Senate Legal and Constitutional Affairs Committee

Inquiry into the Federal Circuit and Family Court of Australia Bills (2018)

Submission from the Australian Institute of Family Studies

Prepared by Dinika Roopani, Rachel Carson and Lixia Qu

Authorised by Anne Hollonds, Director

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Introduction

This submission is made by the Australian Institute of Family Studies (AIFS) in response to the inquiry into the Federal Circuit and Family Court of Australia Bill 2018 and Federal Circuit and the Family Court of Australia (Consequential Amendment and Transitional Provisions) Bill 2018 (‘The Bills’), introduced into the House of Representatives on 23 August 2018.

The Federal Circuit and Family Court of Australia Bill 2018 proposes to create the Federal Circuit and Family Court of Australia (FCFC) which comprises of two divisions:

- Division 1 (currently the Family Court of Australia (FCoA)) which is to have original jurisdiction in family law and child support; and
- Division 2 (currently the Federal Circuit Court of Australia (FCCoA)) which is to have original jurisdiction in family law and child support matters, as well as general federal law matters.

Both divisions will also have limited appellate jurisdiction in relation to appeals in family law and child support matters from courts of summary jurisdiction, exercisable by a single Judge.1 However, the current appellate jurisdiction of the Family Court of Australia (as created by s 93A of the Family Law Act 1975 (Cth) (FLA)) is to be moved to a Family Law Appeal Division which is to be established in the Federal Court of Australia to hear all family law appeals from the FCFC and federal family law appeals from the Family Court of Western Australia.2

The Explanatory Memorandum states that the structural reform is intended to: “help Australian families resolve their disputes faster by improving the efficiency of the existing split family law system; provide appropriate protection for vulnerable people; and ensure the expertise of suitably qualified and experienced professionals supports these families in need” (Explanatory Memorandum, 2018, p. 2).

Selected provisions of the Bills and the stated aims of the reforms will be considered below with reference to research conducted by AIFS. This submission aims to provide an evidence-based perspective to assist the Committee in their consideration of these proposed reforms.

This submission will outline AIFS’ research into the complexity of issues characterising a substantial proportion of family law matters, the prevalence of matters in the family courts involving allegations of family violence or abuse, and the proportions of self-represented parties accessing the family courts. This context is of particular relevance to identifying the expertise and experience required by judicial officers and other court personnel, and understanding factors underlying the duration of family law proceedings and the accessibility of the family courts.

An outline of the research projects referred to in this submission is provided below:

1. Domestic and Family Violence and Parenting: Mixed-Method Insights into Impact and Support Needs. Final Report (2017) (Domestic and Family Violence and Parenting Study): This project was commissioned by the Australian National Research Organisation for Women’s Safety and conducted with researchers at the University of Melbourne and La Trobe University. It was designed to explore the impact of parenting and service engagement and experience in the context of domestic and family violence. The project comprised a systematic literature review; analysis of the following datasets: Growing Up in

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1 Federal Circuit and Family Court of Australia Bill 2018, ss 25, 27, 102 106.
2 Federal Circuit and Family Court of Australia (Consequential Amendment and Transitional Provisions) Bill 2018, s 227(2)-(3)).
Australia: The Longitudinal Study of Australian Children, the Survey of Recently Separated Parents 2012, the Longitudinal Study of Separated Families, and responses to semi-structured interviews with 50 participants.

2. Evaluation of the 2012 Family Violence Amendments (Evaluation of the 2012 amendments): The Evaluation research program examined the effects of amendments to the Family Law Act 1975 (Cth) that were intended to improve the family law system’s responses to matters involving family violence and safety concerns. It comprised the following studies:

   a. Responding to Family Violence: A Survey of Family law Practices and Experiences (Responding to Family Violence Study) was a survey of family law practices and experiences, primarily based on online surveys completed by judicial officers and registrars (n = 37), legal professionals (n = 322) and non-legal professionals (n = 294) across the family law system.

   b. Experiences of Separated Parents Study (Experiences of Separated Parents Study), which comprised two cross-sectional quantitative Surveys of Recently Separated Parents (SRSP), conducted in 2012 and 2014: SRSP 2012 (n = 6,119) and SRSP 2014 (n = 6,079). These surveys allowed a comparison between the “pre-reform” and “post-reform” data.

