FEDERAL CIRCUIT COURT OF AUSTRALIA

Case Management

The Commission considers that there is benefit in identifying case management practices and innovations which have proven to be effective, and which could be applied more broadly – where individual courts consider it appropriate to do so and noting that the resources and jurisdiction of courts differ.
The Commission is also interested in identifying ways the evidence base for different case management approaches could be improved. Draft Recommendation 11.2 and Information Request 11.1 of the draft Report relate to this issue and are set out below.

The Federal Circuit Court of Australia has in place a structure consisting of a National Coordinator of Case Management and a number of case management judges who represent discrete geographical areas/locations. The Court through this structure actively monitors its case management across the nation and considers opportunities for improvement.

The Court operates a docket system of case management whereby all matters, with the exception of some general federal law matters, are listed to an allocated judge in the first instance. The judge manages those matters from first court date to disposition. The Court recognises the value of early judicial involvement in ensuring that each matter is managed in accordance with its particular needs and not subjected to a process. Judges of the Court endeavour to limit court events to only those required to advance the matter towards resolution thereby not subjecting parties to unnecessary, costly events. The Court rules assist the judges by allowing for flexibility in case management and a less formal approach to proceedings.

The Court's docket system is premised on early judicial intervention with the judges taking active interest in the management of each matter. This position is supported in the paper '*Working Smarter Not Harder-How excellent judges' mange cases by the Institute for the Advancement of the American Legal System 2014'.* The paper is available at:
http://iaals.du.edu/images/wygwam/documents/publications/Working_Smarter_Not_Harder.pdf

Case management judges meet quarterly to monitor and evaluate case management. Statistical reporting enables the Court to assess its performance with operational reports that assist in analysis and evaluation.

Measures used by the Court include:

- Filing numbers – a count of the applications by type received by the Court
- Clearance rates – the filings received within a defined period measures against finalisations
- Matters requiring judicial determination – this is a measure that enables the Court to see how many matters require a judge to make a determination
- Attendance rate – this is the number of times a matter is listed for a court event. Court events include property conciliation conferences and events with family consultants.
- Time taken from filing to disposition, age of pending matters and the age of matters finalised.

This data in part enables the Court to construct a historical record of its performance that acts as a base line comparator.

The Court also conducts a Court User Satisfaction Survey as part of its commitment to court excellence. The survey feedback allows the Court to understand how litigants, lawyers and others who visit the courts regard services.

The Productivity Commission notes in Draft Recommendation 11.2 that there is a greater need for empirical analysis and evaluation of different case management approaches on court resources, settlement rates and techniques adopted by jurisdictions. The Federal Circuit Court supports the need for greater analysis and evaluation but notes that there needs to be some regard to 'like-for-like' comparison. It is difficult for example to compare the case management practices used in the family law with those used in criminal or other civil matters, is to obviate the need for litigants, in stressful circumstances, from having to repeat their stories to different judicial officers. This benefit is not always a factor in case management.

The volume of workload that a court must deal with is also a relevant factor. The Federal Circuit Court is responsible for 86 percent of all family law matters excluding those filed in Western Australia. The Family Court of Australia undertakes the most difficult matters (14 percent) and the state courts have only limited jurisdiction in family law. This make the comparative analysis and evaluation of case management practices in family law with Australian Courts on a 'like for like' basis difficult.

The Court actively engages with both Australian and overseas courts with a view to learning about case management practices. The Court is currently providing advice and assistance to the state courts in Singapore as they move to a docket system and has an established relationship with the Family Court in New Zealand. Engaging with these courts and others provides an opportunity to learn about case management practices and the evaluation of performance.

The Court participates in the Family Law Council where the focus is on particular issues relating to family law. The Court also has membership with the Australian Institute for Judicial Administration, a forum that considers a range of matters relevant to courts and case management.

Further development of relationships particularly with, but not exclusively, 'like' courts would advance the empirical analysis and evaluation.

