



# **CPSU (PSU Group) Submission:**

**Review of the Family Law System**

**May 2018**

## **Introduction**

The Community and Public Sector Union ('CPSU') welcomes the opportunity to provide a submission to the Australian Law Reform Commission's Review of the Family Law System Issues Paper (IP-48).

The CPSU represents employees of the Federal Courts. This includes advocating for the important work they undertake. The CPSU is committed to working with Government, the Courts and community groups to secure adequate funding for the Courts and services that support users of the Courts.

Employees of the Federal Court, employed in the Family Court of Australia and the Federal Circuit Court of Australia (hereafter 'the Courts') are dedicated professionals, committed to serving the community and working in an emotionally volatile, and sometimes physically volatile environment. They value the contribution they make to our community and have a strong sense of professional identity. The proper functioning of the Courts and their family law functions rely on the work of these staff.

Courts' staff have considerable experience and professional expertise in the day to day functions and administration of the family law system. Most are long term employees, specialised in their area of service. The CPSU submission<sup>1</sup> to the 2017 Parliamentary Inquiry into a better family law system outlined experiences of staff and made several recommendations.

This submission is informed by experiences and observations of Courts' staff working in the field and responds directly to questions in the Issues Paper. We have restricted our comments to those questions on direct relevance to the work of CPSU members.

## **Objectives and principles – CPSU submission**

The modern family law system should always focus on the best interests of the child. It should provide support and timely access to support and justice for vulnerable persons. It should provide a safe environment for those subjected to family violence and abuse. It should prioritise support and access to those most at risk and those most vulnerable. It should be properly funded to support and assist persons needing to access its services.

Principles to guide any reform should include

1. Giving primacy to the best interests of children, including speedy interim resolutions for children relying on expertise of courts' employees.
2. Legal assistance to families going through conflict so they are well supported to reach resolution.
3. Greater accessibility and quicker access to justice for people living in regional Australia.
4. Well-funded and well-resourced courts, including ongoing employment for courts employees, ongoing access to training to ensure best practice and minimised use of outsource providers.
5. A low cost jurisdiction where justice is facilitated by the Commonwealth and accessible to all families in conflict.
6. Judicial appointments where the practitioner has had at least 10 years family law experience as an active practitioner.

Courts' staff want a system that ensures outcomes that work for children and not outcomes for the sake of outcomes or "better" reporting.

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<sup>1</sup> Parliamentary Inquiry into a better family law system, submission 70 – CPSU PSU Group  
[https://www.cpsu.org.au/system/files/cpsu\\_submission\\_to\\_better\\_family\\_law\\_system\\_inquiry.pdf](https://www.cpsu.org.au/system/files/cpsu_submission_to_better_family_law_system_inquiry.pdf)

## Access and engagement – CPSU submission

The CPSU agrees with the ALRC’s statement that “ensuring the family law system is accessible to all families who require its services is a critical element of ensuring access to justice.” There continues to be a range of barriers to access and engagement in the family law system.

### Inadequate staffing

Not only is the cost of legal and other services a barrier to justice, but the staffing pressures on Courts are a major factor. Since 2013-14, there has been a 11% decline in Average Staffing Levels at the Courts (Table 1).

**Table 1: Average staffing levels for the Courts<sup>2</sup>**

Agency	2013-14 (Actual)	2014-15 (Actual)	2015-16 (Actual)	2016-17 (Actual)	2017-18 (Actual)	2018-19 (Estimate)	Change	%
<b>Family Court and Federal Circuit Court</b>	789	778	780					
<b>Federal Court</b>	418	406	400	1,062	1,077	1,081		
<b>Total</b>	1,207	1,184	1,180	1,062	1,077	1,081	-126	-10.6%

Courts’ staff report that inadequate staffing results in delays in hearings. People are left in situations where there are no court orders in place because of a lack of Registrars. This has meant there are times where hearings have not gone ahead as there is no court officer. Matters that could have been finalised at an earlier stage drag on. As one member explained:

*“When there are no Registrars available, due to minimal Registrars in the court, vulnerable people and children at risk must wait before their case can be assessed for urgency as only Registrar’s have the availability [capacity] to make the call and to slot them in for an urgent hearing. Multiple times each week we have no Registrar on duty.”*

Inadequate staffing levels not only create delays but mean there is not enough time to engage with clients who need assistance. Early triaging, as well as initial and ongoing assessment of risk are needed but there are not the resources for this to happen. More staff are needed, as detailed by CPSU members:

