



# FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

Division 1

THE HONOURABLE JUSTICE HENDERSON

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Dear Ms Kerr,

1. I refer to your letter of 30 July 2021. The Chief Justice of the Federal Circuit and Family Court of Australia (“the Court”) has asked me to respond to your letter on his behalf.
2. You may not be aware of the significant programs and enhanced screening that has now been implemented in the Court, under the guidance of the Chief Justice, made possible by significant funding provided by the current federal government. This has enabled the Court to expand its cohort of Registrars and Court Child Experts, implement appropriate processes and provide aids to assist vulnerable people as they navigate the Court system. These programs and processes are as follows.
3. The Courts risk screening and triage pilot, known as the **Lighthouse Project**, formally commenced in the Adelaide registry on 7 December 2020 and in the Brisbane and Parramatta registries on 11 January 2021. The Lighthouse Project plays a central role in the Court’s response to cases involving allegations of family violence and assists matters to be allocated to a case management pathway that is the most appropriate, with a view to improving the safety of litigants and children who may have experienced family violence. The pilot is a new approach to risk screening that focuses on public health and tailored case management for families involved in the family law system. It involves:
  - Early risk screening through a secure online platform;
  - Early identification and development of safety plans and referrals;
  - Assessment, triage and support of cases by a specialised team of Judges, Court Child - Experts, Senior Judicial Registrars and Judicial Registrars;
  - Tailored case management to suit the needs of each case; and
  - Referral of cases to a dedicated high-risk court list, known as the Evatt List.
4. The **Priority Property Pools under \$500,000 (PPP500) pilot**. The aim of the PPP500 pilot is to provide a simplified way of resolving property disputes which will minimise risk and legal costs, and best preserve the parties’ assets. The PPP500 list is focused on the urgent preservation of assets to ensure the economic security of vulnerable women and children. The purpose of the pilot is achieved by identifying and narrowing the issues in dispute and assisting the parties to undertake:
  - Alternative Dispute Resolution at the earliest opportunity; and
  - Where Alternative Dispute Resolution is unsuccessful, providing an opportunity for a less adversarial trial or a hearing on the papers.
5. **COVID-19 List**, a court list dedicated to dealing exclusively with urgent family law disputes that have arisen as a result of the COVID-19 pandemic including where there has been an increase in risk of family violence.

6. **Co-location of state and territory child welfare authorities and police.** In early 2020, state and territory child welfare officials and police were co-located in the busiest family law registries of the Family Court and Federal Circuit Court as part of a co-location initiative announced by the Federal Government. The co-location initiative is intended to improve the sharing of information between the state and territory police and child welfare authorities and the family courts, and ensure that this information is available to Judges and Registrars at the earliest opportunity. It is anticipated that the co-location initiative will lead to a more cohesive response to identifying and managing family safety and child protection issues across the family law, family violence and child welfare systems.
7. **Notice of Child Abuse, Family Violence or Risk.** From 31 October 2020, the former Notice of Risk used by the Court was replaced by the Notice of Child Abuse, Family Violence or Risk which assists the Court in ensuring that it is made aware of risks alleged to be present in each case as early as possible so that families and their children receive appropriate and targeted intervention in the family law system as far as is possible.
8. The Court has recently engaged a number of **Indigenous Liaison Officers (ILOs)**. From 1 June 2021 to 25 October 2021, 7 ILOs have been appointed in Townsville, Brisbane, Sydney, Alice Springs and Adelaide. ILOs provide in-Court support to Aboriginal and Torres Strait Islander people faced with family breakdown and/or who are accessing various services provided by the Court. The roles are focussed on supporting Aboriginal and Torres Strait Islander people to understand the role of the Court in family law matters, as well as ensuring that litigants attend Court events and provide support when interacting with the Court's processes. ILOs can link Aboriginal and Torres Strait Islander people with key legal and community-based services. ILOs are also responsible for representing the Court to the community. They are responsible for explaining the needs of Aboriginal and Torres Strait Islander people to the Court and to other service providers.
9. The Court will continue to make use of **electronic hearings**. The Court ensured that it remained open to assist litigants during the COVID-19 pandemic through the use of electronic hearings. The Court will continue to utilise this technology to provide access to justice for remote and regional Australians and safe access to justice for those who may feel unsafe about being in the vicinity of the other party, reduce the risk of emotional and re-traumatisation. It also means parties are able to appear from their home or other safe space, or where possible, with their lawyer from their office.
10. **Integration of Family Advocacy and Support Services** in every registry. This service combines free legal advice and support at court for people affected by domestic and family violence.
11. Structured **Court-based Family Dispute Resolution**. Family Dispute Resolution conferences in parenting matters include an initial intake session to ensure that the conference is conducted in a safe manner.