Technology Response

The Commission seeks views on how best to enable courts to identify their technological needs and service gaps, and promote work practices that maximise the benefits of available technologies. In particular, the Commission seeks views on whether, and to what extent, this involves greater use of court information technology strategic plans and/or greater coordination and leveraging of technology solutions across and within jurisdictions. Investment in which types of technologies, including those to better assist self-represented litigants, would be most cost effective? What are the likely costs of addressing the different technological needs of different courts?

The Federal Circuit Court of Australia was established by the Federal Circuit Magistrates Court of Australia Act 199. The Court was established in a manner that made it reliant on both the Federal Court and the Family court for a range of services for which it was not funded. These services include IT with the Court relying on the superior courts for the provision of systems including case management systems.

The Court has participated in a range of technological advances in conjunction with each of the superior courts. The advances include eFiling in family law and eLodgement in general federal law. These initiatives provide efficiencies for the courts and enable greater levels of access to litigants and legal practitioners. Access to filing and lodgement outside standard registry hours allows litigants to file applications at times suitable to them.

The difficulty for the Court is the two superior courts heading in different directions with IT particularly in respect to case management systems and approaches to the creation of electronic courts files. This leaves the Court in a position where judges and associates are required to log in to different systems depending on the work that they are undertaking. The Court is afforded the opportunity to participate in these developments but ultimately the control of the systems sits with the superior courts. The Court has the vast majority of the workload and would like the opportunity to have control of its own case management system.

The Court is currently investigating the option of developing an interface that will interact with the data bases of the Family Court and Federal Court and enable Federal Circuit Court users to work through one system. This will enable the Court to develop systems and processes that will focus on the particular needs of litigants and practitioners in the Federal Circuit Court.
This work is still in the early stages and is yet to be fully scoped and costed.

Court Governance

The Commission is interested in any information the Court wishes to provide in response to information request 17.3, set out below.

The Court wishes to have its own administration however it also supports the notion of shared administrative services. The Court's administration would focus on the needs of the Federal Circuit Court and would engage with the shared administration as required.
The definition of shared administrative services needs to be clearly established. The Court does not believe that it should unnecessarily replicate services.

Self-Represented Litigants

The Commission is interested in any further data that the Court may be able to provide in relation to the number of self-represented litigants in the Court (including trends over time), the characteristics of people who self -represent, the types of matters they are involved in and their case outcomes (and whether these differ from those who have legal representation), and any information on the effectiveness of programs and initiatives that target self-represented litigants.
See attached data 'A'

Duty lawyer services

The Commission is interested in any information the Court can provide about duty lawyer services that operate in the Court and whether there are have been any evaluations on the effectiveness of these services

See attached list of duty lawyer services available in family law proceedings. see ATTACHMENT 'B'

In addition, a duty lawyer service is available in Melbourne for the migration lists and the following services for litigants in respect of general federal law proceedings. see ATTACHMENT 'C'

It is not known if there has been any formal evaluation of these services

Vexatious litigants

The Commission is interested in any data the Court may be able to provide on how common vexatious litigants are, and strategies the Court uses to respond to them.

It is relatively rare for the Court to declare a litigant vexatious. Rather than making such an order general powers are often relied upon to require a party to seek leave from filing a further application in respect of relief which has already been sought.

It is difficult to obtain accurate data on the number of such orders made as a request for data would identify not only vexatious litigant orders but also any order which inhibits an applicant from filing without leave. Often such orders are sought together with an order for summary dismissal – *Section 17A of the Federal Circuit Court of Australia Act 1999* is often utilised in preference to a vexatious proceedings order.

At present any orders precluding filing without leave are identified in the Court's case management system (Casetrack) in relation to family law/ child support proceedings. A report can be generated but the data may be available. In relation to general federal law proceedings such orders are not currently identified in the Court's case management system but via manual processes. There is a difficulty with recording such orders in the context of the migration jurisdiction. Section 91X of the *Migration Act 1958* prohibits the publication of the name of applicants seeking review of protection visa determinations and accordingly, the names of these litigants cannot be published. A national spread sheet is maintained by registry staff who attempt to maintain the details of any orders made declaring a litigant vexatious.