   c. Court Outcomes Project involving:

      i. an analysis of quantitative data from court files in matters resolved prior to the 2012 family violence amendments (n = 895) and in matters resolved post-2012 family violence amendments (n = 997);

      ii. an examination of patterns in court filings based on administrative data from each of the three family law courts for each financial year from 2009–10 to 2013–14; and

      iii. a systematic analysis of published appeal and first instance judgments applying the provisions introduced by the 2012 family violence amendments.

3. Evaluation of the 2006 family law reforms, including Wave 1 of The Longitudinal Study of Separated Families (2009, 2010, 2014): involves three survey waves of up to 10,000 parents covering a five-year period after separation (see also Qu et al. (2014)).

Brief mention is also made of the following AIFS research:


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3 The first two waves of the LSSF were commissioned by the Australian Government, Attorney-General’s Department (AGD) and the then Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), now called the Department of Social Services (DSS), while AGD commissioned the third LSSF wave.
Profile of families using the courts

It is important to consider the FCFC Bills in the context of the profile of families using the Family Court of Australia (FCoA) and Federal Circuit Court of Australia (FCCoA) and in particular, the complexity of issues characterising a substantial proportion of family law matters. This context is of particular relevance to identifying the expertise and experience required by judicial officers and other court personnel, and understanding factors related to the duration of family law proceedings and the accessibility of the family courts.

Data from AIFS’ *Evaluation of the 2012 family violence amendments* illustrates the complexity of matters reported by parents accessing the legal system to resolve their post-separation arrangements. In particular, data from the *Experiences of Separated Parents Study* component of this Evaluation (2015) (Synthesis Report, 2015, Table 2.2, presented as Table 1 below) sets out the extent to which parents who used different family law system pathways to resolve their parenting arrangements also reported a range of issues indicative of problematic behaviours and dynamics.

These findings illustrated that the use of formal pathways (lawyers and courts) were more commonly reported among the parents who also reported the greatest level of pre-separation problems and complexity in their circumstances. Courts had the greatest proportion of parents with four or more reported issues in the 2014 post-reform sample (38%), compared with lawyers (27%) and FDR/mediation (21%). In this sample, nearly half of court users reported having current safety concerns (46%), compared with just over one-third of parents who used lawyers (34%) and one-quarter of parents (26%) who used FDR/mediation. These findings highlight the importance of effective risk assessment and management practices in all courts exercising family law jurisdiction, as well as relevant judicial expertise and experience in hearing these high-risk and complex cases to ensure that the courts are in a position to identify, assess and appropriately respond to these multiple, co-occurring and complex factors (this issue will be considered further below).
Review of the family law system: Submission from the Australian Institute of Family Studies

Table 1: Complex issues and family law pathways, 2012 and 2014 (Synthesis Report, 2015)

