raised when the court reform bills were first considered by a parliamentary committee, which was that the government might just let the Family Court part of that new court wither away by not appointing any new judges. Of the people who are currently appointed to the Family Court, I think the latest person to have to retire at the age of 70 would be in about 2037 or so, so it's a way off. There was a concern that the government could just not appoint any new people, therefore you'd be left with, effectively, just the circuit court. To address that squarely, the Attorney said he would make a commitment that there would continue to be a minimum of 25 people appointed to the Family Court.

Senator WATERS: You're talking about new appointments?

Prof. Anderson: No. At any one time there would be a minimum of 25 judges appointed to division 1 of the new court. That's not talking about the numbers appointed to division 2, which corresponds to the circuit court. So it would be a matter for the government, on advice from the Chief Justice, to consider when appointments should be made and to which divisions.

Senator WATERS: Sure, but I still don't understand how 25 and 83—

Senator HANSON: At present, you've got 38 in total—that is, 33 and five for WA. So if you're going to have the merger of the two courts, you're actually going to not appoint new judges, per se, to the family law court. So the last one will finish by about 2037. I think it's about 36 or 38. The last one will finish their appointment by that time. They're not appointing new judges, so the Attorney-General is saying: 'Look, we will make it a minimum.
Instead of going from 38, we'll make sure there's a minimum of 25. Do you understand that? It's going to be a reduction.

Prof. Anderson: So there will continue to be—

Senator WATERS: Is he talking about new appointments?

Prof. Anderson: The Attorney is saying that he would make a commitment that there would continue at all times to be a minimum of 25 judges. So as judges retire or leave from—

Senator WATERS: So fewer than we have now.

Senator HANSON: There will be fewer judges.

Prof. Anderson: This is not the total number of judges; this is specifically judges appointed to division 1 of the new court, which corresponds to the existing Family Court.

Senator WATERS: Which is what we're talking about in this hearing?

Prof. Anderson: Well, that's only a small part as 89 per cent—

CHAIR: Just to be clear, the 25 is a base threshold. There may be more judges than that in division 1, but the base in the future would be 25. There won't be fewer than 25; there may or may not be more than 25—that would depend on the advice of the Chief Justice and the decision of the government of the day.

Prof. Anderson: Absolutely, but there would not be fewer. And 89 per cent of federal family law matters are dealt with by the circuit court, so it's very important to bear in mind we're talking about three different courts dealing with family law, as well as the 70 per cent of matters that get resolved outside the courts.

CHAIR: I don't want to get bogged down on just one issue, and Senator Chandler has some questions.

Senator CHANDLER: I note in your submission that you say that the costs for legal representation can be quite prohibitive, and that's certainly consistent with some of the other submissions that we've received from individuals for this inquiry. I wonder if you have a view as to the relationship between the bill that people going through the family law system might get at the end of the process and the court backlogs that we've been talking about today.

Prof. Anderson: As my colleague Mr Gifford mentioned earlier, the PricewaterhouseCoopers report that informed the Attorney's decision to seek those reforms and to bring those two courts together, estimated that an additional 8,000 cases a year could be resolved. That would eat into that backlog very significantly.

Senator CHANDLER: What I'm saying is, if people are getting a bill of—the number you've used here is—$110,000 on a matter, if we reduce the backlog and people are able to go through the process in a more timely fashion, what impact will that have on the bill that people are receiving at the end?

Prof. Anderson: Our expectation is that people would be billed less by legal professionals, because there would be less court events that they would be billed by legal professionals to attend and to participate in.

Senator CHANDLER: Yes. Some of the submissions we've received do reference people going into court at 9 am and waiting around until 4 pm or 5 pm as the court hasn't had time to get to their case for the day so they have to come back and, of course, they have to pay the lawyer for the period of time they've been there.

Prof. Anderson: And there have also been cases where, due to the period of time that a matter takes to get through the courts, certain steps have to be repeated. A family report might be written and then a second family report might be required, because of the period of time it's taken for the matter to be resolved. The hope is that, if we can have matters going through more quickly, they won't need to repeat some of those steps. Again, that should reduce the expense.

Senator CHANDLER: This may be a question better put to the Law Council when they appear, but is there a role for the legal profession to play in setting out clear expectations when they're engaging with clients around the delays and the impact that that can have on costs?

Mr Anderson: The Law Council would doubtless say that they have legal obligations and professional obligations, and it's important to give clients estimates of cost, clear advice and things like that. I think that there's perhaps a slightly larger issue, and we point to this in our submission. It's something that was raised by the Productivity Commission in their 2014 access to justice report: that consumers of legal services are in a slightly different position to consumers of a range of professional and other services Australia. It's actually very difficult to dispute a bill from a legal professional. You need to effectively show that your legal professional has engaged in misconduct, whereas, if you think about consumer law more broadly, it's a question of saying these services aren't fit for purpose. I think there's another discussion there, but that is a matter for states and territories, who are responsible for the regulation of the legal profession.
Senator CHANDLER: You reference this unbundling of legal services in your submission. Could you provide the committee with some more detail on what that would look like?

Mr Anderson: Unbundling is something that particularly occurs in the legal assistance sphere. Legal aid commissions, who are actually Australia's biggest family law practices, provide a number of unbundled services, where they might have either a solicitor or another member of staff engage on just one part of a matter rather than every part of a matter. That's, in its essence, what unbundling is. It's not saying that a qualified legal professional needs to address every part of a matter but instead can just focus on a particular thing that they might have expertise in or a particular thing that's more important than other parts. For other aspects people might not have legal representation or they might have representation by a person who's an expert but isn't a fully qualified legal professional.

Senator CHANDLER: Do you run the risk in that situation—say you're going through a family law process and you end up engaging with five different lawyers for five discrete pieces of work throughout that process—of there being inefficiencies that you would end up with, where the cost would obviously be passed on to the client?

Mr Anderson: That's a risk, and that comes down to record keeping, basically. On the other hand, another alternative might be that you don't get legal representation at all, because you can't afford to have a lawyer represent you throughout all aspects of the matter, or you might be paying for things that you can do yourself, either with the guidance of a mediator or with the guidance of a registrar. I think there are a range of different issues in that.

Senator CHANDLER: It would just need some sort of oversight, whether that's a mediator or whatnot, to ensure, advise and say: 'Well, at this point, if you've engaged with a lawyer for three different things it's becoming quite costly. You may as well get one for the whole process.'

Mr Anderson: Yes.

Senator CHANDLER: Thank you.

Dr MARTIN: Further to that point, because I think that is a very important point about the fees and the cost of legal representation in family law matters, I want to know if there's a role for government to play in terms of regulating the fees in general for family lawyers as similar to that of the medical profession or allied health profession, in the sense that there is scope for a recommended schedule of fees?

Mr Anderson: The Productivity Commission certainly raised the question of the regulation of fees for legal professionals, including in family law. That is primarily a matter for states and territories, who regulate the practice of law in Australia.

Dr MARTIN: I have a separate question in relation to safety. The government provided additional funding to support those affected by family violence who were involved in family law proceedings, which was:

- $13.5 million over three years … to the Federal Court of Australia to pilot a screening and triage program for matters being considered by family law courts, with three interconnected processes: screening parenting matters for family safety risks at the point of filing; triaging matters to an appropriate pathway based on the identified level of risk; and maintaining a specialist list to hear matters assessed as involving a high risk of family violence

Could you discuss the pilot and the implementation of the pilot.

Ms Mathews: As you mentioned, the pilot was announced last year. The government committed $13.5 million towards it. It is operational in three registries initially, the Parramatta, Brisbane and Adelaide registries, but together, as Mr Anderson said in his opening statement, they constitute 42 per cent of filings. We are expecting there to be a significant reach in terms of the initial pilot stage. As you mentioned, there are three elements. The initial part would be: when matters are filed with the court the parties are asked to fill in an online screening process, which is a modified version of DOORS, the detection of overall risk screening tool. It's a clinical tool which was initially developed by Relationships Australia, and the court are modifying that for their purpose. Depending on the outcome of that risk screening exercise, the matter would be appropriately triaged according to the level of risk. High-risk cases would be intensively case managed. There would be an offer of immediate assistance, safety planning and the like. Moderate-risk cases would be, again, offered a safety plan and alerted to the support services that might be available. Low-risk cases might be assessed as suitable for family dispute resolution. For the high-risk cases, the pilot will establish a specialist family violence list, which will be overseen by a judge and intensively case managed, with a view to having a matter dealt with quickly and with appropriate safety supervision.

Dr MARTIN: What is defined as appropriate safety supervision?
Ms Mathews: That was just my language. In terms of what would happen, the high-risk cases would have a face-to-face or telephone appointment with a court employed family consultant. There would be follow-up risk assessments and a safety plan would be put in place for attendance at all court events as well as service referrals.

Senator POLLEY: You mention in your submission that the Australian Institute of Family Studies found that in 2014, of the families who use the court system:

- 53.7% reported … physical violence
- 85.3% reported … emotional abuse
- 38.1% presented with four or more risk or complexity issues (such as family violence, alcohol or drug use, mental health issues and gambling problems).

The Federal Circuit Court has just commenced this week something they call the Summer Campaign. Are you aware of that?

Mr Anderson: That's their campaign to hear up to 50 matters a day.

Senator POLLEY: Yes. With such complex issues impacting on most families involved in these matters, are you aware of any risk assessment that has been done on this process? There are a significant amount of families that have been impacted by family violence, physical abuse and emotional abuse. Has this process been assessed for risk?

Mr Anderson: That's a matter you'd have to address to the courts. Our understanding is that they haven't chosen these cases simply on the basis of being cases that have been around for a long time. I think they've carefully chosen the type of cases that would most benefit from this particular targeted intervention. They've done blitzes before, as they call them, and they've actually been very productive. It's quite a common experience that, when a matter has been on foot for some time, the legal professionals and the parties don't necessarily really come to grips with what they're seeking from the matter until they're on the steps of the court. The intention is to bring the parties and their representatives together and say: 'Okay, where is this matter going to go? What do you need to actually resolve the matter?' In many of those cases, people will say that it's one or two things that they particularly want addressed, and they will hammer out with the aid of a judge or a mediator what those things are in a couple of hours. In terms of the risk assessment process, that's something that we can't answer. That's a matter you'd have to address to the court. I don't think they would have chosen their cases lightly.

Senator POLLEY: What's the expectation of the number of issues that are going to be dealt with? Is there an expectation that this is going to be a speedy process, so more cases will go through this process quicker?

Mr Anderson: The expectation is that this process of applying very focused judicial and other resources will actually result in a lot of those cases being resolved. But this is private litigation, so if a party isn't prepared to resolve a matter—if it needs to go through a longer hearing process—then it won't be settled. This is really aimed at trying to say to people: 'Can we help you settle the matter? If we can't, we'll need to have some other interventions.'

Senator POLLEY: Do you have the percentage of litigants who are unrepresented in the family law system and whether or not that percentage has been increasing?

Ms Orr: We should be able to locate that.

Mr PERRETT: Do you want to ask another one and come back?

Senator POLLEY: We will move on to family relationship centres. They have been undertaking the family property mediation since 1 July 2019. Can you give us some information about that? Have the mediators given been given any further training? How many property disputes have been mediated by the family relationship centres since 1 July 2019? And, very importantly, how many of them have been resolved?