As note rarely are orders made declaring a litigant vexatious. Subrule 13.11(3) of the *Federal Circuit Court Rules 2001* sets out the test as being whether the person has *habitually and persistently, and without reasonable grounds, instituted vexatious proceedings in the Court.* The *Access to Justice (Federal Jurisdiction) Amendment Act 2012* introduced amendments to implement new model provisions concerning vexatious proceedings. In family law proceedings section 118 provides a statutory source of power in addition to recently conferred powers by way of Part XIB of the *Family Law Act 1975.* In respect of general federal law proceedings the statutory source of power is found in Part 6B of the *Federal Circuit Court of Australia Act 1999.*
There is a new provision whereby a person may apply to the CEO for a certificate advising whether or not an individual has been the subject of a vexatious proceedings order.

For some examples of those matters which have attracted orders being made inhibiting litigants from further filing without leave see below.

Ranjit Rana was declared to be a vexatious litigant on the 20th July 2012 noting that Mr Rana had litigated 77 decisions of various Courts being unsuccessful in each and every one.

Rana v Deakin University [2012] FMCA 575 (20 July 2012)
http://www.austlii.edu.au/au/cases/cth/FMCA/2012/575.html

Rana v Deakin University [2013] FCA 59 (Appeal Decision)
http://www.austlii.edu.au/au/cases/cth/FCA/2013/59.html

Family Law

Hanes & Walsingham [2011] FMCAfam561
http://www.austlii.edu.au/au/cases/cth/FMCAfam/2011/561.html

Impact of such an order being made in a state court

Liprini v Liprini & Anor [2011] FMCA 1029
http://www.austlii.edu.au/au/cases/cth/FMCA/2011/1029.html

In migration context

MZXCN v Minister for Immigration & Anor [2007] FMCA 573
http://www.austlii.edu.au/au/cases/cth/FMCA/2007/573.html

Family Violence

Stakeholders to the inquiry have raised a range of concerns in respect of the way the family law system responds to family violence. In particular, participants have raised concerns that a person who has allegedly used family violence is able to personally cross- examine a victim of that violence in family law proceedings.

The Commission would be grateful for any information you can provide about:
- the number of cases involving allegations of family violence where one or both parties is self-represented at trial

This data is not available. Data is only available in respect of allegations of child abuse, family violence, risk of child abuse or risk of family violence as captured by way of Form 4 filings. The number of Form 4's filed has increased as a result of the family violence amendments to the *Family Law Act 1975* introduced by the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011.*

In the 2007 Australian Institute of Family Studies 2007 Report - *Allegations of Family Violence* and *Child Abuse in Family Law Children's Proceedings, over* half of the cases sampled in the court, contained allegations of adult family violence and or child abuse. For allegations of spousal abuse there was an average of not less than 4-5 allegations per case, most of which were characterised as severe. The most common forms of alleged spousal abuse were physical abuse.

- what procedural protections currently exist for victims of alleged family violence in respect of cross examination in family law proceedings

There are no specific statutory protections restricting alleged victims of family violence being directly cross-examined or cross examining the alleged abusive ex-partner in family law proceedings.

The issue is one that has been the subject of various law reform inquiries and any suggested change to the law is a matter for government.

The Court adopts an individual docket system to facilitate individual judicial case appraisal. It recognises the individual needs of the matter in dispute. In the context of trial management, such cases can pose significant difficulties in the absence of corroborative evidence. Often proceedings come before the Court in the context of applications seeking urgent or interim orders and allegations of family violence are still contested. Generally there is limited or no corroborative evidence for the Court to rely upon.

Cross examination is an intrinsic aspect of the trial process. Specific arrangements can be made to facilitate the testimony of vulnerable persons via video or in closed court. However there can be significant difficulties, particularly in circuit localities, with limitations on the availability of facilities to ensure adequate protection for vulnerable persons. Often the proceedings can be delayed with the need to adjourn to a larger metropolitan locality which has video and other facilities. This can result in consequential delay and inconvenience. While parenting matters are conducted in a less adversarial manner, when both parties are unrepresented the judicial officer is often required to ensure that any cross examination is conducted without improper questioning of a witness.
This is difficulty when increasing number of parties are appearing unrepresented. Of particular concern in this regard are the limitations being place on legal aid funding in various jurisdictions with increasing number of such vulnerable people being unrepresented in family law proceedings. See the following by way of example.