<table>
<thead>
<tr>
<th>Pre-separation problems</th>
<th>FDR / mediation (%) 2012</th>
<th>FDR / mediation (%) 2014</th>
<th>Lawyer (%) 2012</th>
<th>Lawyer (%) 2014</th>
<th>Court (%) 2012</th>
<th>Court (%) 2014</th>
<th>Discussions (%) 2012</th>
<th>Discussions (%) 2014</th>
<th>Just happened (%) 2012</th>
<th>Just happened (%) 2014</th>
<th>Other (%) 2012</th>
<th>Other (%) 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol or drug use</td>
<td>22.4</td>
<td>27.5</td>
<td>26.6</td>
<td>29.5</td>
<td>27.5</td>
<td>41.6*</td>
<td>21.3</td>
<td>19.0*</td>
<td>27.2</td>
<td>27.8</td>
<td>30.0</td>
<td>32.2</td>
</tr>
<tr>
<td>Mental health</td>
<td>40.5</td>
<td>45.8</td>
<td>40.5</td>
<td>50.5*</td>
<td>55.4</td>
<td>59.3</td>
<td>28.6</td>
<td>32.2**</td>
<td>28.0</td>
<td>34.4</td>
<td>39.9</td>
<td>41.3</td>
</tr>
<tr>
<td>Gambling</td>
<td>6.3</td>
<td>8.7</td>
<td>6.5</td>
<td>6.8</td>
<td>6.1</td>
<td>12.0</td>
<td>5.6</td>
<td>4.5</td>
<td>8.9</td>
<td>9.4</td>
<td>5.6</td>
<td>9.9</td>
</tr>
<tr>
<td>Internet or social media</td>
<td>27.5</td>
<td>26.2</td>
<td>26.3</td>
<td>33.1</td>
<td>28.0</td>
<td>31.2</td>
<td>19.5</td>
<td>19.6</td>
<td>20.0</td>
<td>19.8</td>
<td>26.9</td>
<td>22.5</td>
</tr>
<tr>
<td>Pornography use</td>
<td>9.3</td>
<td>13.0</td>
<td>12.7</td>
<td>12.7</td>
<td>13.9</td>
<td>15.2</td>
<td>7.2</td>
<td>6.7</td>
<td>7.1</td>
<td>8.3</td>
<td>10.8</td>
<td>7.0</td>
</tr>
<tr>
<td>Emotional abuse</td>
<td>72.2</td>
<td>73.7</td>
<td>79.9</td>
<td>86.1</td>
<td>92.6</td>
<td>85.3*</td>
<td>49.9</td>
<td>47.8</td>
<td>58.0</td>
<td>58.4</td>
<td>76.4</td>
<td>82.5</td>
</tr>
<tr>
<td>Physical violence</td>
<td>33.0</td>
<td>26.6*</td>
<td>33.7</td>
<td>38.9</td>
<td>49.7</td>
<td>53.7</td>
<td>16.1</td>
<td>14.8</td>
<td>23.9</td>
<td>21.8</td>
<td>28.4</td>
<td>29.8</td>
</tr>
<tr>
<td>4+ issues</td>
<td>18.7</td>
<td>21.1</td>
<td>23.0</td>
<td>26.8</td>
<td>28.5</td>
<td>38.1</td>
<td>11.3</td>
<td>10.5</td>
<td>14.8</td>
<td>16.8</td>
<td>23.0</td>
<td>24.4</td>
</tr>
<tr>
<td>Mean no. of issues</td>
<td>2.1</td>
<td>2.2*</td>
<td>2.3</td>
<td>2.6</td>
<td>2.7</td>
<td>3.0</td>
<td>1.5</td>
<td>1.4***</td>
<td>1.7</td>
<td>1.8***</td>
<td>2.2</td>
<td>2.3</td>
</tr>
<tr>
<td>Current safety concerns</td>
<td>22.6</td>
<td>25.6</td>
<td>29.3</td>
<td>33.8</td>
<td>41.7</td>
<td>46.4</td>
<td>12.1</td>
<td>11.5</td>
<td>16.1</td>
<td>18.0</td>
<td>25.4</td>
<td>27.3</td>
</tr>
<tr>
<td>No. of participants</td>
<td>439</td>
<td>453</td>
<td>322</td>
<td>282</td>
<td>177</td>
<td>145</td>
<td>2,927</td>
<td>2,778</td>
<td>433</td>
<td>450</td>
<td>130</td>
<td>111</td>
</tr>
</tbody>
</table>

Notes: Data have been weighted. Percentages do not sum to 100.0% as multiple responses could be chosen. Statistically significant differences between 2012 and 2014 within a given population are noted: * p < .05; ** p < .01; *** p < .001.

Data from the *Evaluation of the 2012 family violence amendments* (2015) provides insight into the increase in matters characterised by allegations of family violence and/or child abuse before the FCoA and FCCoA. The Court Files component of the *Court Outcomes Project* (2015) demonstrated that the proportion of matters filed in the FCoA and FCCoA in which both allegations of family violence and child abuse were raised doubled in the post-reform sample as compared to the pre-reform sample, with this representing a statistically significant increase. Child abuse allegations also increased to a statistically significant extent (Court Outcomes Project, 2015, Table 3.10, presented as Table 2 below).