*“Things now just don’t get done as we don’t have the staff to function.”*

*“At times the families who experience violence are missed because of the lack of resources and it is only discovered during a Court event so the appropriate safety planning has not always happened and the family experience anxiety around this and this can affect how they engage with services on that day.”*

*“Matters are not listed promptly. Sometimes matters are not even looked at to get a listing date for weeks as staff are too busy. Litigants are then frustrated by delays and left in vulnerable situations as there are no court orders in place.”*

*“Clients are having to wait too long to have their matter heard. in the meantime, children are spending supervised time with someone who they then may be ordered not to see because the violence was too great. By this time, they have established a relationship that appears good (because the person is well behaved whilst being supervised)- so then final orders are made for the child to see the parent even if they are found to be a perpetrator of coercive controlling violence.”*

<sup>2</sup> Average Staffing Level figures from Portfolio Budget Statements. As of 1 July 2016, the functions of the Family Court and Federal Circuit Court of Australia were transferred to the Federal Court of Australia, with a corresponding transfer of staff.

*“Every year there is less money to spend on staffing and we are asked to do more with less. Obviously, something must give and that is usually the time we are able to spend assisting clients and referring them appropriately.”*

**Question 3.** No submission made.

**Question 4. How might people with family law related needs be assisted to navigate the family law system?**

Courts' staff recommend

1. Centralised point of entry with triaging so those who need to go to court can get there quickly and others can move through mediation and conciliation processes.
2. Merge the child protection system with the family law system and provide legal aid resources and family dispute resources.
3. More Courts' Case Co-ordinators, more Registrars, more client service officers delivering more targeted service, support and education.
4. Reintroduction of Information Sessions (introduced in the early 1990s) once matters have been appropriately filed and after pre-trial procedures. This could be in face and through the Courts website.
5. Online and hard copy Plain English information of family court processes, providing 'case examples' of typical scenarios in both property and children's cases, and common outcomes.
6. User friendly online and hard copy forms and publications.
7. Reintroduction of joint case conferences with Registrars and Family Consultants at an early stage of proceedings
8. Adequate staffing of Registries. The litigants need quick efficient resolution and this means not forcing those with barriers to engagement to file via the portal. Things need to be made simpler; litigants deserve the respect of human interaction, that means providing funding so staff may support in person clients.
9. Consideration of the suggestions listed at 52 and 57 of the ALRC IP 48.

**Question 5. How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?**

Courts staff support the recommendations at 61 of the ALRC IP 48. In addition, as outlined in response to Question 44, regular cultural awareness training for all Courts' staff and judicial officers would also assist.

**Question 6. How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?**

Courts' staff recommend video access to interpreters where in person translation is not required or possible. Access to translators must be funded by the Court.

**Question 7. How can the accessibility of the family law system be improved for people with disability?**

Courts' staff recommend consideration of a model for accessibility based on Guardianship and Mental Health Review Tribunal models.

**Question 8.** No submission made.

**Question 9. How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?**

Courts' staff recommend

1. The ALRC consider visiting Federal Circuit Courts and Family Courts in regional areas, without providing public notice, to see the impact of the gaps and workload pressures first hand.
2. The appointment of additional Registrars and judges would help to cover gaps, particularly in regional areas, and assist with workload pressures. Any increase in judges needs to be

accompanied by additional and commensurate funding for administrative staff and support functions. Scarce resources are stretched further by increases in the number of judges without commensurate additional funding for support staff and administration.

3. Courts have the technology to allow appropriate video conferencing for all rural matters with a triage system for matters requiring face to face circuits.
4. Adequate staffing to process electronic filled and review of documents at lodgement, including support for those in regional communities in lodging electronically. As one member noted:  
*“The emphasis is on quantity not quality of work. More and more errors are occurring in the data entered into the electronic files both by clients and the staff. Delays in listing cases occur as delays blow out.”*

**Question 10. What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?**

Courts' staff recommend

1. Use of dispute resolution and family reports at an earlier stage as these are both very effective resolution tools that could resolve matters before the cost/time of court appearances.
2. Case assessment conference or directions hearing with Registrar and Family Consultant prior to hearing, with a compliance check in.
3. Pre-trial work done by parties with trial to be conducted with legal representation.
4. Solicitors certifying to pre-filing procedures in property matters with personal costs penalties against solicitors for not doing so.
5. Capped expenses set to a percentage of the asset pool.
6. See responses to Question 4 and 11. Self-represented litigants often take longer to move through the system and this increases costs for other parties in a dispute. It can be used by some as a tactic to pressure other parties.
7. Judges encouraged to order single expert reports from clinical psychologists with child protection experience rather than child and family psychiatrists.
8. Family reports done by properly resourced counsellors employed by the Courts.
9. Funding for and access to financial services, mental health support services and substance abuse services for those with family law matters on foot.