Mardine & Uysal [2014] FCCA 146
http://www.austlii.edu.au/au/cases/cth/FCCA/2014/146.html

Gough & Allard [2014] FCCA 617 – see ATTACHMENT 'D'

The Court's views on the way the confidentiality provisions in the Family Law Act 1975 impact on the sharing of information between family dispute resolution providers and the court in respect of family violence

The issue is also one that has been the subject of various reviews including the Family Law Council's 2009 *Family Violence Report*; the *ALRC* in its 2010 report, *Family Violence - A National Legal Response;* and NADRAC in its February 2011 Report on *Maintaining and Enhancing the Integrity of ADR Processes*. The Family Law Council in 2011 also provided a letter of advice in respect of some case law on the scope of the provisions and when family counselling starts and the distinction of family counselling from other services.

Recommendation 22-1 of the ALRC 2010 Report recommended an amended to paragraph 10H(4)(b) (and an almost mirror amendment to paragraph 10D(4)(b)) to permit FDR providers *to disclose communications made during FDRP, where practitioners reasonably believe that disclosure is necessary to prevent or lessen a serious threat to a person's life, health or safety.*

Clearly the aim of any legislative or other recommendation is to protect participants while maintaining the integrity of the FDR process.

While these reports would suggest there is some broad agreement about the utility of more extensive information sharing between FDR providers and the Courts in respect of risks, there appears no real agreement about the mechanism to achieve this.

As highlighted in both the NADRAC and FLC Reports *...most of the issues surrounding court's access to information obtained during the FDR process arise not from the operation of the confidentiality provisions, but rather from the functionality of the inadmissibility provisions of the Act:* (page 100 NADRAC report).

As noted by Family Law Council's in its 2009 *Family Violence Report* at para [10.7.1]:-

"A section 60I certificate is a document which materialises because a confidential family dispute resolution intervention has been unsuccessful and the parties must proceed to obtain a judicial determination of their dispute. Save for the exceptions provided for in the Family Law Act, evidence of what occurred at the family dispute resolution invention is not admissible.
The tension lies in the perceived restriction on the family dispute resolution practitioner providing to the Court some guidance as to what intervention would best suit the needs of the family. The function of the Certificate as simply the vehicle which authorises parties to move to litigation does not reflect the financial investment by Government in creating family relationship centres, or the skill of the family dispute resolution practitioner in working with the family to provide guidance to the Court as to the program or services best suited to the needs of the participants.

In discussions with Family Relationship Centres, legal aid and others, the Council was not able to ascertain a consensus across all of the relevant agencies as to whether Family Relationship Centres could have some responsibility for communicating relevant information to the court without it compromising the inadmissibility of the intervention, or the anonymity of a violence allegation thereby placing a victim at risk.
There are of course many unintended consequences that will flow from changing the status of a family dispute resolution practitioner (FDRP) from a practitioner delivering a privileged intervention to that of a "family consultant" style expert witnesses and report writers for the court system. For example:

- *Funding to FDRPs will need to increase to add report writing skills and tasks;*
- *FDRP officers will be subpoenaed to testify about their due process, factual conclusions and diagnosis;*
- *Violent persons will develop strategies to avoid attending FDRPs;*

- *Many 'violated' persons will develop strategies not to disclose the violence to FDRP officers as they would rather just 'get the money and kids sorted out, rather than make a fuss'.*

Before mandatory report writing or box ticking roles are added to the current mediation and advice giving roles of FDR's, the Council recommends that an options paper be written with advantages and disadvantages of each option, for comment by interested groups."