Table 2: Allegations of family violence and child abuse, pre- and post-reform (Court Outcomes Project, 2015)

<table>
<thead>
<tr>
<th>Allegation of family violence * and child abuse</th>
<th>Pre-reform (%)</th>
<th>Post-reform (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Both family violence and child abuse</td>
<td>8.2</td>
<td>17.0 ***</td>
</tr>
<tr>
<td>Family violence alone</td>
<td>18.2</td>
<td>18.9</td>
</tr>
<tr>
<td>Child abuse alone</td>
<td>2.8</td>
<td>4.9 *</td>
</tr>
<tr>
<td>Neither</td>
<td>70.8</td>
<td>59.2 ***</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>No. of cases</td>
<td>895</td>
<td>997</td>
</tr>
</tbody>
</table>

Note: * Includes family violence order raised. Percentages are based on weighted data. Statistically significant differences between pre- and post-reform periods are noted: * p < .05; ** p < .01; *** p < .001.

Data from the *Court Outcomes Project* component of the Evaluation also indicated that more than one-third of cases in the post-reform sample involved any allegations of family violence and close to one-quarter of cases in this sample involving any allegations of child abuse (Court Outcomes Project, 2015, Tables 3.11-2.12, presented in Table 3 and Table 4 below).
An analysis was also conducted of the specific factual issues raised in the matters included in these pre-reform and post-reform sample of files. This analysis highlighted the range and complexity of these matters as well as the statistically significant increases in allegations and protective concerns relating to family violence and abuse, alcohol/substance misuse and parental mental health issues in the post-reform sample (Court Outcomes Project, 2015, Table 3.14, presented as Table 5 below).

### Table 5: Factual issues alleged during proceedings, pre- and post-reform

<table>
<thead>
<tr>
<th>Factual issues</th>
<th>Pre-reform (%)</th>
<th>Post-reform (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Protective concerns</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parental family violence</td>
<td>25.0</td>
<td>35.2 ***</td>
</tr>
<tr>
<td>Parental alcohol/substance misuse</td>
<td>15.6</td>
<td>22.2 ***</td>
</tr>
<tr>
<td>Protection from abuse</td>
<td>10.9</td>
<td>21.8 ***</td>
</tr>
<tr>
<td>Parental mental health</td>
<td>11.0</td>
<td>16.0 **</td>
</tr>
<tr>
<td>Protection from high conflict</td>
<td>9.8</td>
<td>8.6</td>
</tr>
<tr>
<td>Housing/environmental neglect</td>
<td>7.4</td>
<td>9.0</td>
</tr>
<tr>
<td>Criminal history—charges</td>
<td>3.3</td>
<td>3.9</td>
</tr>
<tr>
<td>Criminal history—convicted</td>
<td>3.3</td>
<td>3.8</td>
</tr>
<tr>
<td>Family violence orders</td>
<td>5.6</td>
<td>5.1</td>
</tr>
</tbody>
</table>
The statistically significant increases in the risk and harm factors characterising family law matters filed with the FCoA and FCCoA emphasise the importance of ensuring that judicial officers in these types of matters and other court personnel have the requisite specialist skills and experience to engage with this client base and to determine matters of this complexity and high-risk nature. This finding will be expanded on in the next section.

### Ensuring the expertise of professionals in the family law system

Research undertaken by the Institute has identified the need for ongoing improvements in the ability of judicial and legal professionals to effectively screen for, assess and respond to the complex needs of parties accessing the family law system. In the *Responding to Family Violence Study*, concerns were raised by professionals about the family law system’s capacity to screen for risk, and assess and respond to family violence and child safety concerns (RFV Study, 2015, Table 4.1). Comparative data from the *Evaluation of the 2006 family law reforms* and the *Evaluation of the 2012 family violence amendments* did highlight that there were improvements in the perception of the legal system’s capacity to screen adequately for family violence and abuse and the judicial responses to family violence, child abuse/safety concerns. (Responding to Family Violence Study, Table 4.2, Figure 6.1). However, in the qualitative component of the *Responding to Family Violence Study* (RFV Study), judicial officers raised concerns about ongoing resource limitations impacting on the ability of family law professionals to effectively screen for and address family violence issues (RFV Study, p. 80).