Ms Orr: Sorry, I missed the first part of that question because I was focusing on the previous one. In terms of statistics on the number of property mediations in FRCs due to that additional funding, we don't have those at present. Some of the services were given additional time for reporting purposes due to the bushfires, but we're anticipating on getting that data soon and we can take that on notice to provide it.

Senator POLLEY: How many cases have been resolved through this mediation? You don't have any numbers?

Ms Orr: I don't have those numbers now, but we can take them on notice.

Mr PERRETT: And the previous one?

Mr Gifford: To go back to your previous question: it was one of the questions on notice that we took from the private briefing earlier, so we've provided a formal response to that on notice that gives you a breakdown across
the last five financial years about matters in the Federal Circuit Court and the Family Court, where there is either representation for both parties, only one party or no parties.

Senator POLLEY: Can we get that broken down by state?

Mr Gifford: I can see if we can do that through the courts.

Senator POLLEY: Thank you.

CHAIR: Senator Waters.

Senator WATERS: Thanks for your submission and for giving us some useful information this morning. I just have a follow-up question about the family violence triage pilot that Ms Mathews mentioned earlier. Could you just run again through what the screening tool was? I think that I caught something about using Relationships Australia methodology, but can you tell us which risk screening tool is being used to determine which matters will be sent to the specialist list and why that tool was selected?

Ms Mathews: Certainly. It was the detection of overall risks screen risk assessment tool. It's referred to as DOORS. The court will be using a modified version of that. As I mentioned, the tool was originally developed by Relationships Australia with Australian government funding. It is a reputable and empirically tested screening tool and it's being used with increasing frequency across the services sector. Further questions about why that was chosen we'd have to ask the court, but it is a common tool and a well-regarded tool.

Senator WATERS: Was there consultation with stakeholders regarding which tool would be selected?

Ms Mathews: I'd have to take that on notice.

Senator WATERS: And did you say the courts made that decision themselves as opposed to the department?

Ms Mathews: Yes, the courts put forward the funding measure, but we were consulted.

Ms Orr: It is a tool that Family Law Services utilises as well.

Senator WATERS: So who will run the specialist lists in this triage pilot?

Ms Mathews: They'll be run out of the Federal Circuit Court in the three registries which I mentioned earlier: Brisbane, Parramatta and Adelaide. It will be the judges in those registries.

Senator WATERS: And what expertise will they have?

Ms Mathews: I'd need to take that on notice in terms of the particular judges.

Senator WATERS: Will any extra staff be provided for these pilots?

Ms Mathews: Yes, the measure does include funding for a number of additional staff: registrars, senior registrars and family consultants. So there are a number of additional staff that would be supporting the judges with the intensive case management.

Senator WATERS: Thank you. What progress has been made in implementing the ALRC recommendations?

Mr Anderson: The government is still considering the 60 recommendations. While the government is not required to formally respond to those recommendations, I anticipate that the government will do so, hopefully, in the not too distant future.

Senator WATERS: Is this inquiry diverting resources of the department from assessing the government's response to the ALRC recommendations?

Mr Anderson: No. We've been working on understanding where the ALRC came from. There was quite a difference between the interim report and the final report of the ALRC, so we've been working with a range of stakeholders as well as with the courts and others to actually seek views. We've had two day forums—not public but open to a very wide range of stakeholders in the family law system. We've sought a range of views from different people in the family law system. This is fathers groups, lawyers, the courts, family relationship centres and all sorts of different parties. It is what they think are the key recommendations and how they think some of those recommendations might work if implemented in particular ways. So we've been fully engaged with that process. This process obviously has slightly different terms of reference as well, and we think that it is important to look beyond the ALRC as well, so we're encouraging the committee to look beyond a purely legal focus, which is what the ALRC chose to restrict themselves to.
Senator WATERS: Do you have the same people working on both streams—ALRC and this inquiry? How have you managed the increased capacity of this inquiry? What specific staff time and resources has this inquiry—

Mr Anderson: We haven't got any additional staff. We have the same people who work in family law and in family safety working on both the committee and on other aspects of family law. I indicated in my opening that there are 18 different streams of reform that are currently underway. It's the same people doing all of those, but we're not doing it just with the department; we're doing it by reaching out to other people, whether they are legal aid commissions or family relationship centres. We're getting lots of other people to actually do pilots so that we can evaluate them and get learnings from them, and all of that can be fed back into government decision-making, whether it's the ALRC recommendations or other issues.

Senator WATERS: Those people obviously sound very busy, and I'm sure they're doing very good work. Are there just more hours in the day for them? Are they working overtime to add on the additional workload of addressing this inquiry?

Mr Anderson: They're just very committed to what they're doing.

Senator WATERS: So are they working overtime?

Mr Anderson: It's probably the case that some people work overtime. People work a lot of hours. Public service is not a sinecure. We're very busy people generally.

Senator WATERS: I understand that; that's why I'm asking the question. I'm interested in the additional level of time that staff are now being required to work to address this inquiry on top of those existing activities that you outlined.

Mr Gifford: It's fair to say that the way we approach it is that a lot of the conversations we're having about consideration of ALRC recommendations we're having with stakeholders. At the same time, they're providing us the same expert view in terms of what they think about this committee's terms of reference as well. So there are actually synergies that we can leverage to make sure that we're not actually diverting resources from one to the other. We are able to multitask those considerations at the same time.

Senator WATERS: You said that there were synergies, but you said there was an expanded remit, so which is it?

Mr Gifford: Both terms of reference between the ALRC and this particular committee are looking at ways to improve the family law system. The focus is slightly different, and I think that's the difference that Mr Anderson is referring to, but, by the same token, the expertise that we need to draw on is common to both.

Senator WATERS: Have you sought additional staffing resources from government to address this inquiry?

Mr Anderson: No.

Senator WATERS: Okay. I hope that those people are getting lots of holiday time accrued! Thank you.

CHAIR: Senator O'Sullivan.

Senator O'SULLIVAN: My question is probably best directed to the relevant state agencies, but nonetheless I would be interested in your view. A lot of the submissions go to the use of restraining orders. The accusation is that they're being used in a vexatious way. Have you got a view on that and whether there needs to be a deep look into those matters with regard to restraining orders?

Mr Anderson: You're right that it's primarily a matter for states and territories, because restraining orders are issued under their legislation. There are processes that have to be gone through. In a number of jurisdictions it's police who make applications to court, and they need to satisfy the court that there's evidence and risk. Often they're made by consent as well, which is a different scenario. But I can say that the fact that we're moving to develop legislation for state and territory police to enforce federal personal protection injunctions is an indication that we think that there's a very clear role for restraining orders. They might be only temporary. It could be that people are going through particular situations in their life that mean that those additional measures are necessary, or they might need to be longer-term. But, as I said, often they are made by consent, and parties will recognise themselves that, for whatever reason, it's appropriate to have distance between themselves or to have rules about how they contact each other. I think it is very important to always bear in mind the best interests of the child, and the best interests of the child can change over the course of a child's life as well.

Dr ALY: As I come from WA, I'm interested in the fact that WA has a rather different system, in that Western Australians have to go through the Western Australian family court and not through the Federal Circuit Court. What implications does that have for the bill—joining up the circuit court and the Family Court?
Mr Gifford: I think that the key question for WA, when it comes to the proposed reforms to the federal circuit and family courts, is where the appeal pathway is to go to. So, for matters that are concluded within the WA family law system, the previous iteration of the bill would have had those matters effectively going into Division 2 of the proposed new court—the equivalent of the FCC. As the bills are currently proposed before parliament, it's not going to affect the appeal pathway from WA.

The other key consideration for WA courts is that the WA courts also largely utilise the Family Court rules. There is a rules harmonisation project underway within the Federal Circuit Court and the Family Court, looking to bring their two different sets of rules together so that they're operating in the same way. That will have flow-on implications for the rules that will be applied within the WA family court. The WA family court has been part of those conversations with the Federal Circuit Court and the Family Court about making sure that those rules are appropriate for the system within Western Australia, noting that it is a different system, as you flagged at the beginning of your question.

Dr ALY: Where is the rules harmonisation project up to, and when is it due to conclude?

Mr Gifford: The government provided funding to the Federal Circuit Court and the Family Court for that exercise. At the moment, they're in what I would describe as the internal consultation stage. They're developing what would look like a single consistent set of rules. There is an internal working group within the Federal Circuit Court and the Family Court for that purpose. I understand that their next step is, once they get to the stage of, effectively, a first final draft, they will then extend consultation within the courts to all judges and then, beyond that, outside of the courts, to the legal practitioners as well.

Dr ALY: Are you going to consult with community? Are people going to have a say as well?

Mr Gifford: I believe that that is part of the planned process. My understanding, in terms of time frames, is that that's probably still going to take until at least the middle part of this year.

Dr ALY: Thank you for that. I have a question about the cross-examination ban that now applies in some circumstances where you've got family violence issues present in a Family Court matter. Do you have any information on how many times the ban has been imposed since it was implemented?

Ms Mathews: Yes, we do. We have information on the number of applications—and we would have information on the number of times that the ban was imposed, so I can take that on notice. But, in terms of the number of applications: as of 24 December last year, National Legal Aid, who have been funded to provide the representation, advised that 187 applications had been received for matters to be heard this financial year.

Dr ALY: Have all of those cases received legal aid funding for representation?

Ms Mathews: I'd need to check which applications have been granted—

Dr ALY: Also—and perhaps, again, you might need to take this one on notice—do you have any information about cases where legal aid funding was requested but not provided?

Ms Mathews: I can take that on notice. But if the case met the merits of the scheme, I don't know why funding would not have been provided. We were aware of—

Unidentified speaker: Running out of funding?

Ms Mathews: In that regard, the government has provided additional funding for this scheme in the MYEFO process of an additional $2 million.

Dr ALY: For legal aid for the scheme—specifically for this scheme?

Ms Mathews: Yes, specifically for this scheme.

Dr ALY: And specifically for legal aid for this scheme?

Ms Mathews: Exactly—so that we could continue to meet demand.

Senator HANSON: I'd like to go back to the percentages on domestic violence. You've got 85.3 per cent for allegations of emotional abuse. Can you tell me what you classify as 'emotional abuse'?

Ms Mathews: Those figures were from the Australian Institute of Family Studies. It would probably be best if I take it on notice and provide the definition that they've used.

Senator HANSON: Could it be, 'You spent too much money out of the account,' and things like that?

Ms Mathews: It's probably not useful for me to hypothesise, but I can certainly provide the definition that they've used for the purpose of that study.

Senator HANSON: You've got here the percentages of separated parents resolving family law matters. Do you have the percentages for how many of these cases may have reported domestic violence prior to separation?
Ms Mathews: No, we would not, and I'm not sure the court would—

Senator HANSON: You don't have figures for that? You don't investigate how many of these separated families may have reported domestic violence prior to separation?

Ms Mathews: Only to the extent that that would presumably be raised in the context of the Family Court matter and therefore captured. But we wouldn't record that separately, unless it became relevant to the proceedings.

Senator HANSON: In Queensland, you can apply for a domestic violence order if you go to the police. That can be granted through the Magistrates Court, which has no relevance in the Family Court because the judge may not be aware of what the domestic violence is that's been brought against the person. How do you propose to deal with that?