**The number of new Registrars, Senior Judicial Registrars and Court Child experts , appointed since 2020:**

12. From 1 June 2020 to 25 October 2021, **83** Registrars have been appointed to the Courts supporting the existing Registrars cohort.
13. From 1 September 2021, the Courts' Child Dispute Services became known as the Court's Children's Service (CCS), and the Courts' on-staff psychologists and social workers were renamed Court Child Experts to reflect the broadening of their duties to those of both family consultant and family counsellor as defined in the Family Law Act.

- Since the commencement of 2021, **31** new Court Child Experts have been recruited.

**All Judges must undergo mandatory training in relation to family violence and dealing with vulnerable litigants.**

14. The Courts engaged the Safe & Together Institute to provide training on the impact of family violence on children to Judges, Registrars and Court Children's Service staff. The training was bespoke for each group, taking into account the different roles each played in the Australian court system. The trainer for the Judge's session was David Mandel, the founder of the Institute. This is an internationally recognised program developed initially for child protection workers, endorsed by the Australian National Research Organisation for Women's Safety (ANROWS), referred to in the 2016 Victorian Royal Commission into Family Violence and the subject of specific recommendations for professional development for family law practitioners and judicial officers by the 2017 Australian Parliamentary Inquiry into a better family law system to support and protect those affected by family violence.
15. The National Judicial College of Australia has developed e-learning modules which each Judge is required to complete online.
16. The Court has also implemented court-wide family violence training modules including Registrar Family Violence modules and online training modules for legal and administrative support staff.
17. The Courts' Family Violence Committee provides advice to the Chief Justice/Chief Judge and the CEO and Principal Registrar on the issue of family violence.
18. One of the early steps which enhanced the Court's capacity to protect vulnerable litigants whilst in the court process was the inclusion of section 102NA of the Family Law Act which provides for mandatory protections of parties where there are allegations of family violence. This section of the Act provides Judges of the Court with the capacity to prohibit cross-examination of a victim by a perpetrator of violence. Where there has been a conviction of violence or where an AVO exists a Judge must make a declaration under the section, the effect of which is that only a lawyer acting on behalf of the perpetrator can cross-examine the victim or alleged victim. A lawyer is appointed for the perpetrator through the legal aid system and is provided free of charge to conduct the hearing. Once such a declaration is made both parties are prohibited from cross-examining each other and each may receive assistance to conduct their final hearing via this scheme.
19. A Judge can make such a declaration even if there is no conviction or AVO in place if the behaviour of a party to the relationship is of concern.
20. This scheme came into effect in 2018 and has meant that vulnerable litigants are no longer subjected to cross-examination by perpetrators of violence and if the perpetrator rejects the appointed lawyer then there is no cross-examination of the victim at all.
21. The Chief Justice, Deputy Chief Justice, every Judge, all Registrars and Court Child Experts take seriously their obligation to the people of Australia to not only assist in the resolution of a dispute and provide a just and safe outcome for parties and children but also protect those who are vulnerable as much as is possible whilst they are navigating the family law system and into the future.
22. As you are aware it is the role of the criminal courts to convict people and determine whether someone has behaved in an unlawful fashion. The role of the family law Judge is to assess the risk to a child or a parent from the behaviour of the other person in the relationship and assess whether that risk is acceptable or unacceptable from the evidence placed before them. If there is a risk and it is an acceptable risk a Judge can place safeguards around time and communication with the other parent

for both the child and the caring parent. If the risk is unacceptable Judges do make orders which prohibit the perpetrator of the unacceptable behaviour from coming into contact with the child and/or the caring parent.