Similarly, although the majority of parents participating in the 2014 sample of the *Experiences of Separated Parents Study* (2015) agreed that the courts understood the impact of family violence and other considerations relevant to parenting arrangements such as the best outcomes for children and children’s developmental needs, there were approximately one-quarter of parents who disagreed with these statements. (RFV Study, 2015, Table 7.8, presented as Table 6 below; see also ESPS Study, 2015, Figure 5.5).
Participants in the Domestic and Family Violence and Parenting Study (2017) also described experiences with family law professionals across the system who lacked sufficient expertise in family violence and did not place sufficient weight on their experiences and the impact of trauma. Participants reiterated the need for a family law system which could meet the range of needs arising from family violence, including: the need for expertise in family violence and a trauma-informed practice which emphasises the protection and safety of parties.

The prevalence of matters involving allegations of family violence or safety concerns in the cases before the FCoA and the FCCoA suggests the need for broader awareness and understanding around issues associated with family violence including the capability to ensure that parties feel safe and protected in their engagements in court and particularly in circumstances where they may be coming into regular contact with an alleged or substantiated perpetrator of family violence (Domestic and Family Violence and Parenting Study, 2017; Direct Cross-Examination in Family Law Matters Study, 2018). These findings reinforce the significance of ensuring that any judicial officers and court personnel engaged in family law matters have the requisite skills, experience and specialist expertise to identify the needs of families accessing the family law system and engage in safe and appropriate decision-making.

The Explanatory Memorandum states that an aim of the structural reforms is to “ensure the expertise of suitably qualified and experienced professionals” (Explanatory Memorandum, 2018, p. 2). The proposed legislation contains provisions relating to the appointment of judicial officers to each division of the FCFC. In relation to Division 1 which focuses on family law matters, s 11(2) states that a person is not to be appointed as a judge unless, “by reason of training, experience and personality, the person is a suitable person to deal with matters of family law”. On the other hand, s 79(2) in relation to Division 2, the Bill states that the person is to have the “appropriate knowledge, skills and experience to deal with the kinds of matters” that may come before the courts. It is noted that Division 2 of the FCFC is intended to have a

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4 As with the current provisions for the FCoA: FLA s 22(2).
broader jurisdiction, extending beyond family law to general federal law matters.\(^5\) However, AIFS’ research identified that both courts may deal with cases that involve complex issues of family violence, abuse, risk and/or safety concerns.

Further, we noted above that the current appellate jurisdiction of the FCoA is to be moved to a new division established in the Federal Court in Australia. A proposed amendment to the Federal Court of Australia Act 1976 (Cth) provides that a person is not to be appointed as a judge unless “the person has appropriate knowledge, skills and experience to deal with the kinds of matters that may come before the Court”\(^6\), noting that, as with the FCFC (Division 2), there is no explicit reference to expertise in family law. There is presently insufficient empirical data available relating to the types of matters of appeal cases (including a consideration of how many appeals involved family violence or child abuse allegations, or other key risk factors such as drugs, alcohol or mental health concerns, the grounds for and classification of appeals, whether parties were represented or self-represented, and whether appeals were successful). Nevertheless, the complex factual and legal issues involved in family law matters in both courts highlight the need for all judicial officers presiding over family law matters to be equipped with expertise in family law and an awareness of complex issues relating to risk factors, safety concerns, family violence and abuse.

**Duration of cases**

A stated aim of the reforms is to “help Australian families resolve their disputes faster by improving the efficiency of the existing split family law system”. Data available from AIFS’ research relating to the duration of cases is outlined below to provide insight into the factors which may be associated with the duration of family law disputes.

Limited data on the duration of cases is available from the Court Outcomes Project component of the Evaluation of the 2012 Family Violence Amendments (2015). It was observed that the duration of cases increased from the pre-reform period to the post-reform period (Court Outcomes, 2015, Table 3.3: 2 to 5 months). However, this variation may be due in part to the shorter time period from which the pre-reform sample was drawn (1 July 2009-30 July 2010) compared with the post-reform sample period (1 July 2012-30 November 2014). When considered in relation to each determination type, cases determined by judicial determination and consent after proceedings had the greatest increase in mean duration, compared to cases involving consent without litigation (Court Outcomes, 2015, Table 3.4). When considered by court type, each court type had an increase in the duration of cases (Court Outcomes, 2015, Table 3.5).