Ms Mathews: First of all, that's absolutely an issue with the adversarial system: the court is reliant on the evidence that parties bring to the court, and in some cases people and particularly self-represented litigants simply don't know that that is relevant, nor do they know how to adduce the evidence. One immediate way in which we are seeking to address that issue is through the co-location initiative. Last year, the government announced $10.4 million to locate child protection officers and policing officers in Family Court registries so that that information can be brought to the attention of the court at the point of filing.

Senator HANSON: The scheme that you put out—you've put a fair bit of money towards that, haven't you? And it's basically for women and children. Is that correct?

Ms Mathews: No. That operates for men and women. That particular measure, for $10.4 million over three years, was announced in last year's budget.

Senator HANSON: You've got here:

As part of the Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010–2022 …

I hear from people that it is not really looking at domestic violence from the men's perspective, because men do go through domestic violence, don't they?

Mr Anderson: They do. One of the measures of the Family Advocacy and Support Service is—although the funding was initially aimed at assisting women and children, there's an additional $7.84 million over three years for dedicated support workers for men who present at registries unrepresented and needing assistance with family violence. So there is some specific funding to assist males who are presenting with those situations.

Senator HANSON: Correct me if I'm wrong, but in New South Wales domestic violence against men is about 29 per cent, so it's quite high, isn't it?

Mr Anderson: Men can certainly be victims of domestic violence.

Senator HANSON: I want to go back to judges. Tell me about the caseloads of a judge per day: what would they be looking at in terms of caseload?

Mr Gifford: It's a little bit difficult to answer in the general. It depends on the judge. It depends on whether or not they're in the circuit court or the Family Court. As we said, they manage their caseloads differently, and it depends on what sort of hearing pattern they're in at the time. We can give you some statistics, in engaging with the courts further on that, but there can be anything from dozens of matters being dealt with on any particular day to a single matter, depending on whether or not it's a more complex and lengthy hearing. I'm sorry I can't answer that in the broad.

Senator HANSON: I've been informed by the Australian Law Reform Commission that there could be up to 60, 80 or even 100 cases a day that go before them. Not hearing cases—you're talking about family law matters of one case a day. But when you're talking about Federal Circuit Court judges, they are not just handling family law matters; they're handling civil matters and immigration, aren't they? So they can actually be faced with a lot of procedures. What is the Attorney General's Department doing about helping the judges with their case loads by implementing more registrars to take the workload off judges?

Mr Gifford: I can answer your question in two parts. First and foremost, in relation to the proposal for bringing together the Federal Circuit Court and the Family Court, part of the idea behind that is to make better use of the resources that are currently available within those courts, and part of it is, with the rules harmonisation process in particular, looking at trying to reduce the amount of court events, so as to free up judicial time so that they can concentrate on the matters that require judicial attention. In relation to your second question about what the government is doing in terms of consideration of registrar resources, the courts have made requests for registrar resources over a range of years and have been given those over a period of time as well. There's been
quite a significant injection of resources into the courts over the last five years. We can give you the breakdown of where that has been applied, but that has included additional judicial registrar resources.

**Senator HANSON:** Registrars could take a lot of the workload off the judges by hearing mentions and those minor duties so that the judges could do their jobs more efficiently.

**Mr Gifford:** That's a central part of what's being proposed through the court reform legislation. It's to reduce the amount of court events to make sure that judges are using their time for the matters that require judicial intervention and that the registrars are able to manage those matters of the courts that could free up that judge time.

**Mr Anderson:** I just want to add to one thing. You made the comment about judges in the Federal Circuit Court hearing non-family-law matters as well. We made the point that, of the 69 or so judges in the Circuit Court, 50.4 full-time equivalent are dedicated to family law. The Chief Justice tends to have particular judges hearing the non-family-law matters—migration, bankruptcy and things like that—and the largest tranche of judges are dedicated to family law. So very few of the judges will actually be juggling a family law and non-family-law case load.

**Senator HANSON:** You're looking at the merger of the two courts; therefore, you're losing the expertise of the Family Court judges, especially in Magellan cases. They will be more involved in the bigger property settlements and that type of thing if you move it into the Federal Circuit Court. There's a lot of concern that the judges are not up to doing the Family Court matters—that they're not really across it. So how are you going to deal with the more involved cases, like the Magellan cases, without the expertise there?

**Mr Anderson:** Respectfully, Senator, I don't agree there will be a loss of expertise. The Family Court will continue as division 1 of the new court. There are elements of the Magellan process that are picked up in the triaging pilot that's being tried in the Circuit Court. That's an example of bringing some greater consistency across the entire federal family law case load. We think that, where things are working in one or other court, court reform will give us an opportunity to apply those across the broader case load. In terms of the expertise as well, because 89 per cent of the federal family law cases are heard in the Circuit Court, there's a great deal of expertise there in terms of handling cases. PricewaterhouseCoopers found that 52 per cent of cases dealt with in the Family Court don't involve children; they're only about property. I think sometimes there's some misunderstandings about the nature of the expertise as well, which is not to say that the Magellan process hasn't been an effective process. I agree about expertise, but I don't think it's only held in the Family Court and I don't think that bringing the two courts together is going to reduce the amount of expertise; I think it's actually going to enhance the expertise.

**Senator HANSON:** I want to go to the contact centres. I've had complaints and read in submissions that have been put forward that people are having to wait months, if not nearly a year, to have time made available so that they can see their children. Do you think this is good enough? How can we address it?

**Mr Anderson:** We think that children's contact services is an area that needs reform as well.

**Ms Orr:** Certainly we are conscious that there are some long waiting times in some children's contact services.

**Senator HANSON:** I've heard that parents are paying from $100 to $150 an hour at some contact centres. What are we doing about the cost?

**Mr Anderson:** There's a distinction between contact services that are actually registered by the government and those that are privately run. My colleague will say something about that.

**Ms Orr:** The Commonwealth funds a range of children's contact services, but there are also some privately operated ones which, obviously, the government does not control.

**Senator HANSON:** If the courts say you must take them to that contact centre and if that contact centre is privately run and they're charging exorbitant prices, how do you expect the parents to pay for that?

**Ms Orr:** The court would have to take into consideration parents' ability to pay before they would make an order. If they're unable to pay the fee—

**Senator HANSON:** Is there an appeal process? Can they appeal against the judge's decision that they must use that contact centre?

**Ms Orr:** If a court makes an order, there's always the opportunity to appeal the order, but, I would have thought, as a matter of practice, the judge would be mindful around the orders that he or she is making in terms of capacity to pay.
**Mr Anderson:** Parties can also come back and seek variations of orders. That's not an uncommon process with family law. If you're ordered to go to a particular children's contact service and it then increased its fee significantly, it would be open to the parties to come back and seek a variation of that order. But, we agree with you, Senator, that the children's contact services is one area that does need to be looked at carefully. As my colleague Ms Orr said, there are 69 that are funded by the Commonwealth but, with the private sector centres, there's a real question as to whether they should, in fact, be regulated in some way.

**Senator HANSON:** Would it be reasonable to assume that domestic violence orders are made after separation? If so, then there's concern about connection with the non-custodial parent, who may not have been able to see the child. Then, when it finally gets to the court after waiting months and months and months, there's concern that the child may be alienated from the parent, and therefore they must go to a contact centre. So there is this long process that is in place. Has the department looked into how we can actually alleviate this matter?

**Mr Anderson:** We've been doing some thinking about children's contact services, and that's a matter that is caught up in the government's potential response to the ALRC.

**Mr PERRETT:** Are there any legal or constitutional barriers to changing the family law system from an adversarial to a more inquisitorial approach? What are the limitations of an inquisitorial system of family law? No doubt we might hear from some family law barristers down the track with a different answer.

**Mr Anderson:** Perhaps unhelpfully, I'll just note that it's not the role of public servants to give legal advice to committees. That said—

**Mr PERRETT:** Of course, but you're familiar with the Constitution, I assume?

**Mr Anderson:** Absolutely. That said, we think that there are no barriers to prevent a move to a more inquisitorial process. There are limitations as to how far that process can go, but there are also cultural and professional barriers as well. So, in order to go down an inquisitorial process, we need the parties, their representatives and the courts to all be prepared to do that. I point to the fact that the Family Court developed a less adversarial process and it's enshrined in the legislation, but it doesn't get used very often.

**Mr PERRETT:** As have other courts.

**Mr Anderson:** Absolutely. Also, we can't overlook the fact that in the early eighties, there was a terrible period of violence against Family Court judges, and that matter's before the criminal courts at the moment. So that's part of all of that. But I believe a lot more can be done, and we're certainly thinking about education of participants—professionals and judges—as part of this of process of seeking to move towards a less adversarial process wherever possible.

**Mr PERRETT:** For the 97 per cent that are already going through that process, is it your thinking that you'd always need some ability to test the facts in front of a judge?

**Mr Anderson:** Some of the people who resolve their matters outside the courts probably need more support. They might sometimes enter into consent based agreements that aren't necessarily in the best interests of a child. They might be in a situation of violence where they might be terrified and they might agree to something just to get away from it. Certainly some of those people outside the courts need a lot more assistance too.

**CHAIR:** Thank you, Mr Anderson and your colleagues. We appreciate your submission and your coming along to discuss it with us today. We'd be grateful for the follow-up on the various matters that have been raised with you. Importantly, picking up on the last question which, in a sense, reflected back on the first one, if you have any further thoughts on how that aspect of this system might be developed, I'm sure the committee would be very interested in a further discussion about that. We look forward to further discussions in the course of this inquiry. Thank you very much.

**Mr Anderson:** Thank you, Chair.
BENNETT, Mr Shane, Acting Deputy Secretary, Social Security, Department of Social Services

HEFREN-WEBB, Ms Elizabeth, Deputy Secretary, Families and Communities, Department of Social Services

McLARTY, Ms Mary, Acting Group Manager, Participation Payments and Families, Department of Social Services

TOZE, Ms Cathy, Acting National Manager, Child Support Program Branch, Services Australia

YOUNG, Mr Bruce, Acting General Manager, Child Support, Indigenous and Tailored Services Division, Services Australia

[09:46]

CHAIR: I now welcome representatives from the Department of Social Services. You've lodged submission No. 95 with the committee. Are there any amendments or additions to that submission at this stage?

Mr Bennett: No, Chair.

CHAIR: Information on parliamentary privilege and the protection of witnesses in giving evidence to parliamentary committees has been provided to you as part of the invitation to appear. I invite you to make some opening remarks. At the conclusion of that, I'll ask members of the committee if they have any questions.

Mr Bennett: We have no opening remarks, Chair.

CHAIR: I will lead off then. In your submission, one of the things which you referred to was the investment in the cost to develop a national child protection information sharing solution which will enable child protection agencies to search for information held about a child in child protection agencies. Can you elucidate the progress of that? Where are we up to and what sort of time frame is envisaged?