**Question 11. What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

Access to community legal centres and legal aid has a very direct impact on the functioning of the Courts and access to justice. Reduced access to legal aid and community legal centres, results in more individuals needing Courts' staff assistance navigating the family law system. Courts staff have seen an increase in members of the community having to self-represent.<sup>3</sup>

Courts staff support the recommendations at 117 of the ALRC IP 48. Self-representing clients need additional time and support from the moment they contact the Court to when their matter is heard. These result in additional resources and time required to be provided by Courts' employees, to minimise the reverse workflow generated by parties not taking the appropriate or required steps.

Courts' staff recommend

1. Proper consideration to adequate, long term funding for community legal services to improve access for self-represented clients.
2. Consistent forms and procedures for the Family and Federal Circuit Courts. It is confusing to clients that there are different forms for different Courts with the same name eg Subpoenas.
3. Free on site advice to self-represented litigants in relation to family violence issues but which should not extend to property matters.
4. Fund duty solicitors for all first return dates and some assistance in drafting documents to reduce length and irrelevant issues.
5. Extending the limit of information to be provided by Court's Client Service Officers.
6. More judges, and funding for support staff and administration, so judges have less matters in a docket and can give more consideration to the issues of particular case and are able to

<sup>3</sup> Law Council of Australia (2016, 18 May). 45 000 people faced courts alone due to legal aid crisis. Retrieved from <http://legalaidmatters.org.au/images/pdfs/1629----45000-people-faced-courts-alone-due-to-legal-aid-crisis.pdf>

better direct the case to for a quicker resolution. Currently a Judge of the Federal Circuit Court may have 30 to 40 matters in a duty list for hearing. Courts' staff consider it is impossible for a judge to adequately deal with that number of matters in a workday.

7. See responses at Question 4, specifically points 4, 5, 6, and 7.

**Question 12.** No submission made.

**Question 13. What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?**

In the CPSU submission to the 2017 parliamentary inquiry into a better family law system to support and protect those affected by family violence, we provided an example from a member on how court design and structures can be used to continue family violence:

*“At times the Court process is used by the perpetrator as an extension of the violence. The family might be continuing to be exposed to violence when they attend mention hearings with the perpetrator and attend other court events, such as family reports, on the same day as the perpetrator.”*

Courts' staff recommend

1. Consideration of round table approach for some proceedings so that judges are not on a raised bench. This would not be appropriate where there are security concerns.
2. Use of video facilities across Registries and within the Registry between hearing rooms so that victims are not required to physically be present with the perpetrator.
3. Entry to and leaving the registry should also be separate, which may require multiple exit and entry points to the Courts.
4. Purpose designed conference rooms with double access/exit points and screens.
5. Separate waiting rooms and increased access to secure safety rooms, including with toilet facilities.
6. Mandatory regular testing of duress alarms in all Courts hearing or meeting rooms.
7. Increased presence of security in Registries.

## **Legal principles in relation to parenting and property**

**Question 14. What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?**

Feedback from CPSU members in the Courts is that judges do an amazing job but there is just not enough of them, nor is there enough staff to support them.

Courts' staff recommend

1. The emphasis in the Act must be on the best outcome for children.
2. Triage at lodgement so that complex matters fast tracked to a judge.
3. Shorten the period from first access to child dispute assessment with Family Consultant and Registrar both of whom report back to Judge.
4. Judges to have leave to refer simple appropriate matters to an in-house Tribunal with a Registrar and Family Consultant, or for internal arbitration. These “simple” matters could have time limits on hearings for matters unless with leave of a judge, fees based on the amount of hearing time allocated to a matter with the ability to waive fees in appropriate cases on a means and merits based system. Even with the current Registrar resource of 32 FTE, if two full days of four hearings were undertaken each week by that resource, up to 3,200 matters could be disposed of with current funding per year.
5. Post orders (and as part of orders); mandatory allocation of time for a Judge, Registrar or a Family Consultant to explain to children why the Judge made the decision, what it means and how their views were taken into consideration, without parents present. Noting that Judges are generally not trained to talk to children and children's expectations about this process would have to be managed. The benefit of the Family Consultant is that they are best trained and equipped to identify further assistance required for those children. This would not include

where there is an Independent Children's Lawyer who may have already formed a relationship with the child or children and would be best placed to do this.