I am attaching a presentation on the issue which may be of some interest: - *Has confidentiality in Family Dispute Resolution reached its use by date?* - Dr Tom Altobelli and Hon Diana Bryant – see ATTACHMENT 'E'

The family violence screening processes used by the Court

As highlighted in the 2007 Australian Institute of Family Studies 2007 Report - *Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings.,* over half of the cases sampled in the Federal Circuit Court (then known as the Federal Magistrates Court) and the Family Court , contained allegations of adult family violence and or child abuse. For allegations of spousal abuse there was an average of not less than 4-5 allegations per case, most of which were characterised as severe. The most common forms of alleged spousal abuse were physical abuse. In addition, of real concern was the limited evidentiary material to either support or respond to these allegations.

Any one of a multiple of factors impacts on the Court's ability to obtain reliable evidence including:

- reluctance to disclose
- lack of competent legal representation
- inability to present relevant corroborative evidence to the Court.

Active judicial led case management is one of the most effective processes available to a court .A system which allows the judicial officer to individualise and priorities those matters and make urgent determinations where necessary. In the FCC the first contact is the judge before whom the matter is listed with screening and triage undertaken by the judicial officer. Before the Court can do anything about questions of violence or abuse it must be aware that allegations exist and, if possible, have some corroborative evidence. As a means of identifying risk, the Court is considering a national implementation of the form of *Notice of Risk* currently the subject of an evaluation in SA. This notice is required to be filed in all parenting applications and responses. In drafting the *Notice of Risk* the following factors were considered:

- the current Form 4 is not complied with in all instances where allegations are made. Judges not infrequently order parties to file the Form when allegations are made by way of the supporting affidavit. By requiring all parties to file such a notice there is likely to be greater compliance with the legislative requirements;
- the current Form 4 does not identify other risks such as mental illness, drug or alcohol abuse and serious parental incapacity. The form proposed identifies these wider risks;
- The requirement for the filing of such a Notice by all parties to parenting proceedings may facilitate the collection of more accurate statistics about the number of parenting cases in which particular allegations are made.

Parties are required to advise the Court of risk allegations if they are seeking consent orders and explain to the Court how the parenting order attempts to deal with the allegation (r. 13.04A *Federal Circuit Court Rules 2001*).

It is essential however that information is available at an early stage so that judges can evaluate evidence of violence and decide the relevance of any alleged violence to the outcome of a parenting case. The Court has no investigative role in respect of risk allegations.

The Court is however required to determine, on the balance of probabilities, whether a child would be placed at an unacceptable risk if ordered to spend time with a parent. The Court is reliant upon agencies such as child welfare departments and the police to undertake investigations into matters that may be relevant to proceedings. If parties are unrepresented it is rare that any subpoenaed material is produced and provision of independent evidence is often dependent upon parties access to competent legal representation. In such cases it is not uncommon for an expert to be appointed to provide assistance to the Court. Resources are available by way of expert reports and, in appropriate cases, the appointment of an Independent Children's Lawyer. The limitations in certain states on the availability of legal aid funding has made it an increasingly onerous task for the Court to ensure that evidence is gathered at an early stage of the proceedings. It is not the role of the courts to make conclusions concerning disputed allegations including allegations of violence. The written account of a Family Consultant's observations of the interaction of parents and children in a family report however remains one of the most useful assessment tools and is a vital part of the evidence that the Judge relies upon in exercising their discretion to make orders after a contested hearing.

The training and qualification of family report writers – see ATTACHMENT 'F'

The Court's views on any reforms that might assist in ensuring that evidence in respect of family violence is efficiently, effectively and fairly presented to the court.

Clearly additional resources are necessary. The Court relies on evidence being gathered in a timely manner. Limitations on legal aid eligibility criteria and funding for the appointment of independent children's lawyers place considerable difficulties on the Court when allegations are made and the unrepresented party/ies are not able to undertake the evidence gathering tasks.

There is not only an 'investigatory gap' with court reliant on other agencies to undertake this role but also an 'evidentiary gap'. Judges are qualified in making findings of fact based on relevant evidence in a system designed to provide a procedurally fair manner for determinations to be made. They cannot do so if they do not have relevant evidence. There are significant barriers to information sharing. Some of this is addressed by the appointment of experts and ICLs.