Ms Hefren-Webb: Yes, I can. That is a joint project between the Commonwealth and all the states and territories. We've just announced the successful tenderer for that project, so the work is commencing on building that system. There'll be quite a lot of testing of interoperability, but the goal of that system is that, where a child has been involved with the child protection system in one jurisdiction and then they come to the attention of the authorities in another jurisdiction, it will simplify the ability to search and find out the history and the background. At the moment, that's done fairly manually, with states and territories having to contact all the other states and territories and find out what's happened and whether they have any record. If the child is going under a different name or even a differently spelt name, it can often be quite hard for that information to be provided. This system will have greater search powers, and it will be much quicker for the jurisdictions to track what a family's history has been. In terms of time frame, at the moment it's looking like around two years before we're at the point where we will have it widely operational, because there's a lot of IT work in making sure that it interacts with every state and territory system.

CHAIR: Obviously that will be available in relation to child protection systems and services at the state and territory level, but will that information also be shared with the Family Court at the federal level?

Ms Hefren-Webb: At this stage we haven't explored that, but that would potentially be something we could explore. At the moment we're focused on the child protection systems in each state and territory, and we've been engaged with those departments. We're having general conversations with our colleagues in Attorney-General's. It is something that the system could potentially expand to incorporate, yes.

CHAIR: Ideally, if you have a system like that, access by the various instruments of the state, whether it is the child protection service or the Family Court, would seem to be desirable; would it not?

Ms Hefren-Webb: Indeed it would. The reason I'm hesitating is really, as you know, the privacy protections and the information protections in each state and territory do vary and the extent to which information can be shared and the context in which it can be shared do vary. We've had to look at a lot of those kinds of legal issues even in just sharing between different child protection systems. It is something, I agree, that would be of benefit.

Senator HANSON: Just explain the role of the federal to the state in the child provider services?

Ms Hefren-Webb: Are you talking about child support?

Senator HANSON: The protection services additional to the state.

Ms Hefren-Webb: We have no constitutional role in child protection outside of any role through the Family Court. We work with the states and territories on child protection issues in a capacity of coordination and collaboration where issues are common across states and they are interested in pursuing some sort of national solution. We meet twice a year at officials level—and ministers meet reasonably regularly as well—to discuss
issues of common concern, but we don't have any role in terms of legislation or any kinds of powers over the states in terms of how they run their child protection systems.

Senator HANSON: Okay. I want to go to child support now. When was the last time it was updated and when was it last investigated?

Mr Bennett: Are you talking about—

Senator HANSON: How the formula works.

Mr Bennett: In terms of the child support system, there was a 2015 parliamentary inquiry into the broader child support system. Out of that, in 2018—while this doesn't go directly to the question of the formula—there were further legislative amendments made to the child support system, such as extending interim care arrangements, making it more administratively efficient for amended tax assessments and, in terms of the last issue, improving the situation where a payee had received an overpayment and how that might be used or reclaimed.

Senator HANSON: Do you think this system is working?

Mr Bennett: As we talk about the system, we go back to effectively what was occurring in the eighties. Prior to this system coming into existence there were a number of challenges associated with the transfer of payments to custodian parents. It was effectively a situation where only about 30 per cent of custodian parents were receiving payments. As the system has gone on over the years, there have been improvements to it. It comes back to the purpose of the system. It's designed so that both parents can take responsibility for the ongoing financial support of their children in line with their financial capacity to do so. If we look at the transfers that have occurred through the child support system, there are various aspects of that, so I'll use the expression the 'agency collect'. Over time now, up to approximately 92 per cent of payments have been collected and passed through.

If you sort of look at that history, certainly there are aspects that are working. What we are mindful of, though, is that this is a highly sensitive and contested policy space. Improvements have occurred through the system, including the introduction of the cost-of-children table, which occurred from work in approximately 2004 and came in after 2008. But as we undertake these activities, including in regard to the legislation of 2018, we are very mindful that there is a balance to be found, both in terms of the highly sensitive nature of these arrangements and the contested perceptions, making sure that we continue to focus on the object of the scheme and seeking not to undertake changes that could have unintentional consequences.

Senator HANSON: The child support agency have the authority to actually take money directly out of a person's bank account or force the employer to hand money over. Is that correct?

Mr Bennett: In circumstances where they needed to seek to claim a debt, there is a number of powers they have.

Senator HANSON: That's through legislation? Is it legislated to do that?

Mr Bennett: They would have the power to do that through the legislation, taking into account that the activities would occur through the agency.

Senator HANSON: Do you get a lot of complaints with regard to that—money being taken out of someone's account regardless of whether they'll have enough money to pay the rent or the bills?

Mr Bennett: I come back to the scheme. I can give you statistics associated with how broad the scheme is. We have a scheme that covers 1.05 million children. Currently there are 1.25 million parents and approximately 680,000 active cases. Within that, as part of the arrangements that occur, there will always be the potential for cases where the perception of what's occurred is not equitable in that person's eyes. So we are aware that there will be—

Senator HANSON: I'm sure, but do you have a percentage on how many complaints you get of people saying, 'Look, I've had this money taken out of my account unbeknownst to me, without my authority, and this has left me short. I can't pay the bills. I can't pay my rent. I can't pay my electricity bill.' Is there a percentage of complaints you get from the public about this practice of taking money out of their accounts unbeknownst to them?

Mr Bennett: I might ask one of my colleagues from the child support agency in Services Australia to talk about the circumstances that will occur. On second part of your question, because of the way that we effectively have the legislative policy and they have the service delivery, it may be that their statistics will be more relevant to this question. I'll ask Mr Young to answer.

Mr Young: We don't specifically have that information available here. It isn't one of our most common areas of receiving complaints. Lack of collection would be much higher. I would emphasise that wherever there's a debt
we would look to contact parents and negotiate suitable payment arrangements wherever possible. In regard to deductions from wages and salary, often this is undertaken voluntarily. It's a convenient way for many parents. It can also be used in an enforcement way.

Senator HANSON: It is an enforcement way, that through the employer they must hand over that money?

Mr Young: Parents can look to negotiate other ways of payment in those situations. They can voluntarily do that.

Senator HANSON: Is it legislation that the department, child support, can actually go to the employer to extract money out of their employee's pay for child support?

Mr Young: Yes.

Mr PERRETT: The $7.8 million for dedicated men's support workers and family advocacy support services—can you give me some details about that? When did this roll out? How long is it funded for? Will funding be renewed?

Ms Hefren-Webb: That funding is for three years. The fourth action plan of the National Plan to Reduce Violence against Women and their Children operates for three years. It was launched by the Prime Minister last year. It operates through from 2019 to 2022. The question of ongoing funding is a matter that government will consider at that point.

Mr PERRETT: And the dedicated men's support workers are available to both men who are victims of violence and men who are perpetrators of violence. Do you know how many men have utilised the dedicated men's support workers? Do you know how many of the men are victims of violence and how many are perpetrators of violence?

Ms Hefren-Webb: I'd have to take that on notice.

Mr PERRETT: Your submission details a new information-sharing platform, the solution, which will be up and running later this year. Does this mean that when a matter is filed in the federal Family Court system, an initial search could be undertaken to see whether the subject family and/or children are already known to child protection agencies in other jurisdictions? When will this system be fully operational? What level of information detail will be available to the Federal Court system?

Ms Hefren-Webb: At the moment, as I mentioned, the first tranche will be that child protection officials will have access. Access by the Family Court is something we'd have to look at and explore.

Mr PERRETT: That's the inclination?

Ms Hefren-Webb: Obviously, I can see clear benefit in that being available. We just need to explore all legal and privacy matters.

Dr MARTIN: Are you aware of parents who are obliged to contribute towards child support payments but have perhaps moved overseas? What processes are in place to collaborate with other jurisdictions to ensure that children who are Australian citizens who are requiring child support, what the processes are to ensure that the best interests of the children are upheld?

Mr Bennett: At the moment, we have approximately 97 arrangements with reciprocating jurisdictions. This aims to recognise the child support cases and liabilities that may exist. How these work will often depend on the jurisdiction. We can describe the child support system in this country for you as it works and how liabilities are created. If there's a liability and we have a reciprocating jurisdiction, the obligation would be to transfer that money across. If it's in a different jurisdiction, effectively the equivalents of what we have here would have to be tested, in terms of what is the child support system in that jurisdiction.

Out of the 97 agreements, most arrangements that we have with international child support cases occur in the US, New Zealand and the UK, and there are well-established procedures there, taking into account that some of the jurisdictions—and I'm talking now in the broad—can move at a pace that is different. We constantly look to these arrangements to see how they're working and the opportunities for them to be improved. I probably would add that these are often cases where things, when they work, will work, but, when they don't, not only do you then have the complexities associated with family arrangements that are breaking down but you then are introducing another layer through, effectively, another child support payment transfer system as it intersects with ours. So we are very mindful of that.

Dr MARTIN: Where there are cases where employers collaborate with people who are obliged to contribute towards child support payments, what investigative processes do you have in place to ensure that there isn't avoidance of child support—for example, where people who are obliged to pay child support are collaborating
with employers, perhaps, to find alternative ways to receive payment or to reduce payment during periods of review of their child support requirements?

Mr Bennett: I might start it from a policy point of view and then see if my colleague will talk about it from a service delivery point of view. The formula, as it works, is based on adjustable taxable income, where it then is expected to add back a number of benefits to represent the true financial circumstances of—and I'm going to use this expression in this case—the payer. If there is a circumstance where someone believes that someone is arranging affairs to be beneficial, they can apply for what is known as a change of assessment. There effectively are 10 criteria that can be investigated. One of the main ones—and we have pointed this out, I believe, in our submission, which discusses the additional criteria—is No. 8, which basically relates to circumstances where there are questions about the person's earning capacity as it's reported.

Mr Young: There are a number of enforcement and collection powers available to child support. Of course, our emphasis is, at the beginning, on voluntary compliance—so contacting both parents and making suitable arrangements, often private-collect arrangements where child support is paid directly between parents. Just over 50 per cent of cases registered with child support are paid through that method, and then slightly under 50 per cent are paid through payments to the agency and then on to the receiving parent. Again, even with collect arrangements, where they're paid through child support to the other parent, often those arrangements are voluntary in that regard, and that may include deductions from wages or direct payments to the agency. Where payment's not forthcoming, we would look to negotiate payment arrangements where possible, and then we would look to exercise our other powers—powers of seeking information from third parties, seeking information from parents, garnisheeking bank accounts or wages and taking other types of firmer collection action where required, such as departure prohibition orders and litigation action.

Senator Polley: Can you elaborate on the extra steps that you can take?

Mr Young: Yes. I might also get some help here from colleagues. And, as mentioned earlier, the interception of tax refunds is another power available for collection.

Dr ALY: My line of questioning is also going to be around child support. In negotiating payment arrangements, how many times has the child support agency written off a debt?

Mr Bennett: I don't believe the expression 'written off the debt' is correct. The debt still exists. It is then a case of how they can be effectively enforced. I've used this statistic previously: over the years, 92 per cent of payments have been transferred, but, that of itself, means that there are cases where for various circumstances those debts have not been collected. So, then I'll look to—

Dr ALY: Can I give you an example of what I mean by 'written off a debt'? It's a case where the obligated parent to pay has not paid for a number of years. Child support agency has failed to collect the child support for a number of years, primarily because the obligated parent has not had tax returns—the debt is calculated on the minimum amount of payable tax. Then, circumstances change. The obligated parent then returns into the children's lives and starts taking a little bit of responsibility for the children, and that's over a period of years. Then, the parent to whom the debt is owed gets a phone call from the child support agency saying that that parent now has to pay the other parent but that the child support agency could 'write off the debt' and 'extricate itself from any negotiations' in which case neither parent owes anything to the other parent.