6. More use of supervision orders. These are currently underutilised because of the time involved for staff and the Courts' pressure to get matters of the books.
7. Centralised federal child protection organisation under the umbrella of the Family Court, appropriately resourced, to enable court orders to be supported, enacted and policed with state based branches having access to national data based information.

**Question 15. What changes could be made to the definition of family violence, or other provisions regarding family violence, in the Family Law Act to better support decision making about the safety of children and their families?**

Based on considerable work experience, Courts' staff consider the current definition of family violence is adequate. The issues are in timing of assessment for family violence, timeframes for progress of cases, and insufficient staff and time to investigate allegations.

Court's staff recommend

1. The focus in any provision about family violence must be on the best outcome for children.
2. Earlier determination of whether coercive-controlling type violence has occurred. This currently happens at final hearing, which means that a child may be spending (albeit possibly supervised) time with a person they perhaps should not be spending time with.
3. Accountability mechanisms for Court judicial and administrative officers and lawyers to protect clients from being pressured into agreements, particularly when there is an AVO which protects children.
4. Providing time and resources on filing and prior to first return date to undertake family violence assessment using current family violence assessment tools. This could be done by Courts administrative staff and could inform triage systems.
5. Charge the Courts with investigating and implementing a docket process whereby a Courts' Client Service Officer has responsibility to ensure all safety measures are identified early and are followed up at every Court event. Any funding to implement to be provided by the Commonwealth Government.

**Question 16.** No submission made.

**Question 17.** No submission made.

**Question 18.** No submission made.

**Question 19.** No submission made.

**Resolution and adjudication processes**

The ALRC issues paper highlights the clear evidence that many of the people who approach the family law system for assistance today have complex support needs. While most family law matters are resolved without involvement of the Family Court or Federal Circuit Court; where applications are lodged with the Courts, those matters are more likely to include allegations of abuse from either or both parties. Parents are also required to use alternative dispute resolution processes before filing in the Courts and this can mean by the time an application is lodged, positions of parties can be entrenched.

The Courts' own internal Family Violence Committee was established in response to these increasingly complex matters and addressing factors such as child protection, mental health issues, family violence, and drug and/or alcohol abuse.

**Question 20. What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?**

Courts' staff support the recommendations at 171 of the ALRC IP 48 and

1. Providing intensive support early in the dispute process, including earlier access to family reports, and triage to fast track matters before they become entrenched.

2. As per response to Question 4. Reintroduction of joint case conferences with Registrars and Family Consultants at an early stage of proceedings before next return date before a Triage Officer whether Judge, Registrar or Registrar and Family Consultant to refer matter to tribunal, arbitration or judicial determination.
3. As per response to Question 4. Reintroduction of Information Sessions.
4. As per response to Question 11. Consistent forms and procedures for the Family and Federal Circuit Courts.
5. More staff/judiciary and processes/procedures created in-house by those who hear and process matters rather than bureaucrats in the Federal Court or the AGD, or a private profit-driven company.

**Question 21. Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?**

Courts' staff recommend

1. Yes, as noted with reference to Court facilitated Tribunal hearing and arbitration, but this is conditional on many factors such as
  - a. if parties can afford it and make meaningful commitments to the process within a fixed timeframe. Many parties seem to file due to delays by one party or in accessing mediation.
  - b. consideration on referring a matter to mediation once an urgent once primary issue has been resolved, where there are multiple issues.
  - c. some parties cannot or should not mediate, their circumstances mean they do not have the capacity to engage effectively.
2. Provide more resources to Courts so parties move through the system more swiftly.

**Question 22. How can current dispute resolution processes be modified to provide effective low-cost options for resolving small property matters?**

Courts' staff recommend

1. This be managed by the Courts, and not an external party, to simplify the process and experience for parties. This is consistent with community concerns outlined in the ALRC IP 48 on complexity of navigating the family law system.
2. Use of Registrars, or retired judges, to make property orders. Practically this would mean the first return date with a Registrar on any given day could call over up to 10 matters and then identify up to four matters to be heard and determined that day, in hearings of 90 minutes. Initial applications often contain all the necessary information and evidence to hear and determine matters at first instance. Decisions on these matters could be either ex tempore or reserved reasons in short form to be provided within four weeks. The other matters that require more information, evidence or action before determination could be listed for a future date.