ICLs fulfil an important role in assisting the court to understand any risks that may exist to a child's best interests. While not exercising a forensic role in assessing risk, they play a key role in ensuring that all relevant evidence is placed before the courts to enable them to make decisions about arrangements for children. In Victoria, there are limitations place on the funding of ICL in the FCC this comes at a time when increasingly allegations of risk are presenting in matters that come before the Court. There needs to be a greater sharing of information when allegations of risk are made. The possibility of parallel proceedings compounds uncertainty as to the differing thresholds for intervention between the systems and uncertainty about roles and responsibilities. Relationship building and greater collaboration between the various sectors can assist with co-location a useful means of enhancing the sharing of information and resources. Demand for Children's Contact Services exceeds demand and there are extensive waiting times for services to facilitate supervised contact/ changeover. A family's inability to access a Contact Service can escalate conflict. Information sharing about supervised visits of changeovers can often be useful for the Court in informing future decisions.
More work needs to be done to facilitate family dispute resolution for families where past or current family violence exists utilising specialised violence risk assessment by suitably qualified experts.

Child protection

The Commission is interested in any information the Court may wish to provide on initiatives in which it is involved which seek to improve collaboration between the federal family law system and the State and Territory child protection systems.

FCC INITIATIVES - COLLABORATION WITH WELFARE AGENCIES – ALLEGATIONS OF RISK

Research has highlighted the significant incidence of allegations of abuse and violence in proceedings in the family courts. The prevalence of allegations is of particular significance for the FCC where most parenting applications are filed. The Court considers the use of a docket management process facilitates the early identification of issues. The following is an outline of some of the efforts being made by the Court in respect of risk identification.

Increasing reporting of risks

As expected, there has been a greater reporting of risks as a result of family violence amendments to the *Family Law Act 1975* as introduced by the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011.* The under reporting of risks has been identified as a real issue of concern. The expanded definitions of *abuse* and *family violence* has resulted in a significant increase in filings of the *Notice of Child Abuse Family Violence or Risk of Family Violence (Form 4)* in the Court.

see information provided

Notice of Risk - pilot SA

Consistent with the legislative amendments, the FCC is seeking to better facilitate the early identification of risk in parenting matters when allegations are raised. Currently the Court has adopted the Form 4 as prescribed by the Family Court. However, as noted by Professor Richard Chisholm in his Report - *Violence Review 27 November 2009:' Under the Rules of Court, parties are obliged to file such a notice where allegations of violence or abuse have been made. Experience has shown that this system is not working. This Report suggests that because of this, and because issues of family violence and other risks factors are so common in parenting cases brought to the courts, it would be better to have a system of risk and assessment that applies to all parenting cases'*.
Accordingly a new form of *Notice of Risk* has been developed by the Court to replace the currently prescribed Form 4 to better identify risks. This *Notice of Risk* ***will be required to be filed in all matters involving children rather than the current requirement of filing a Form 4 only in instances where allegations are made which attract the statutory requirements.***

In drafting the *Notice of Risk* the following factors have been considered:

- The requirement to file and complete a Form 4 is not complied with in all instances where allegations are made. By requiring all parties to parenting applications to complete a *Notice of Risk* in all proceedings, there is likely to be a greater compliance with the legislative requirements;
- The utility of a form which seeks to identify a wider range of risks will aid the effective early intervention case management pathway of the Court

Before considering national implementation, the *Notice of Risk* has been piloted in parenting proceedings filed in the Court in South Australia as from 4 February 2013.

See details as follows: http://www.federalcircuitcourt.gov.au/forms/html/risk%20notice.html

FCC local liaison with welfare agencies

To better facilitate the provision of information of any child welfare involvement at an early date, the Court has established a committee of Judges with the aim of enhancing local relationships with state and territory child welfare agencies. While mindful of the resource constrains of child protection agencies, the Court has been able to work in partnership with agencies to advance local initiatives. In the Melbourne and Dandenong registries judges have been actively involved in the establishment, evaluation and review of a co-location initiative with DHS.

In Parramatta and Newcastle, a pilot has commenced with the Department of Family and Community Services to obtain a 'Personal History' document in certain proceedings. In SA, Judge Mead is part of a Working Group formed to facilitate the Courts interface with Families SA and enhance communication.