Mr Bennett: I'll start off by talking in the broad about the way that the formula works. Without knowing the specifics of each case, it is quite challenging. But the formula effectively, while it has a number of steps to it, basically has three key elements. The first is: what is the adjustable taxable income of both parents? Then it comes down to the care percentage that the parents have for the children, and then we go to the cost-of-children table to work out the amount that relates to the parent's income. From there, depending on the care arrangements, a parent can have an obligation, a parent can be a payer, or a parent can be a payee. The circumstances of who a payee or payer is can change over time, depending on the circumstances that people have. Sometimes it can be that one parent is a payer, and then, as time moves on, they could become a payee. So, I can say that the circumstances of having someone who was owed money and then later on, potentially, could be someone under the formula—

Dr ALY: Ends up having to pay money.

Mr Bennett: could hypothetically occur. What we've found in some of the cases in the past is that, depending on the specifics of the circumstances as they're investigated, something that might appear to be one thing on the surface may not be the actual case. Again, I come back to: these can be very sensitive and complicated arrangements. And then I'll hand to my colleague to talk about how people might be communicated with in these circumstances.
Dr ALY: My question isn't about the communication.

Mr Bennett: Okay.

Dr ALY: To be specific, my question is: how many cases have there been where the child support agency has written off a debt or made an arrangement so that a debt didn't have to be paid? How many times has that happened? In how many cases has that happened?

Mr Bennett: I think we'd have to take that one on notice.

Dr ALY: Could you please take that one on notice. Related to that, how responsive is the child support agency to changes in circumstances, whether those changes and circumstances relate to the care percentage or whether those changes in circumstances relate to the amount of monies to be paid or to be taken? How responsive would you rate the child support agency in those cases?

Mr Young: Where possible, in our contacts with both parents, we would always look to ascertain the current circumstances around care, income and those types of things. Of course, we encourage parents to always get in contact with us when there is a change in circumstances. But, in our proactive contact with parents, we would look to check those things. In regard to the first bit, we would not elect to not go through and collect payment without speaking with parents. As was said before, there aren't write-off procedures. There are what we refer to as 'discharging arrears' where parents are in agreement about amounts not to be collected. If that doesn't occur, amounts would stay collectible through to a parent dying and then through to their estate.

Dr ALY: Let's use that terminology 'discharging arrears'. How many times has the child support agency discharged arrears?

Mr Young: I would have to have that on notice.

Dr ALY: I would argue that there are circumstances, and I know of cases, where the child support agency has discharged a risk.

Mr Young: That would be with the consent of the parent that is owed the money.

Dr ALY: In some of the cases with people that I've spoken to, the lack of responsiveness—and I'm just relaying to you the cases that have come before me—of the child support agency to changes in circumstances is a cause of frustration for people. It could be whether it's a change in circumstances where one parent ends up having more access or more care of the children but the child support agency has taken an extensive amount of time in readjusting the support payments or whether it's to do with income. What would be your suggestions for improving that process so that the child support agency can be more responsive in a more timely fashion and address some of the concerns that are being raised in this regard?

Mr Young: We're looking to make more and more services available, digitally, for customers so that they're able to notify us of these changes. Many of these things can be done now. I reiterate that, in our procedures, it's very clear that we should check these things—even if parents don't mention them in our contact with them, primarily over telephone in these circumstances—particularly around the care of children between both the parents and the income. Of course, the change in income would normally be picked up through the lodgement of tax returns, as well, but there can be, where there's particularly a reduction in income greater than 15 per cent then parents would have available to them the capacity to lodge an estimate, and we would revise the assessment of the child support to be paid.

Dr ALY: So you make your assessment, based on the tax return, and then circumstances change—for example, the paying parent loses their job or has a significant reduction in hours worked—so they are no longer able to pay the amount that was assessed at the time of the tax return. What's the length of time that it would take to adjust their child support payment, roughly?

Mr Young: When a parent contacts us about a reduction in income we're able to apply that from the date of notification.

Dr ALY: Thank you, Chair.

Senator POLLEY: I want to get some details on the record. Because it's very common that there's been delay in responding to changes, can you tell us how many staff you have in your department, Mr Young?

Mr Bennett: The agency is Services Australia. It obviously has a range of different activities. When this conversation occurs, it isn't purely the agency; it may well just be the people who are in the child support line, taking into account you can have back-office-type staff et cetera. Does that assist?

Senator POLLEY: The issue is that there are delays which have impact on all parties, on children in particular. I want to establish whether or not the delays are caused primarily because there are not enough people
working in this area. You do an assessment and then do the follow up to see whether or not the party who has an order to pay for support of their children. Those orders are taking some time. I'm not sure that the full extent of what can be enforced through legislation is in fact being enforced. I'm trying to understand how in this case the husband who has shared custody of children, responsibility and regular contact and who is working is required to pay only $20 a month for three children.

Mr Bennett: Can I talk broadly about the formula. Coming back to the formula, the three main areas are the adjustable taxable income of both parents, the percentage of care and the cost-of-children table. As that works through, depending on the parents' incomes, you can have a situation where parents effectively have the formula, hypothetically could have a very small margin of payment because their incomes are very similar and they have 50 per cent of care et cetera. Then it equalises itself out as the formula is applied. In other circumstances, the person could have a larger amount but they might have additional factors that they need to take into account, including that they themselves could, as we've talked about, have a change from the previous year. One of the issues that we do have in this area is that there can often be a perception of people's circumstances that may not be occurring in practice and is not taking into account that things can be investigated. I'll let Mr Young talk further about that. But there can be a variety of circumstances that lead to the different scenarios.

Senator POLLEY: But it is fair to say that there is additional frustration and stress put on parties when it's fairly clear to those people involved that one party has been able to manipulate the circumstances in order to have to contribute less to the care and support of their children. That comes through in a lot of submissions, and in a lot of information that's come to me. That's why I was interested to hear from Mr Young as to what in fact are the steps? It's not something that I'm au fait with. Dealing with how you go through the circumstance, how big a team do you have that's actually enabled to take those additional steps that you referred to earlier in your evidence?

Mr Young: The latest figure I have on our staffing was for September 2019; it was 1,787 full-time equivalent. That's not a headcount. A headcount would be higher, given we have part-time arrangements and things like that for our staff, but 1,787 full-time equivalent staff are working in child support. Of course, there are other parts of Services Australia that are also involved in child support, say in the family tax benefit space and things of that nature.

Senator HANSON: Can you also give us your budget? What's your child support agency budget, please?

Mr Young: I'm sorry; I haven't got that with me.

Senator POLLEY: Could you take that on notice for us?

Mr Young: Yes.

Senator POLLEY: And we'll put some further questions on notice about that. I now want to refer to the domestic violence alerts training program. Can you provide any information as to what the uptake has been in that? How many people have taken on that additional training?

Ms Hefren-Webb: I'll need to provide that to you on notice. Sorry; I don't have that information with me. That training is run by Lifeline on behalf of the government. We fund Lifeline to train a wide range of professionals and frontline service workers, but I can come back to you on that.

Senator POLLEY: That would be very useful, because it's fairly obviously from the submissions, in terms of family violence and domestic violence, whether or not people are adequately skilled in the area to be able to identify that.

Dr ALY: Could you also provide some information about how much of that is provided in culturally and linguistically appropriate service provisions, so in languages other than English and to other specific communities?

Ms Hefren-Webb: Will do.

Senator POLLEY: And also what the cost and the time commitment are for this program. Can the program be specifically tailored for Family Court staff? I'll put some additional questions in relation to that on notice. What has been the uptake for that state by state?

Ms Hefren-Webb: I will need to take nearly all of that on notice.

Senator POLLEY: It's always good to have homework.

Ms Hefren-Webb: Yes!

Senator WATERS: Thanks folks for your evidence so far. There have been National Children's Commissioner reports that say many kids have reported feeling unsafe while on supervised visits, particularly at
those contact centres that we've just been discussing. Is the department doing anything to accredit or audit the performance of those contact centres?

Ms Hefren-Webb: While we administer the funding to those contact centres, the policy and program management sits with the Attorney-General's Department.

Senator WATERS: I see; okay.

Ms Hefren-Webb: I'd need to ask them to provide you with further information on that.

Senator WATERS: Thank you. If you wouldn't mind doing that it would be very helpful. Just a question about the Specialist Family Violence Services, SFVS. What's the interaction between that program and the triage pilot that we were told about earlier this morning by the Attorney-General's Department? Will there be any pathway for referrals to exist from that pilot to the SFVS?

Ms Hefren-Webb: Certainly, we encourage the providers of the Specialist Family Violence Service to have appropriate referral arrangements with a range of relevant services. As you're aware, those services are run out of Family and Relationship Services Australia. People coming in may well not have any kind of contact with or wish to have any contact with the family law system, so it really is a case by case matter. We would encourage services to build referral pathways to what might be an appropriate service.

Senator WATERS: Do you think that would require additional resourcing? Is the government considering doing so?

Ms Hefren-Webb: That's something that's already built into our funding agreement with the existing services. I'd be confident that that's something they can do.

Senator WATERS: The first suggestion of the Women's Legal Services Australia's five-step plan calls for removal of the presumption of equal shared parenting responsibility to shift the focus onto the safety of the child. Has the department done any analysis of that proposition? Or has the department given any analysis and advice to government on whether or not on the presumption of equal shared parenting is being appropriately balanced with risk factors?

Ms Hefren-Webb: That really is a matter for the Attorney-General's Department.

Senator WATERS: So that's not within your purview at all?

Ms Hefren-Webb: No. We don't have any responsibility for the Family Law Act.

Senator WATERS: I'll direct that question to them. You mentioned the DV-alert training program in your submission. Can you provide a bit more information about that? If this is your purview, can you tell me how many Family Court judges or staff have undertaken that training.

Ms Hefren-Webb: I would have to come back to you on notice, but I'm happy to do so.

Senator WATERS: Okay. I'm interested in the level of engagement that the department has with the Family Court in relation to the DV-alert training program.

Ms Hefren-Webb: To clarify, as I said, Lifeline provide that training. Our department doesn't provide it directly. We contract with Lifeline to provide that training, who provide it to a really wide range of professionals and front-line services and medical services. But I will get you some information on the participation of the family law.

Senator WATERS: Thank you. And could you say that again? Do you provide the money to Lifeline and they then provide it to a range, or do you provide it to a range, including Lifeline?

Ms Hefren-Webb: No. Lifeline is the provider. We fund Lifeline direct and then they run those DV-alert programs around the country to a wide range of different professionals, service providers et cetera.

Senator WATERS: How much is that program funded?

Ms Hefren-Webb: I'll get you that on notice; I'm sorry, I didn't bring that with me.

Senator WATERS: Could you give me a bit of background about why they were the chosen organisation to provide that service and what kind of quality assurance satisfied you that they had the expertise to do that? Could you give me as much information as you can in that sort of context?

Ms Hefren-Webb: Certainly.

Senator WATERS: There was mention that that training was available to university students that would ultimately end up working in relevant professions. Do you have any further details on whether that's a mandatory element of their studies or an optional extra? In particular, is it being offered or mandated to legal students?
Ms Hefren-Webb: I don't know the answer to that. My expectation is it's probably a bit case by case. I'd have to go to every university and understand what each faculty's policy is in relation to how they structure their curriculum. But I can see what information we can get for you on that.