**Question 23. How can parties who have experienced family violence or abuse be better supported at court?**

Courts' staff recommend

1. Domestic violence assessment tools such as DOORS to be used by Courts' administrative staff before first return date to triage matters prior to Registrar call over. This will assist Registrar triage to Tribunal, arbitration or judicial determination.
2. As per Question 15, charge the Courts with investigating and implementing a docket process whereby a Courts' Client Service Officer has responsibility to ensure all safety measures are identified early and are followed up at every Court event. Any funding to implement to be provided by the Commonwealth Government.
3. Use of video conferencing for court hearings and separate court rooms.
4. No cross-examination by self-represented litigants who are alleged or convicted perpetrators of family violence. Cross examination should be by a lawyer or support person and must not be conducted by the judge or registrar on behalf of the self-represented litigant.
5. Increased security presence.
6. As per responses to Question 14.



**Question 24. Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?**

In short, yes. Courts' staff recommend

1. Focus on the best outcome for the child rather than the concept of "parent's right" to time.
2. Focus on real financial needs at time rather than future needs (interim property agreements).
3. More use of Independent Children's Lawyers to protect the children, and the necessary staffing and funding to support this.
4. As per responses to Question 13.

**Question 25. How should the family law system address misuse of process as a form of abuse in family law matters?**

The problem currently is that determining whether abuse is occurring is decided at the end of the process, not during it. It is also a complex matter that should be assessed by professional officers of the Courts.

Courts' staff recommend

1. Give Judges time and power to deal with this. It is not always easy to identify misuse of process as a form of abuse and needs proper assessment. This may include the judge seeking information from a Registrar, Family Consultant, or Client Service Officer of the Court.
2. When appropriate, costs to be awarded against party misusing process; include a restriction on right to bring new applications for defined period.
3. As per Question 10, Solicitors certifying to pre-filing procedures in property matters with personal costs penalties against solicitors for not doing so.
4. Lower the threshold for declaring someone a vexatious litigant, any swearing at a judicial officer in Court should result in a penalty.

**Question 26. In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be developed or expanded to better support families to resolve disputes in a timely and cost-effective way?**

Non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, is much cheaper for the parties when provided in-house; that is, by the Court.

Some matters are not suitable for family dispute resolution and a triage system should determine if this approach may work.

Ultimately Courts' staff consider adequate funding for the courts is the most effective solution to ensure staff and time to resolve family disputes.

**Question 27. Is there scope to increase the use of arbitration in family disputes? How could this be done?**

Yes, Courts' staff recommend

1. Train Registrars, at a cost of \$2000 per Registrar, to be able to do so and offer arbitration at the end of a conciliation conference or after a case assessment conference. Currently an external arbitrator can make awards but cannot finalise them without the imprimatur of the Court, which is, in effect double handling.
2. Arbitration for property and financial disputes.

**Question 28. Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?**

No. Court's staff view is that online processes could be a useful guide and reality testing tool to allow people to make more informed and realistic offers of settlement. However, the view is that the heavy

lifting in dispute resolution should be done in person, as there are other psycho-social factors at play that are missed through an online interface.

**Question 29. Is there scope for problem solving decision-making processes to be developed within the family law system to help manage risk to children in families with complex needs? How could this be done?**

Yes, Court's staff recommend

1. Referral of state child protection powers to the Family Court with in built agreements for enforcement by State FACS, Police and other relevant services.
2. More Family Consultations to make assessments earlier, possibly in file review before first return date to identify what needs to be available prior to any interim decision. There should be no interim decisions if children are subject to AVOs without further evidence being available.
3. More judges to prioritize serious matters.
4. As per responses to Question 16.

**Question 30. Should family inclusive decision-making processes be incorporated into the family law system? How could this be done?**

The primary concern for Courts' staff is the safety of children in family inclusive decision making processes. Child inclusive work is done in the Courts. Registrars and Family Consultants are best placed to make a professional assessment on whether this approach may be suitable. In the way a therapist will identify the process best suited for the needs of a particular client.

There is concern that most of the families with matters before the Court are unable to make decisions together because of their complex barriers to engagement and it is not always safe. Staff are also concerned that too many alternative processes that make a difficult system even more complex and "muddy the waters".

## **Integration and collaboration**

It is broadly accepted that integrated service approaches are needed to better support clients in the family law system. Crossing jurisdictions, however, can add to the complexity of family law cases.

Courts' staff have flagged the intersection with state-based child protection departments as an issue as the Courts deal with a high level of child protection work by default. Due to the child protection departments' notification systems – when they are assessing notifications of children at risk - matters can be put off, or not prioritised as highly if there is court involvement, which again adds to the complexities of matters before the Courts.