It is, however, important to note the nature and characteristics of cases when considering the duration, including the risk profile and complexity of issues. Indeed, the further analysis of the Court Files component data (unpublished) reveals that cases involving allegations of child abuse/neglect and/or family violence had longer duration compared with cases without any such allegations. For example, in the post-reform cases determined by judicial determination, the mean duration for cases involving both allegations of child abuse/neglect and family violence was longer compared with cases involving child abuse/neglect alone or family violence alone (not both) or without either allegation (10 months cf. 6–9 months). Notably, a higher proportion of cases dealt by the FCoA than by FCCoA involved allegations of child abuse/neglect and/or

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\(^5\) Currently, the Federal Circuit Court’s workload comprises largely of family law matters (representing 89% of all family law work filed at the federal level: Federal Circuit Court of Australia, Annual Report 2017-18).

\(^6\) Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill, s 186.
family violence. For example, in the post-reform sample, one-half of the cases determined by judicial determination in FCoA were involved with both allegation of child abuse/neglect and allegation of family violence compared to one-third of cases determined by judicial determination in FCCoA.

Data from the Experiences of Separated Parents Study component of the Evaluation of the 2012 Family Violence Amendments (2015) also provides insight into the duration of cases. Among the Experiences of Separated Parents Study sample, the proportion of parents reporting that their parenting arrangements had been sorted at the time of the survey decreased from 2012 to 2014, from 74% to 71% (ESPS report, Table 4.4). While the majority of parents from both survey cohorts reported that they had resolved their parenting arrangements at the time of the survey (around 15 months after separation), time frames for the resolution of parenting arrangements were longer for parents affected by a history of family violence compared to those who did not report such experiences (ESPS report, Table 4.5; see further, Qu et al., 2014).

On the basis of these data, it is may be observed that the complexity of matters is a contributing factor in the context of the duration of cases, among a range of factors which may impact the duration of cases. Such factors may include the need for more judicial intervention, the availability of adequate resourcing, screening and assessment practices (see, eg, RFV Study, 2015, p. 79-80, 123), as well as the efficiency of information-sharing between agencies and courts (AIFS Colocation Report, 2016). Participants in the Domestic and Family Violence and Parenting Study (2015) also reported deliberate protracting of litigation by the other party to perpetuate abuse and control (p. 181, see also Explanatory Memorandum, p 8).

The FCFC Bill proposes that all proceedings before the FCFC are to be subject to case management and that the overarching purpose of the family law practice and procedure provisions is to “facilitate the just resolution of disputes according to law; and as quickly, inexpensively and efficiently as possible” (s 48).7 Importantly, both divisions “must give effect to the principles in the [FLA] when exercising the jurisdiction in relation to proceedings under that Act” (ss 48(1), Note 2 and s 157(1), Note 2). Relevantly, the principles outlined in s 69ZN of the FLA provide for judicial officers to “actively direct, control and manage the conduct of proceedings” (Principle 2), conduct proceedings “without undue delay and with as little formality, and legal technicality and form, as possible” (Principle 5), to “consider the needs of the child concerned” in determining the conduct of the proceedings and to conduct proceedings in a way which safeguards children and the parties to proceedings against family violence, abuse or neglect (Principle 3). These principles provide essential guidance for the exercise of judicial discretion and decision-making in relation to proceedings under the FLA and are integral to ensuring that the courts provide services that are not only efficient, but safe, timely and appropriate to the parties’ needs.