Senator WATERS: Thank you. That would be really useful. It sounds like a really great idea to me, but if it's actually being delivered in a bit of an ad hoc manner then you're undermining the ability to achieve the outcomes for which the program exists. We think the training is a great notion and we would like to see it more systematically rolled out.

Ms Hefren-Webb: I'll see what we can do. I'm just conscious that there are a really wide variety of universities, and each university has a really wide variety of offerings. I just need to check what we can provide.

Senator WATERS: Thank you—to the best of your ability.

CHAIR: I'll just go back to the 2015 report of the House Standing Committee on Social Policy and Legal Affairs into the child support program. Recommendation 3 was to provide additional funding and training to family relationship centres to assist separating or separated parents to negotiate child support arrangements. Can you indicate what, if anything, has happened in relation to that recommendation?

Mr Bennett: As the recommendations were dealt with through government, that one was for the Attorney-General's Department, and they would probably be best placed to answer it.

CHAIR: Recommendation 9 may well be for Attorney-General's Department as well, but it relates to considering international models for enforcing contact and parenting orders.

Mr Bennett: My information is that that was a recommendation that the government did not take up.

CHAIR: Some may know, from my previous political incarnations, if I can call it that, my keen interest in prevention programs. Could you provide, on notice, updated numbers of individuals and/or couples who in the last, say, two or three years have attended, firstly, marriage or relationship education programs; secondly, marriage or relationship counselling programs—I don't mean the court related ones; I mean the prevention related ones—and, thirdly, parenting programs? I would be interested in the numbers in relation to where that's all going at the moment.

Ms Hefren-Webb: If I had my Senate estimates folder with me, I could give you that on the spot, but I don't.

CHAIR: I'm happy to take them on notice.

Ms Hefren-Webb: I will give it to you on notice.

CHAIR: Thank you.

Senator HANSON: Give me a range of the child support that is paid out. What is the most paid out for one child a week, basically? I know your formula, but could you give me an idea what people claim in child support a week for one child?

Mr Bennett: One child, per week?

Senator HANSON: Yes.

Mr Bennett: Unfortunately, I think—

Senator HANSON: Give me a range of the child support that is paid out. What is the most paid out for one child a week, basically? I know your formula, but could you give me an idea what people claim in child support a week for one child?

Mr Bennett: One child, per week?

Senator HANSON: Yes.

Mr Bennett: Unfortunately, I think—

Senator HANSON: What would be the maximum on your books?

Mr Bennett: I'm going to have to take that one on notice. I don't have a maximum. I have various averages et cetera.

Senator HANSON: Give me some idea. Is it $50 a week? Is it $200 a week? Is it $400 a week? I know it depends on what their income is. I understand all that.

Mr Bennett: I don't have it per week, so I'm going to give annual figures if that's okay. The average child support liability is approximately $5,600. The normal question is: is that the mean or the median? Unfortunately I can't answer that. I can only say that the figure I've got is average. I can say that there are approximately 30 per cent of cases where the annual amount is less than $500. If it's of interest to the committee, I can take it on notice and try to get a better distribution.

Senator HANSON: You're saying your average is $5,600 a year. That's about $100 a week for a child. I know that in cases it can be a lot higher than that, where people could be paying $200 to $300 a week. Do you know the figures for what the government pays to a recipient if they're a sole parent with one child? How much does the government pay a week to that person?

Mr Bennett: Do you mean someone with parenting payment single?

Senator HANSON: Yes.
Mr Bennett: Probably coming back to the situation of the transfer amounts, as we do the statistics we might just need to also look at—you've used the scenario of one child, but the way that the formula works you can obviously have different children, so it could be that the amounts that I'm talking about don't just represent one child. I would just like you to be clear with that. That's why I'm taking it on notice.

Senator HANSON: Where my questioning is going is that, if the government believes that it costs this much to rear a child, and it pays that in parenting payments or welfare payments or single-parent payments, whichever way you want to, I want to know the difference in the formula of how we work out the child support and what they believe some of these parents have to pay, which in some cases is quite excessive and in other cases it's not even enough to look after that child.

Mr Bennett: Thank you. I now appreciate the question. Would you mind if I take that on notice?

Senator HANSON: Please.

Mr Bennett: Thank you.

Senator HANSON: I'd like to go to your comments here about additional income. Can you just explain what you classify as additional income? You've got it over a three-year period. It's on page 14.

Ms McLarty: Are you talking about the three-year period in which you can earn additional income?

Senator HANSON: There is a three-year grace. You basically said it is generally included in their child support assessment, and then there are exclusions to it, and then you say you have a three-year time limit. How do you assess it, if someone has additional income? Are they forced to pay that child support?

Ms McLarty: For three years after separation someone can exclude additional income, to assist them in getting back on their feet, settling themselves into a new life. The additional income could be a second job, or it could be overtime and those sorts of things. It has to be additional to what was happening prior to separation.

Senator HANSON: So that's always taken into consideration. So, if they have an income prior to separation, that's basically what they derived. If they then go out and get a second job, do overtime, or work hard, that is not taken into consideration for child support for three years?

Ms McLarty: I think there has to be an application—

Mr Bennett: There has to be an application for that.

Ms McLarty: The person has to apply to have that excluded. But that's the basis for the exclusion—three years and additional.

Senator HANSON: In a situation where you have a married couple and the husband has a former marriage and was paying child support, the current wife—in a very happy marriage—receives a letter from the Child Support Agency saying, 'If you were to separate from your husband, you would get paid $39,000 a year for your two children.' Why are these letters going out?

Mr Bennett: If we could take that one on notice. I think it's case-specific to the child support agency. It may be of benefit to do some further investigations, if you're comfortable with that.

Senator HANSON: Please, because I can assure you they're a very happily married couple.

Mr Bennett: Thank you, Senator.

CHAIR: If there are no further questions, can I thank officials from the Department of Social Services for your submission and also for attending and discussing it with us today. We look forward to the responses to the various questions on notice. It may well be that, during the course of this inquiry, we will have an opportunity to discuss some of these matters in further detail as things develop during the course of the inquiry. Thank you very much for your participation.

Mr Bennett: Thank you, Chair.
MITCHELL, Ms Mitchell, National Children's Commissioner, Australian Human Rights Commission

Evidence was taken via teleconference—

[10:43]

CHAIR: Welcome. You've lodged submission number 91 with the committee. Are there any amendments or modifications to that submission?

Ms Mitchell: No.

CHAIR: Information on parliamentary privilege and the protection of witnesses and the giving of evidence to parliamentary committees has been provided to you as part of your invitation to appear. Can I invite you to make an opening statement, if you'd like to?

Ms Mitchell: Thank you for the opportunity to appear before the joint select committee's inquiry into Australia's family law system. In my letter to the committee in December last year I drew the committee's attention to a submission by the Australian Human Rights Commission to the Australian Law Reform Commission's review of the family law system in 2018. This covered a broad cross-section of human rights issues in family law, including key human rights principles and accessibility for Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse communities and people with a disability. The submission outlined legal principles in relation to parenting and the welfare jurisdiction of the Family Court, dispute resolution processes, children's experiences and perspectives and the skills and expertise of family law professionals.

As Children's Commissioner, though, I am concerned primarily with the importance of safeguarding children within the family law system. Since the beginning of my term in 2013 the issue of family and domestic violence and child abuse in the context of the family law system has been raised directly with me by children, by adults on behalf of children and by adults reflecting on their childhood experiences. In 2015 I conducted a national investigation into how children are affected by family and domestic violence, including children involved with the family law system. And, as I discussed in the submission, I believe that a primary means of ensuring safety and wellbeing is to give children the opportunity to express their views and to have these views taken into account by decision-makers. This is guaranteed to them in article 12 of the Convention on the Rights of the Child.

Children are often directly affected by the separation of their parents and can be the victims of abuse and violence. Children and young people consistently say to me and to others that they would like to have more of a say in and be informed about legal decisions that affect them. However, there are many barriers that inhibit child participation in the family law system. This includes a lack of understanding and concerns about children's participation and how to facilitate it. I want to make it clear that a child should not be compelled to express a view in family law matters, but I do think that they have a right to be provided with the opportunity to do so in a manner appropriate to their age and maturity. They should also be provided with information about family law proceedings that affect them in a manner appropriate to their age and maturity.

In order for this to happen effectively in the family law system, judicial officers and family law professionals, including independent children's lawyers, family consultants and mediators, need to be trained and resourced to better understand the effects of family violence on children and children's needs and development and to be able to engage and communicate with children about family law matters that concern them. I also consider that the Family Court could establish a children's board or committee similar to the Family Justice Young People's Board in the UK to provide ongoing advice to the Family Court on how to better realise children's rights in the family law system.

The UN Committee on the Rights of the Child made similar recommendations when it considered Australia's record in implementing the Convention on the Rights of the Child last year. I have included these recommendations in my 2019 Children's rights report, which I released on Monday. Thank you. I'm happy to answer any questions I can about the protection of children's rights in the family law system.

CHAIR: Thanks, Ms Mitchell. I will lead off with a couple of questions. Do you believe that the current adversarial system in the Family Court best serves the interests of children?

Ms Mitchell: I think it is a very challenging system that makes it very difficult to prioritise the welfare of children over the interests of adults who are put in a necessarily adversarial situation.

CHAIR: Have you examined any other jurisdictions where there is a less adversarial approach and more of an inquisitorial approach in relation to the impact that might have on children?

Ms Mitchell: I am aware that other jurisdictions have a less adversarial approach, but I'm not aware of the outcomes and I'd have to potentially take that on notice to look into that a little bit more. But there are examples
around the world where it is a less adversarial system, and I would need to look at how the outcomes differ for children at the end of the day.

CHAIR: Just one more question from me: you made reference in both your written submission and in your comments earlier about the UK Family Justice Young People's Board. I note in your 2015 report there was a reference to a joint children's committee in the Family Court. Are you able to expand upon the operation of that committee? Has it continued to work? What has it done?

Ms Mitchell: My understanding is that that's no longer in operation. But it was there for some period of time and did inform court officials about issues and processes and their impact on children in that system. But my understanding is that it hasn't actually been in operation for some time.

Senator HANSON: Thank you for your submission, Ms Mitchell. What input do children have into the family law court system in Australia?

Ms Mitchell: There are references to the Convention on the Rights of the Child in the Family Law Act, but there's no requirement to implement these. There are also increased provisions in the act, which were recently included, which prioritise children's safety and wellbeing and their exposure to domestic violence, so it asks the courts to consider these things, and I understand the court does. However, there's no requirement for the court to actually engage children or hear children's views. That is even the case when an independent children's lawyer is appointed.

Senator HANSON: If a child wishes to put an affidavit to the court on how they feel about either parent or being with either parent, is that allowable?

Ms Mitchell: It is allowable, but it's up to the particular judge to facilitate that to happen, and they don't need to do that. And at the moment, what children tell me is that when they're involved in these processes, often for many years, they are very unclear about what's going on and what their rights are—so they're not told what is possible and what's not possible—and they feel that they're not properly listened to, their voice wasn't important and they are not believed. They don't trust what the family consultant puts in a report that goes to the judge and is meant to reflect their perspective, and they don't see that either. They're also very confused about the outcome. They don't get anything in accessible format about what the decision was at the end of the day, and I believe that means that parents can easily play the child a bit and misinform the child about what the outcome was and why.