**Question 31.** No submission made.

**Question 32. What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children?**

And

**Question 33. How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?**

Former Family Court Judge, Professor Richard Chisolm AM considered this in 2012 and 2013 and subsequent reports are available on the Attorney-General's Department website<sup>4</sup>.

Court's staff recommend

1. Child protection and family law matters should be transferred to the one Federal jurisdiction to be dealt with in the one matter.

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<sup>4</sup>Family law and child protection collaboration, AGD 2012

<https://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/Familylawandchildprotectioncollaboration.aspx>

2. A shared database (or at least access to databases) so Courts, police, and child protection officers can communicate with one another. Staff acknowledge there are complex privacy and legal issues to be contemplated.
3. Failing the two points above
  - a. In-house assistance by having specialist court support workers like counsellors, dedicated family violence liaison officers and social workers available.
  - b. Expansion of Family Advocacy and Support Services in the Courts across Australia.
  - c. Timely responses to requests between Courts and jurisdictions for information which do not require issuing of subpoenas. Responses to subpoenas are often partially or completely redacted impeding sharing of information.
  - d. Funding and staffing for state child protection workers to fulfil their roles.
  - e. Education for state child protection workers and police on scope and limitations of current the family law system on removal of children and alternate care.

### **Children's experiences and perspectives**

Courts' staff are committed to quickly and effectively ensuring the safety of those affected by family violence, however, the lack of proper resourcing affects their ability to provide early identification and support responses to family violence.

*"Churning through numbers with the aim of reducing waiting time at the counter at filing means that risk assessment is not carried out at initial entry to the Court. That perpetuates at every Court event thereafter."*

While the Courts do have protocols and can implement client safety plans, staff are reliant on clients to advise if they have safety concerns and there is limited and inconsistent training on how to implement them. As one member noted:

*"It is not uncommon for a lawyer, or client representative, to fail to advise us that there is family violence. We find out once the parties are face to face, which is just too late."*

In a 2017 survey of CPSU members working in the Courts only a third (36.8%) agreed that current arrangements are effective in supporting families who have experienced violence. A common theme was the need for increased resources and more staff:

*"We need more funding to employ more counsellors and we should also have someone on site permanently to give free advice to self-represented litigants in relation to family violence issues. This should not extend to property matters."*

*"Generally, staff numbers are down, so it is hard to cater to the requirements of victims."*

*"Instances of illness in client services have meant hearings in small registries have not gone ahead as there is no one to act as court officer."*

A member provided an example of how more staff would mean far better support:

*"More staff to give these vulnerable clients support through the system. A docket process where a client service officer has responsibility to ensure all safety measures are identified early and are followed up at every Court event. In most cases we act only when a client raises the issue with us or a lawyer requests assistance for the client. We are reactionary not proactive. This is due to antiquated IT systems and lack of staff and resources across the board."*

### **Question 34. How can children's experiences of participation in court processes be improved?**

Court's staff recommend

1. More Independent Children's Lawyers.
2. Where children are to be involved in the process they need a guide.

3. Access to and explanation of resources such as, fact sheets, videos, social media, question and answer forums including immediately available counselling on line if required
4. Children need to be involved appropriately and carefully as they can easily be used as pawns or feel responsible for the decisions. They should have a voice if they want it through Family Consultants and Independent Children's Lawyers.
5. As per Question 14, post orders (and as part of orders); mandatory allocation of time for a Judge, Registrar or a Family Consultant to explain to children why the Judge made the decision, what it means and how their views were taken into consideration, without parents present. Noting that Judges are generally not trained to talk to children and children's expectations about this process would have to be managed. The benefit of the Family Consultant is that they are best trained and equipped to identify further assistance required for those children. This would not include where there is an Independent Children's Lawyer who may have already formed a relationship with the child or children and would be best placed to do this.

**Question 35.** No submission made.

**Question 36.** No submission made.

**Question 37.** No submission made.

**Question 38. Are there risks to children from involving them in decision-making or dispute resolution processes? How should these risks be managed?**

Yes, there are significant and profound risks to children's emotional and mental wellbeing in involving them in a decision making and dispute resolution process.

The court has limited capacity to control the behaviour of parties. One or both parents may seek to coach, coerce or control children. Independent Children's Lawyers and Family Consultants are best placed to identify this and take steps to mitigate it, including referral to hearing.