We reiterate the need for judicial officers, legal professionals and court personnel to adopt a holistic approach to the conduct of family law disputes which not only takes into account the duration and costs of proceedings, but also considers risk factors, safety concerns and the complex dynamics of family violence and abuse where present. Initial and ongoing case management may assist and support judicial officers in efficiently assessing and responding to family law matters. The FCoA’s Magellan program provides an example of an intensively case-managed approach to addressing the risk of child abuse and an evaluation of the Magellan case management model undertaken by AIFS in 2007 found that cases that proceeded through the

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7 As in the Federal Circuit Court of Australia Act 1976 (Cth) s 37M.
Magellan list were resolved quicker than other cases which involved allegations of serious harm to children (Higgins, 2007).

**Improving the accessibility of the family law system**

The FCFC Bill provides for the achievement of common rules of court and forms, common practices and procedures along with common approaches to case management (ss 51, 55, 160, 183). These reforms may contribute to improved accessibility of the family law courts, particularly in light of data indicating the high proportions of self-represented litigants in family law matters.

An analysis by AIFS of court filings from 2004-05 to 2012-13, identified significant proportions of self-represented litigants in family courts (Kaspiew, Moloney, Dunstan & De Maio, 2015, Figure 5.2). Similarly, substantial proportions of self-represented litigants were also identified in both the pre- and post-reform samples in the *Evaluation of the 2012 Family Violence Amendments*. Approximately one-fifth of applicants in both cohorts of the *Experiences of Separated Parents Study* reported that they were without legal representation (ESPS Study, 2015, 2014: 20%, 2012: 22%). More specifically, the *Court Files Study – Court Outcomes Project component* of this Evaluation also indicated that, in the pre and post-reform samples, fathers were more likely to be self-represented than mothers, with more mothers than fathers having a private solicitor and publicly funded legal representation (Court Outcomes Project, 2015, Table 3.2). Overall, about a fifth of applicants in both time periods had no legal representation (Court Outcomes Project, 2015, Table 3.2 - 2012: 22%, 2014: 20%).

Self-represented litigants may face a range of challenges in engaging with the family law system. The Domestic and Family Violence and Parenting Study (2015), the *Direct Cross-Examination in Family Law Matters Study* (2018) and the *AIFS Evaluation of the 2012 Family Violence Amendments – Responding to Family Violence Study* (RFV Study, 2015) also provided insight into the challenges that, if addressed, may improve accessibility and support people without legal representation to resolve their family law issues. Examples of challenges include those arising for self-represented litigants associated with correctly and adequately completing court forms, preparing affidavit material, and gathering, presenting and testing evidence. These data suggest that self-represented litigants may require additional guidance to navigate the family law system and comply with rules, procedures and guidelines. Responses from court users have also suggested the scope for improvements in improving the accessibility of family courts. For instance, in the Court User Satisfaction Survey (2015), many respondents involved in matters in both the FCoA and FCCoA indicated a preference for simplified and user-friendly forms and procedures. Such data emphasises the need for any reforms to consider the accessibility and usability of the family law courts and related services for parties in family law matters.

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8 It is noted that data from the Court Administrative Data component of the Court Outcomes Project (2015) indicates that the number of cases dealt with in the Magellan list has gradually declined over time (Court Outcomes Project, 2015, Figure 2.16: From 213 in 2004-05 to 118 in 2013-14).
Conclusion

This submission refers to relevant research conducted by AIFS to assist the Committee in their consideration of the proposed Federal Circuit and Family Court of Australia Bill 2018 and Federal Circuit and the Family Court of Australia (Consequential Amendment and Transitional Provisions) Bill 2018. This submission drew attention to the complexity of matters characterising a substantial proportion of family law matters filed with the FCoA and FCCoA, and considered the factors associated with the duration of family law disputes. These findings (and the prevalence of matters in the family courts involving allegations of family violence or safety concerns) emphasise the importance of ensuring that judicial officers and court personnel have the requisite skills, knowledge and experience to engage with this client base and to determine matters of this complexity and high-risk nature.

Although the proposed case management reforms may assist judicial officers in efficiently assessing and responding to family law matters, there is merit in a holistic approach to the conduct and determination of family law disputes which also considers risk factors, safety concerns and the complex dynamics of family violence and abuse. Further, we emphasise the need to ensure that any reforms and changes to court procedures and processes are designed in a way which makes them accessible for parties accessing the family courts including self-represented litigants who may face additional challenges in engaging with the family law system.

References