Senator HANSON: So what you're saying is that, in Australia, a child—if they're mature enough to be able to do it—can put an affidavit forward to the courts, but it's at the judge's discretion as to whether that will be accepted. Is that correct? I've been informed by a former family law court judge that they cannot take affidavits from children.

Ms Mitchell: When you say 'affidavit', whether it's an evidentiary piece or whether it's their perspective, I'm using that in a very broad sense. They can put their views to the court. They can ask to have their views put to the court, but then it's up to the court to decide whether they can receive that.

Senator HANSON: Thank you. In Japan, they have a system where the judges can observe the interaction between the parents behind a glass petition, where they don't know they're being observed. Do you believe it would be a wise move for us to introduce that in Australia—that sort of system where the judges can take note, see the observance that's going on with the parents and their children?

Ms Mitchell: It's one method. I would be concerned to know that any court official or a judge had the capacity to interpret what was going on. Really, I think what's needed here is a lot of skills development in court professionals, including relevant expertise in child development and child trauma, which they're not all going to have. I do think that we need to up the ante in the court system and have the relevant expertise available to court officials so that, if they're doing anything like that, they have the best expertise available to make informed judgements about what interactions between parents and children might mean.

CHAIR: Mr Perrett?

Mr PERRETT: Further to Senator Hanson's question and building on some of that, your submission recommends that children be able to give their views in all Family Court proceedings that affect their rights and interests. My understanding is that children—people under 18—can't make an oath; they can't make an affidavit. Do you have a preferred model of how children could give their views in proceedings before a court? Should they meet with the judge alone or with the specialist child consultant? Or should those views be expressed directly to a specialist child consultant and then given to the courts, similar to a family report? What are your suggestions for the process?
Ms Mitchell: I've had children who've had different views about this, so I think the court needs to be agile. Many of the young people whom I've spoken with absolutely want to talk to a judge. They want to talk to the person who, at the end of the day, makes the decision. But others would be comfortable with something less than that and with a process that allows them to get their views across without the pressure of being in that space. So I think all of those options should be on the table for children to decide between them and whoever is representing them, if there is an independent lawyer representing them or an advocate.

Mr PERRETT: I think section 60CD of the Family Law Act gives all of those options to the Family Court now, but you're saying they're not being utilised by the court as it currently operates.

Ms Mitchell: That's what I'm saying. I know of research done in this area where they've interviewed judges and independent children's lawyers to determine how they use the provisions in the current act or not. On the whole, independent children's lawyers rarely even talk to the young people. They might get a phone call for 20 minutes or something with the young people. The feedback I'm getting is that there's often not an established relationship in that process and that these young people don't feel that they're understood or that their perspectives are understood in a way where that person could then reflect their views and perspectives into the court proceedings. I'm also aware of one research project into judges' perceptions of engaging with children. I think the judge in question said, 'I'd rather be handed a scalpel and asked to do brain surgery than engage with a child.' So I really think we've got a long way to go, in terms of the skills and attributes court officials need to effectively engage with children and actually to prioritise that engagement.

Mr PERRETT: Obviously a lot of weight goes on the family reports, so I wanted to turn to them. How important is it that the professionals charged with writing these family reports for use in family law proceedings are experts in child behaviour and development as well as family violence? Would you like to make a comment on that?

Ms Mitchell: Absolutely. In fact, I think that's probably even more important. This is an area where children are very suspicious of the family consultants and the report writers. Also, they get very little feedback in ways that they understand about what has gone into that report. A number of children have said to me that they believe that the information that's going into that report doesn't reflect their own feelings, experiences and perspectives. So for me it's really important that those professionals have a strong background in child development and child trauma.

Mr PERRETT: We have a Family Court system which is supposedly putting the best interests of the child at the centre of all decisions, but, from your work with children, can you give examples of how the delays in family law proceedings impact the children who are at the centre of the dispute?

Ms Mitchell: My problem with the best-interests provision, which is one article from the Convention on the Rights of the Child, is that people presume that they've made decisions in the child's best interests, but often it is in the adult's best interests. Best interests also need to be seen in the context of all of the other articles in the convention. One of the recommendations I made to the ALRC review is that we really need to reflect the full weight of the Convention on the Rights of the Child, rather than just picking out this best-interests idea, which often gets interpreted in all sorts of strange ways—in particular, the length of time. I've had young people come to talk to me who have been involved with the court for six or seven years. I just think that's child abuse, myself—systems abuse. They've been going back and forth in the midst of very vexatious relationships between their parents, and I just think that we need to be really cautious of the way the system is inflicting trauma on the child, as well as the trauma of the separation itself.

Senator CHANDLER: That segues really nicely into the questions I wanted to put to you, Ms Mitchell, and that's around children's mental health. It might be hard to separate out the mental health implications of a child's interaction with the family law system from the impacts that just come naturally from having the child's, or children's, parents separate. But do you have any evidence, whether it's data driven or anecdotal, around the mental health implications for a child currently going through the family law system or whose parents, rather, are going through the family law system, and also for the rest of that child's life?

Ms Mitchell: I only have anecdotal data, and I think you've pointed to a gap in the research. I really do think we've got to go directly to children or people who have been involved in the system and do that research. But from what I've seen, generally, it has a really strong and profound impact on children and their lives now and into the future. They often can't concentrate at school because of all of the things that are going on around them. They say that they're often bullied at school. They don't want to talk about it with anybody either, so they become a target of bullying, and they tend to isolate themselves from their friendships. They're also finding out about relationships in a very negative way, and I also think that the whole disempowerment of children in this system has an impact on their capacity to feel in control of anything, and that actually impacts on your mental health as
well. So for all sorts of reasons, the way that the Family Court currently plays out for kids is really disempowering and detrimental to them, in my opinion.

Senator CHANDLER: Yes, and it would be interesting to know what the benefits could be in the longer term, or, more accurately—spinning that around—what the detriment is in the longer term for these children. I'm sure that there would be cases where people in their 20s, 30s, 40s and 50s—for the rest of their lives—are dealing with mental health issues that, perhaps, can be taken back to when they've had to go through these Family Court situations at a younger age.

Ms Mitchell: I know that the Australian Institute of Family Studies has done some research on the children of separated parents and the outcomes for them. I'm not aware of whether it looked at mental health outcomes, however. But I think that it's a very important piece of research to be supporting, and the Australian government should be looking at those long-term outcomes for young people, and then as they're adults as well.

Senator CHANDLER: Yes, and perhaps looking at some of the root causes. As I said in prefacing the question to you, there are a few different issues at play here that can all impact on a child's mental health. We're looking at the family law system being one of them, but obviously experiencing family domestic violence would have an impact on a child as well, in addition to, I guess, the emotional issues of parents separating, as you touched on. That has broader implications for a child's understanding of relationships which I'm sure would play out later in life.

Ms Mitchell: Yes, and the issue of child abuse, including in the context of family and domestic violence, is a very real and serious one in the Australian context. The latest data shows that there were around 68,000 substantiated—meaning they're very likely to have occurred—reports of child abuse and neglect across Australia. Now, a number of those are in the context of domestic violence situations. That's the reality of children's lives. Sometimes that plays out in a separation scenario; sometimes it plays out in the removal of a child into the care and protection system. There are all sorts of implications for the figure that I've just quoted, which I think is absolutely unacceptable in this country. It means, I think, we're not valuing children and safeguarding children in the way we should be.

Senator POLLEY: I want to refer back to the ALRC review of the family law system. You've touched on this before, but could you outline to us the recommendations that you strongly agree with and then those that you are strongly opposed to.

Ms Mitchell: Generally, I understand why the ALRC recommended greater linkages with state and territory child protection authorities, police authorities and domestic violence agencies. It's mainly because of the capacity to utilise their investigative capabilities, but also to exchange information. You can actually build up a picture of not just what's happening for that child in the separation situation but, over time, what's happened to that child—what that family's been like, how that's played out. But that can happen, and I'm not particularly a supporter of outsourcing this to the states and territories, because then you've got eight states and territories and all the gaps that open up around that, all the inconsistencies that open up when we have state based systems. I believe that we need greater information exchange and greater capacity to utilise the state based services, but I don't particularly support the outsourcing to a state based system. I think that's a pretty big recommendation that was made. I think there are lots of implications of that that probably will not have good outcomes actually. But many of the other recommendations—about the training and development of staff and the building of resources—I obviously would support.

Senator POLLEY: Thank you for that. Recommendation 5 proposes that section 60CC be simplified to reduce from 13 to six the number of factors to be considered when determining parenting arrangements that promote a child's best interests. The proposed factors retain 'any relevant views expressed by the child'. Do you support this, and do you think this is sufficient to address your concerns?

Ms Mitchell: I'm happy to simplify the range of factors, but I think that we need to prioritise children's rights to have a voice, to be safe and all of those other things above other considerations. So I don't think that the way that is articulated is sufficient to give me assurance that children's views would be sufficiently taken into account.

Senator POLLEY: Just for the benefit of the committee, from your experience, are there areas of the ALRC report that the committee should look further into?

Ms Mitchell: I do think that in some of the areas they haven't prioritised children's rights and they've, in fact, suggested downgrading references to children's rights. I would suggest that the committee look at those recommendations.

Dr MARTIN: My questions relate to psychological wellbeing and health. Obviously, children's immediate short-term and long-term psychological health and wellbeing is extremely important and I think that tied to that—
at the core of it, really—is attachment. I'm just wondering about how we can protect and promote relationships in the process so that while parents are going through their dispute, be that property or custody, children's rights to have access to their parents and to ensure their relationship with both their parents—which is at the core of their psychological wellbeing and health—are promoted and protected through the process.

Ms Mitchell: That's a really important point. It is often the case that, in these kinds of matters, the children's wellbeing is neglected and they become almost like the parents, trying to navigate what's going on and living in different houses and all of that sort of stuff. They become quite responsible, and it's a lot to put on a child. This is why I'm quite a supporter of child-inclusive practice, which is a feature of a number of the mediation and dispute resolution services. I think this kind of idea can be brought into the court. The cases that end up in the Family Court are the really serious and complex cases, of course. So this whole focus on child-inclusive practice is a way for the adults in this situation to actually put aside their issues and focus on the welfare of the child. That's the deal when you sign up for child-inclusive practice, and it means that the child's welfare and wellbeing are paramount in the process. Through that process, parents become aware of how the situation that they're in and the way that they're behaving and acting are affecting their relationship with the child. This is very motivating for parents, because they do want to retain a good relationship with their children. That is something quite motivating for them. So I'm a big proponent of child-inclusive practice. It's early days on the research front. It needs, I think, more development and more evaluation, but I think that, as a sort of a principled approach of going forward, it has a lot of efficacy.