National Collaboration

On 22 July 2010, the National Justice Chief Executive Officers' Group approved a project plan for the development of a national initiative to improve collaboration between the family law system and the child welfare authorities to better protect children. The AGD has convened national meetings to facilitate stakeholder engagement on these issues. The FCC has had representation and is an active participant and very supportive of the project.
http://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/Familylawandchildprotectioncollaboration.aspx

In 2012, the Attorney-General's Department published a report entitled *Information Sharing in Family Law and Child Protection: Enhancing Collaboration* The project was part of the wider collaboration to ensure that information relevant to decisions about children is appropriately shared between the family law system and the child protection system and legal aid commissions and ICL's.

http://www.ag.gov.au/FamiliesAndMarriage/Families/Documents/Information-sharing%20in%20family%20law%20and%20child%20protection%20%20Enhancing%20collaboration%20-%20April%202012.pdf

Wider release of family reports - Welfare Agencies/ Legal Aid Commissions

Family reports are generally released only to the parties and their legal representatives unless a particular order for wider release is made in an individual case. The dangers of 'systems abuse' in which children are serially interviewed by various experts often after having already being questioned by parents and other non-experts, are well known. This is exacerbated when a family is involved in both state and federal proceedings simultaneously or close in time.
If the experts and the decision makers in each jurisdiction have access to reports prepared in the other, some duplication of interviews may be avoided and time saved.

Currently the relevant FCC rule, which reflects a mirror rule in the Family Law Rules 2004, restricts release of family reports to the parties and their legal representatives. One of the recommendations contained in *Family Violence - A National Legal Response,* ALRC Report 114; NSWLRC Report 128 (2010) was for greater sharing of expert's reports in the context of child protection and family law proceedings. The FCC is proposing to amend this rule to allow parties to provide a copy of the family report to a child protection authority. It is hoped that this will assist the child protection authority by providing useful information about the family at the time the report was prepared. It may also go some way to reduce the risk of 'systems abuse 'arising when a family is involved in both state and federal proceedings simultaneously or close in time.

Of course it is important that anyone given access to a family report is aware that the family consultant preparing the report does not have investigatory powers and that the report was untested at the time of release. It is proposed that a Notice accompany the release of the report to make that clear.
The proposed amendment would also authorise provision of family reports to legal aid commissions who routinely use them as part of their assessment of an application for a grant of aid.

AGD - Taskforce

As part of the national collaboration initiative AGD convened a Taskforce to inquiry into and assist Professor Richard Chisholm in the preparation of a report on the sharing of expert's reports between the child protection systems and the federal family law system. A report has been released and the recommendations reflect the wider release of reports proposed by the FCC.
http://www.ag.gov.au/FamiliesAndMarriage/Families/Documents/the-sharing-of-experts-reports-between-child-protection-system-and-family-law-system-march2014.pdf

Division of caseload

The Commission is interested in the Court's views on how effectively the Protocol for the division of work between the Family Court of Australia and the Federal Circuit Court is operating.

The protocol for the division of work was published to provide guidance to litigants and legal practitioners regarding the work undertaken in each the Federal Circuit Court and the Family Court. The Protocol may on occasions give way to the imperatives of where a case can best be heard and is not intended to constrain the discretion of a judicial officer having regard to the applicable legislation and the facts and circumstances of the case before him or her.

The protocol has been in place for several years and appears to have achieved its objective in providing clarity in respect to which court a matter is to be filed. It also allows flexibility in that it does not prevent dealing with matters for which the Federal Circuit Court has jurisdiction. This is important particularly in locations where no Family Court judge is based such as Darwin. It affords litigants a greater level of access to justice and potentially eases the cost on the resources of the courts.

It should be noted that the rate of transfer of matters between the Federal Circuit Court and the Family Court is not high. In 2013-14 from a total of 20,488 filings 724 matters were transferred from the Federal Circuit Court to the Family Court and 460 were transferred from the Family Court to the Federal Circuit Court. It should not be assumed that these transfers occurred because of filing in the incorrect court as a range of matters may influence a transfer.