Courts' staff recommend

1. Child involvement on a case by case basis. Distinction needs to be made between younger and older children. Children should not be put in a situation where their input makes them a target or exposed to harm.
2. Children's views should be considered but they must not feel their views determine the outcome. This is critical for psychological protection.
3. Pre-process education and preparation for all parties.
4. More intensive and directed parental education on the damaging effects of control, coercion and coaching on children's mental health and parental bonding. This can be difficult in context of emotional process associated with end of relationship and grief responses.
5. Mechanism to escalate to hearing where Family Consultant or Registrar forms a view that control, coercion and coaching is a factor and the child's wellbeing is at risk.

**Question 39. What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?**

As noted above, there are significant and profound risks to children's emotional and mental wellbeing in involving them in a decision making and dispute resolution process.

Courts' staff consider that this is happening already but could be improved by

1. Considering a victim impact statement model for some cases.
2. More involvement from Independent Children's Lawyers and Family Consultants. This requires the Court to allocate time and the government to allocate funding.
3. Family Consultants are sensitive to these issues and trained not to press child for information. Family Consultants are very aware of implications for children given the non-confidential nature of all interventions with children.

**Question 40.** No submission made.

## Professional skills and wellbeing

The CPSU notes the ALRC Issues Paper highlighted that *“Research has also identified a lack of effective supervision and large or unmanageable caseloads as factors that can increase the risk of vicarious trauma and pointed to the need for this issue to be addressed at the organisational, rather than individual level.”*

Resolving workload pressures for Court’s staff will assist clients. That means more staff and realistic workloads and scheduling of appointments and cases. Registrars should be assigned across the Family Court and the Federal Circuit Court, a decision to assign them to separate Courts two years ago has failed.

The Government’s 2017 announcement<sup>5</sup> to employ additional family consultants at court locations across Australia recognised that Family Consultants play pivotal roles in the family law system, and that workload pressures are affecting their capacity on matters concerning family violence. The situation should be reviewed to ensure the additional resources are sufficient to deal with current capacity issues.

### **Question 41. What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?**

Registrars and Family Consultants are professionals required to maintain qualifications and association memberships to ensure they are kept up to date with research and legislative changes in their fields.

Court’s staff recommend

1. Mandatory resources for professional development of Courts’ staff and opportunities for job based, university supervised research to be part of same. This requires funding from the Courts.
2. Greater support (time off and financial contribution) to on-going training and development for formal training, short courses and conference attendances in a manner which is transparent.
3. Focus on professional development and training relevant to the field. That is family violence, the effects of exposure to family violence on children, effects of separation on children and parents, substance misuse, mental health, and identifying unconscious and cultural biases.
4. Use of in-house Family Consultants for family reports. Some judges refer to external Regulation 7 Family Consultants because workload pressures for in-house Family Consultants mean they cannot meet demand for timely reports. This is problematic because the CEO of the Courts does not have control over the decision of judges to outsource this work and it creates additional uncontrolled expenditure and the quality of Regulation 7 Family Consultants reports can vary, in some cases being of no use to the Courts in assisting to resolve disputes.
5. Introduce initiatives that will assist the Courts to quickly identify and assess issues of family violence, as identified by the Court’s Family Violence Committee<sup>6</sup>, and consistent with the Women’s Legal Services Safety in Family Law 2016 plan.

### **Question 42. What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?**

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<sup>5</sup> Federal Budget announcement for \$10.7 million over four years from 2017-18 (with \$2.7 million ongoing) for additional family consultants at court locations across Australia to the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia. (2017, May 9)

<sup>6</sup> “To introduce these initiatives, however, the family law system is in urgent and desperate need of additional funding. The committee has called for an immediate injection of \$6 million which will allow for additional training and to introduce further initiatives that will greatly assist the courts to quickly identify and assess issues of family violence.” Family Court of Australia (2016, June 20). Media Release - Family law system needs more resources to deal with an increasing number of cases involving family violence. Retrieved from <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr200616>

Court's staff recommend

1. Judicial appointments require extensive family law experience prior to elevation, at least 10 years as an active practitioner.
2. Any mechanism that requires Judges to demonstrate ongoing professional development relevant to family law and family violence to keep current with changing perspectives on best practice.
3. Obligatory cultural awareness training for all members of the judiciary.
4. Only Judges who have experience in family law matters involving children should be appointed to hear children's matters.
5. Maintenance of requirement that Registrars must have at least five years actively dealing with family law matters.
6. Regular ongoing specialist training in family law and domestic violence for all judicial officers.

**Question 43. How should concerns about professional practices that exacerbate conflict be addressed?**

Courts staff recommend

1. A mechanism for openly reporting professionals' behaviour seen to exacerbate conflict between the parties. Lawyers would have a right of response and the judicial officer would make a reviewable determination on the papers with personal costs orders against solicitors and referral to professional bodies as sanctions readily available.
2. A judicial complaint structure is needed.
3. Federal ICAC.