23. Since the commencement of the *Federal Circuit and Family Court of Australia Act 2021* in September 2021 all matters are filed at a single point of entry in Division 2 of the Court, the former Federal Circuit Court.
24. All matters are assessed by a Registrar for issues such as violence, allegations of sexual abuse and other poor behaviour including control and coercion and are dealt with in the most appropriate way to ensure safety for the parties and children. Expert reports are prepared by Court Child Expert family consultants where further detailed risk assessment or evaluation of the family is required.
25. Senior Judicial Registrars conduct interim hearings initially. Those interim hearings and decisions are reviewable before a Judge of Division 2 of the Court. More serious matters can be transferred immediately to Division 1 to be dealt with by Judges of that Division formerly the Family Court of Australia. There is little if any testing of evidence at an interim hearing and these hearings are primarily contained within 2 hours.
26. Final hearings where evidence is tested, findings made and binding final orders made are conducted by all Judges of the Court. All decisions of Judges of each division of the Court whether interim or final are appealable.
27. In addition, where there are allegations made of sexual abuse of a child the matter is transferred to the Magellan list, a program that has been running in excess of 10 years in the former Family Court now Division 1 of the Court. This program continues today. The relevant State agencies work co-operatively with the Court. Each matter is assigned to the named Magellan Judge in a Registry and the Magellan Registrar works closely with the Magellan Judge to manage these matters. This program ensures that the Court is able to manage these matters in a sensitive and appropriate manner to ultimately make the best decision for a child.
28. Going now to the allegations raised in your letter namely at page 2 that in most cases mothers are not being believed by Judges when they claim the children are at risk and it is likely they will lose time with the children if they raise these concerns. In the absence of having been referred to a particular matter by you I am unable to respond to such a generic claim.
29. In relation to your allegation that the family law system is biased against any woman who makes complaint of their partners, that the Judges, lawyers and in particular the Independent Children's Lawyers who are appointed by Legal Aid and undergo rigorous training and ongoing mandatory training are in some way complicit in, to use your language, "exposing women and children to male violence and abuse and are effectively impeding the safeguarding of children by their mothers". Again I am unable to respond to such a generic claim in the absence of reference to a specific matter.
30. I cannot comment on the conclusions you have drawn from the statistics and reports you have referred to in your letter as you have not raised any specific cases or matters to assist me to understand the complaints being made by persons unknown including your allegation that the legal process frames mother's as liars and coerces them into dropping their allegations rather than supporting and protecting them.
31. I note in passing that the statistics you quote are historical spanning a period from 2012 to 2019. As highlighted in this letter significant changes have been implemented since 2019 to address matters of concern raised in those reports and echoed in your correspondence.
32. The offer I made at our meeting on 3 March 2021 to pull up a specific file you refer me to, provide you a copy of the judgment and discuss any concerns you may have arising from that judgment has

not been taken up. There was no requirement for you to obtain specific transcripts in my offer.

33. It is a matter for you whether you chose to obtain transcripts to verify the accounts provided by your clients. Your clients are at any stage entitled to obtain a transcript and can seek a waiver of fees for the transcript.
34. As you are aware the exercise by a Judge of their discretion under the Family Law Act is independent of interference and can only be overturned on appeal. The independent exercise of judicial discretion is a fundamental tenet of our legal system. To use your words, "Anecdotal accounts provided by your clients and members upon a survey" cannot have an impact on the independent exercise by a Judge of their judicial discretion. Judges make these important decisions on the evidence before them having applied the law to the facts as they have found them and after testing the evidence put forward.
35. The Chief Justice has implemented mandatory training for all Judges in relation to the impact of violence, coercion, control and abuse in personal relationships and the Court has implemented for over a decade now a specific dedicated Registrar and Judge to deal with matters where allegations of child sexual abuse are made. The recent injection of funds and professional staff has greatly assisted the Court to put in place specific programs to assist vulnerable people during their time in the Court system and assist the Judges of the Court to make the best possible decision for a child.
36. I have not received any case studies from Ms Norris and I am unaware of what you refer to in that regard. I am more than pleased to receive case studies that can assist me to identify matters or judgments in the family law system in which a party says they have been aggrieved.
37. My offer still stands to assist you by providing the judgment, a matter of public record, for any specific matter you identify. As such there is no necessity for any meeting at this time.

Yours faithfully,

**The Honourable Justice Henderson**



**FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA**

*I acknowledge the Australian Aboriginal and Torres Strait Islander peoples as the first inhabitants of the nation and the traditional custodians of the lands where we live, learn and work.*