Dr Martin: Currently, are there mechanisms put in place, separate to independent children's lawyers, to ensure that children are not compelled or influenced by a parent, or influenced or coached by third parties, to give a particular view in the process? My concern really stems from cases that I've seen as a clinician in a previous life where children have been, perhaps, coached, or they're emotionally enmeshed with, say, the parent who has custody currently, for reasons that are not necessarily in the best interests of the children. That concerns me. It comes back to my question about the psychological wellbeing of the child and attachment to both parents. My view is that, unless there's a criminal matter involved and the child is at risk, we should be protecting and nurturing relationships between both parents and the child involved. Further to that—and this is another question—what tools are currently in place to improve communication between parents to protect and nurture relationships between children and both parents involved in a family law matter?

Ms Mitchell: I would again point to the kinds of child-inclusive practices that are out there. This is the very place that is designed to do that—to improve the way adults behave, communicate and understand the impact they're having on their children and their relationship with their children. That's exactly what those processes are designed to do. I think the court could really benefit from thinking about, 'How can we promote that kind of practice within a Family Court matter?' Because it does allow the focus to be on the welfare of the child rather than on the feelings of the adults.

I don't think there's any evidence that I have to suggest that children are more likely to misrepresent the truth than adults. In fact, in my experience, children are pretty open and candid. Obviously they sometimes feel that, if they say something, they might get in trouble with one or other parent, but I think a skilled professional can help them to reveal how they're feeling, thinking and what they're experiencing and to stay safe within that environment.

Dr ALY: My question goes to the training of judges and law professionals dealing with children. Dr Martin would have a professional opinion on this I'm sure, given her background, but to my mind I think that training could only go so far in equipping law professionals with the skills that are needed to really deal with children who are going through particularly complex cases and where domestic violence or some form of trauma is involved. What would be your recommended time frame? What should the structure of the training and the length of the training be in order to be adequate?

Ms Mitchell: I think you're entirely correct. You're only going to be able to bring up court officials to a certain extent. You're not going to be able to turn them into child psychologists, for instance. So it is actually really important that the court has access to respected and credible expertise that it can draw in. I've had a lot of people talk to me, and you probably have too in the context of this inquiry, who are concerned about the qualifications and expertise of some of those independent experts who are currently working with the court. I think we need a process to make sure that the expertise that is brought in to assist the court is properly accredited.

Dr ALY: Are you saying that there is currently no regulatory framework for that?

Ms Mitchell: That's my understanding.
Dr ALY: So on what basis then would somebody be called by the court to deal with a child or a minor? In what situation would somebody be called? What are the current checks and balances?

Ms Mitchell: I understand that the court does call experts from time to time to look at a domestic violence situation or where there's an allegation of child abuse or mental health issues with a child, but my understanding is there's very limited regulation of who that is and what their qualifications are.

Dr ALY: What would be your recommendation, taking into account primary interest of the protection and rights of the child?

Ms Mitchell: I think there should be a regulatory system where that's transparent: a preferred provider list where people know what the qualifications of these people are, what they're trained in, if they're up to date and what their particular expertise is. I don't think that that process is transparent at the moment.

Dr ALY: In your opinion, what are the consequences of not having this regulatory framework in place currently?

Ms Mitchell: The feedback I get is that there are certain experts brought in by the court who have particular views about women or children, and these play out in the decisions. I think we need to avoid that, because, basically, it diminishes the trust in the process all together if people are not confident in the expertise that the court is utilising, including in children themselves. I've had children say they've had very creepy people come and talk to them, who they don't trust at all and who they think are working for one or other of the parents who might be an abuser.

Senator HANSON: Ms Mitchell, you talked about the rights of the child. Can you give me your definition of the rights of the child?

Ms Mitchell: The rights of the child are set out in the Convention on the Rights of the Child. Australia ratified this 30 years ago. It covers a range of rights for children. They're pretty basic and fundamental things, which we'd all agree on, that kids need to be okay, like to be safe and not harmed; to get a good education; to have a home; and to be cared for—all of those sorts of things.

There is also an article called 'Article 12', which is about one of the four guiding principles: children having a voice and a say in decisions that impact on them. In an area where critical decisions made about their lives and their relationships, we really need to be thinking about how we can best give a voice to a child as a critical decision is made about their life and their future. It also goes to judicial proceedings, that is their right to have a voice and have a say. It doesn't mean they'll get what they want, necessarily, but it is a child's right to understand what's going on and to participate in something that has such a fundamental impact on their lives.

Senator HANSON: And do you believe it's also the right of the child to have access to both of their parents and grandparents and extended family, especially when there is no real harm or reason not to have that contact with those parents?

Ms Mitchell: If it's safe to do so, that is something for the child to consider. I think that it is really important that they have meaningful relationships with their family members.

Senator HANSON: One of the ALRC recommendations is to do away with fifty-fifty custody for the parents. Do you believe that is a good step to take forward?

Ms Mitchell: I think making life formulaic is a problem, generally. Life is complex and can go in all sorts of directions. It may not be that a fifty-fifty arrangement works. I think we need to be flexible about it. I like the idea of a meaningful relationship with the parents, however that works for different people in different circumstances. A lot of kids get worn out, being carted from one parent to another sometimes, and sometimes that just doesn't work. I think we need to be a bit more flexible about this, because these are matters of the heart, they're matters of relationships and they're matters of life, and I don't think that being formulaic about it works very well at all.

Senator HANSON: What is your view on parental alienation?

Ms Mitchell: I think that's a pretty kooky theory. I think that it's been pretty much debunked. I'm a psychologist by trade, so I've looked at this issue and can see that this theory was something that didn't have an evidence base behind it. The fellow who concocted it back in the 1980s or 1990s had some pretty wacky views, I have to say. For instance, he also believes that the best way to cure incest in a family is to give the mother a vibrator so she can have orgasms and then the father won't have to turn to the child. This is the proponent of this theory. So I think we really need to be careful when we're thinking that this is a thing.

Senator HANSON: You don't believe it is happening at all?

Ms Mitchell: I just don't believe it's a real thing. I don't believe there's any evidence in the psychological research to suggest that this is a real thing.
**Dr Martin:** Can I just step in? I think what Senator Hanson is referring to is cases where perhaps one parent is emotionally colluding with the child in the interests of a better financial arrangement in the outcome of a case, if I understand her correctly. I've certainly seen cases where one parent will try to convince a child to take a position or a view with the financial settlement not having been resolved yet and intertwined in the outcome. So, if I'm correct, that's what Senator Hanson was referring to—situations where the financial settlement hasn't occurred and, say, the parent or primary caregiver who currently has custody of the child is trying to convince the child of a certain view and thereby restricting access to the other parent of the child. I think that's at the core of what I was getting at before, which is about protecting and nurturing relationships between the child and both parents. Unless there's a good reason where the child may be at risk of harm, I think we're both concerned about the relationship between both parents and the child as it impacts on the child's psychological health and wellbeing.

**Ms Mitchell:** There's no doubt that these situations are tricky, and there are a lot of emotions involved and a lot of different motivations for different people. I don't know that a court process can solve that. But, as I said before, I don't have any evidence to suggest that children are more likely to misrepresent the truth than adults. This is why I think we need skilled professionals to be engaging with children and also empowering children to tell the truth and not be afraid to tell the truth and also encouraging adults to support children to do that as well. That's why I went back to this whole notion of child inclusive practice, because I think this is a way of thinking about the welfare of the child as opposed to the welfare of the adults involved. I think it's really difficult. Obviously there are different circumstances and different people and we can't cast everybody in the same light, but it's a tricky, tricky time. My view over the years of looking at this is that adults act terribly around their children in these spaces and we really need to be calling them to account so they're not using their child in any way that's detrimental to that child. So there's a lot of education needed for parents. That's why I think we need to use those mediation spaces more effectively than we do at the moment, because the best thing would be for these cases not to end up in the Family Court.

**Senator Hanson:** That's exactly the point I'm going to. You opened with your comments that children should have a say in the matters with regard to this. So, if there is parental alienation, then the child has the opportunity to express how they feel about all this and what's happening. And that takes me back to the AG's office. Are they in line with you and do they agree with you that evidence should be given by children, or do they oppose your views?

**Ms Mitchell:** They aren't opposed. I think they've got differing views around this. I know that a lot of court professionals find this very challenging, but I don't think that there is a strong view that we shouldn't be giving more empowerment to children in these circumstances. I have hope that there is a positive perspective on improving and strengthening the provisions that allow children to be heard, and I hope that we would require children to be heard. That's the change I'd like to see—rather than a discretion, I think it should be a requirement. That will ensure people do develop the skills and can't avoid talking to kids.

I have to say, I think the Royal Commission into Institutional Responses to Child Sexual Abuse shows us that silencing kids never protects them. I really think we need to be aware of how much of a safeguarding tool being able to speak up, raise your concerns and say what you feel is for kids.

**Senator Hanson:** That comes back to the question of the child's lawyer. As you've said, in a lot of cases, they don't always talk to the children or, if they do, it's a 20-minute phone call. Why has this been allowed to go on? Who appoints the child's lawyer? Why isn't there something in place to ensure that, if they are representing the child, they spend time with the child and know the child's wishes?

**Ms Mitchell:** I would love that to be made more explicit in the act. At the moment it's quite unclear as to whether the independent child's lawyer actually represents the children or whether they are an arm of the court to provide the court information about the potential impacts on the child. It's not clear in the legislation that they actually do act for the child at the moment, so it's open to interpretation. Some independent lawyers do a fantastic job for kids and are very engaged with kids, depending on the different jurisdictions. But, on the whole, as you point out, I think they should be required to engage closely with the child and get to know the child and get to know their circumstances so that they can effectively represent them.

**Dr Martin:** I have one more question. Are you aware of any research on the disruption to regular contact and ongoing care of a child on their psychological wellbeing and health? What I'm referring to is the more abrupt disruption in contact between a parent and child.

**Ms Mitchell:** No, I'm not aware of research. We don't have a lot of research in this area. You can imagine why—because it's very tricky and sometimes the cases are ongoing, so they can't be part of it. But we do need to do a lot more work in the research space to understand the impact of these different outcomes of court proceedings on children and their development.
Dr MARTIN: If there is any research on the disruption of regular ongoing contact between both parents involved in a family law dispute and a child, it would be very good to have that on record. It would also be good to have any research that looks at the quality of handovers of families involved in family law disputes and the impact they have on the psychological health and wellbeing of the children involved. Of course, parents have described a spectrum of handovers from hostile and violent handovers through to very calm and relaxed and positive handovers. So I'm just wondering about the quality of handovers and the impact they have on the psychological health and wellbeing of children as well. If there's any research, it would be useful for us and it would guide us in making appropriate decisions going forward.

Ms Mitchell: I'll take that on notice and see what I can find. I don't think there's any in the Australian context, but there may be in overseas jurisdictions. Clearly that is an important issue for a child, if they're experiencing stress at that point—how that impacts on their relationships and their experiences into the future. There might also be some research from child protection systems, which have contact regimes often, that might give you some clues in that area as well. But I'll have a look into that, if that's all right.

Dr MARTIN: Thank you.

CHAIR: Thank you for your submission and thank you for discussing it with us this morning. If there are any of those matters that were raised where you're able to provide some further information, we'd appreciate that very much. I thank witnesses who have given evidence to the committee today. I thank Hansard, the parliamentary broadcasters and the secretariat. The next public hearings of this committee will be in the week of 10 to 13 March, in Townsville, Rockhampton, Brisbane and Sydney.

Committee adjourned at 11:35