**Question 44. What approaches are needed to promote the wellbeing of family law system professionals and judicial officers?**

The competitive, adversarial nature of the law is not emotionally beneficial for anyone involved. Anecdotally, the vast majority of family law clients would benefit from mandatory psychological courses and support prior to beginning the family law process. This would benefit the Courts' staff and judicial officers, to be dealing with some percentage of their clients being more emotionally equipped for the experience.

Time and commitment to training Court's staff from the Courts is necessary

*"There is no training at all re OH&S, security, family violence, mental health issues among clients, drug and alcohol affected clients. I started at the court in 2003. There was regular training in all these issues for many years. Since around 2010, or maybe before - there has been nothing."*

*"We also need more regular training for staff in identifying and referring clients to external agencies that can assist them in cases of domestic violence. This was done in the past but has ceased in the last 10 years due to budgetary constraints."*

*"All staff should be trained in the best practise Family Violence risk assessors, e.g. Family Law DOORs introduced in 2014, supported by both CJs, but no training provided in its use to Family Court or FCC staff since."*

Courts' staff recommend

1. The Federal government support the Courts' staff rather than underfund and undermine it.
2. Appropriate pay rates, professional training, research opportunities, and mandatory professional supervision by colleagues.
3. Acceptance that Courts' staff at all levels (not just judicial officers) are exposed to stressful situations and clients often in a volatile state. Courts' staff who deal with clients by phone, face to face and in their rooms without the presence of other professions (i.e. solicitors or security) are at risk of direct and vicarious trauma.
4. Counselling, less demanding caseload, peer support, rotation into other practice areas from time to time.
5. Time to participate in training and peer review and development for all Courts' staff.
6. Regular cultural training for all Courts' staff and judicial officers.

7. Mandatory mental health first aid training for Courts staff and judicial officers.
8. All judicial officers treat registry staff respectfully and without undue aggression.
9. The Courts implement appropriate Workplace Health and Safety Procedures to ensure the safety of clients of the Courts while onsite and Courts' employees.

## **Governance and accountability**

### **Question 45. Should s121 of the Family Law Act be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of families and children?**

It is difficult to see how this is in the best interests of children. Often, parties involved in family law proceedings are unhappy as their expectations are not met. There is considerable risk of misinformation, defamation, trial by social media, and present and future trauma for children subject to proceedings.

The Court could make case studies from some proceedings or share stories of parties, with their consent, which could provide an avenue for educating future litigants on navigating the process and managing expectations. The focus should be on the protection of children and balancing any uneven power dynamics between adults.

### **Question 46. What other changes should be made to enhance the transparency of the family law system?**

Courts' staff recommend that it would be of benefit to parties if Judges' reasons more clearly identified their 'ratio decidendi'.

### **Question 47. What changes should be made to the family law system's governance and regulatory processes to improve public confidence in the family law system?**

Court's staff recommend

1. Courts be properly funded to maintain effective day to day operation of the Courts and the systems they administer. This must start with a reversal of cuts to funding and an increase to reflect increased workloads and complexity of matters before the Courts.
2. The Commonwealth government end the Average Staffing Level (ASL) staffing cap, which is preventing the Courts from being properly staffed by ongoing employees. The Courts have cut staff by 10.6% over the past four years. In the 2015-16 Budget, the current Government committed to capping the size of the Australian Public Service around or below 2006-07 levels (167,596)<sup>7</sup>. This has meant that regardless of funding levels or operational requirements, agencies are forced to have a maximum average staffing level. The imposition of ASL caps on agencies has created perverse incentives that are increasing costs to Government and the community while hollowing out the skills and capabilities of the public service.
  1. Fund additional staff to reduce client waiting times at the front counter and ensure better oversight of the electronically filed material.
  2. Provide information to staff and the public about the outcomes of independent reviews, such as the KPMG and Ernst and Young reports.
  3. Provide meaningful statistics regarding possible outcomes available under the law.
  4. Replace judges in a timely manner.
  5. Transparent merit-based recruitment procedures so that the most capable people get senior management positions.
  6. Politicians should need to support the family law system and not constantly criticise it.

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<sup>7</sup> Australian Government. 2016-17 Budget. (2016, May). Budget Paper No.4 Part 2: Staffing of Agencies. Retrieved from [http://budget.gov.au/2016-17/content/bp4/html/09\\_staff.htm](http://budget.gov.au/2016-17/content/bp4/html/09_staff.htm)