Australian Government
Attorney-General's Department

3 June 2020

Inquiry into the Federal Circuit and Family Court of Australia Bill 2019 and the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019

Attorney-General's Department submission to the Senate Legal and Constitutional Affairs Legislation Committee

Contents

1. Introduction

The Attorney-General's Department (the department) welcomes the opportunity to provide the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) with this submission as part of the Committee's inquiry into the Federal Circuit and Family Court of Australia Bill 2019 (the FCFC Bill) and the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019 (the Consequential Amendments Bill) (together 'the Bills').

The department has portfolio oversight of the federal courts (including the Federal Court of Australia (Federal Court), Family Court of Australia (Family Court), and Federal Circuit Court of Australia (Federal Circuit Court)) and policy responsibility for the family law system, and has led the development of the Bills in close consultation with the federal courts.

Through each chapter, the submission seeks to outline:

- the problem the Bills are trying to resolve and the Government's proposed solution
- the context within which the Bills have been introduced
- key aspects of the Bills
- common misconceptions about the Bills, and
- the content of the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019 (the Consequential Amendments Bill).

Given the Bills are similar in many respects to the Federal Circuit and Family Court of Australia Bill 2018 and the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 (the Consequential Amendments Bill) (together 'the 2018 Bills'), the submission will necessarily reflect some of the content of the department's previous submission to the Committee in relation to its review of the 2018 Bills. However, this submission also seeks to clarify common misconceptions about the new version of the Bills and highlight key differences between the 2018 Bills and the Bills currently before the Committee.

It is important at the outset to acknowledge the COVID-19 context in which the Committee considers these Bills. The Attorney-General has consistently advocated these reforms on the basis they will increase the efficiency of the courts in dealing with family law disputes safely and effectively. The anticipated efficiency gains will be even more critical in a post-COVID-19 environment where the courts anticipate a significant increase in caseload notwithstanding the best efforts of the courts to deal with urgent family law matters during the pandemic.

The issue

In 2018-19, there were around 19,000 final order applications across both courts,[1] which is the key driver of caseload. Final orders require judicial determination and therefore require significant court time and judicial effort. Over the past five years, the number of applications for final orders in family law matters has fluctuated between around 19,300 and 20,600.[2] From 2014-15 to 2018-19, the number of pending final order family law matters in the Family Court and the Federal Circuit Court grew from around 19,000 to 20,450.[3] Since 2014-15, the age of pending applications in the Family Court also increased from 28% being at or older than 12 months, to 38% being at or older than 12 months in 2018-19.[4]

The reforms

There is widespread agreement among those accessing the family law courts, practitioners, the wider family law sector and the community, that the current federal family law court structure does not serve families as it should. As acknowledged by the Committee in its report on the 2018 Bills, 'submitters and witnesses broadly agreed that the family law system is fundamentally broken and requires reform'.[5] The problem in the federal family law courts is that both the Family Court and the Federal Circuit Court maintain almost the same jurisdiction in family law (except for some limited application types such as nullity of marriage),[6] but have very different rules and processes to deal with the same matters. This causes confusion, delay and unnecessary costs for thousands of Australian families.

While stakeholders generally agree there is a problem, there has over a long period of time continued to be disagreement as to how to address the structural issues of a split court system. There have been suggestions that the reforms put forward in the Bills represent a radical option. However, more realistically, these reforms present a modest structural reform aimed at addressing the specific known problems associated with the current structure. In this regard, and as the Attorney-General

---

[1] Federal Circuit Court of Australia, *Annual Report 2018-19*, 9; Family Court of Australia, *Annual Report 2018-19*, 17.

[2] Federal Circuit Court of Australia, *Annual Report 2014-15*, 6 (17,685); Federal Circuit Court of Australia, *Annual Report 2015-16*, 6 (17,523); Federal Circuit Court of Australia, *Annual Report 2016-17*, 6 (17,791); Federal Circuit Court of Australia, *Annual Report 2017-18*, 8 (17,241); Federal Circuit Court of Australia, *Annual Report 2018-19*, 9 (17,070); Family Court of Australia, *Annual Report 2014-15*, 53 (2,936); Family Court of Australia, *Annual Report 2015-16*, 43 (3,017); Family Court of Australia, *Annual Report 2016-17*, 27 (2,748); Family Court of Australia, *Annual Report 2017-18*, 21 (2,427); Family Court of Australia, *Annual Report 2018-19*, 17 (2,225).

[3] Federal Circuit Court of Australia, *Annual Report 2014-15*, 53 (16,051); Federal Circuit Court of Australia, *Annual Report 2018-19*, 30 (17,478); Family Court of Australia, *Annual Report 2014-15*, 52 (2,982); Family Court of Australia, *Annual Report 2018-19*, 17 (2,979).

[4] Family Court of Australia, *Annual Report 2018-19*, 22.

[5] Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Federal Circuit and Family Court of Australia Bill 2018 [Provisions] Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 [Provisions]* (Report, February 2019) 19 [2.3].

[6] *Family Law Act 1975* sections 39(1A) and 4(1).

has noted, other suggestions, such as the complete overhaul of the way family law matters are dealt with across Australia, as proposed by the Australian Law Reform Commission (ALRC) in recommendation 1 of its report titled 'Family Law for the Future – An Inquiry into the Family Law System' (ALRC Report),[7] comparatively demonstrates the targeted nature of this legislation.

On 5 December 2019, the Attorney-General introduced reforms to the Parliament that seek to implement a sensible and realistic model for reform while also responding to concerns that were raised about the model put forward in the 2018 Bills. Fundamentally, the legislation's primary purpose is to improve justice outcomes for Australian families and make the federal family law courts simpler and easier for families to access. It seeks to address the current problem of two courts dealing inconsistently with the one subject to facilitate a more cohesive federal family law court system.

As with the 2018 Bills, the legislation brings together the Family Court and the Federal Circuit Court to be known as the Federal Circuit and Family Court of Australia (FCFC). The FCFC will create a consistent pathway for Australian families to have their family law disputes dealt with in the federal family law courts. The Bills establish a legislated single point of entry into the federal family law system by requiring all first instance family law and child support matters to be filed in the FCFC (Division 2). A notable and significant difference to the 2018 Bills is that under this new model, there will be no creation of a Family Law Appeal Division within the Federal Court of Australia. Family law appeals will be heard by the FCFC (Division 1). In addition to family law appeals, the FCFC (Division 1) will also hear first instance matters that are transferred to it from the FCFC (Division 2).

The reforms take the least radical path to change, while ensuring that the current barriers to improvement in the federal family law court system are addressed. These reforms will end unnecessary costs and delay for thousands of Australian families arising from a split federal court system and provide safe pathways for separating families. They will significantly improve the efficiency of the family law court system; reduce the backlog of matters before the family law courts; and drive faster, cheaper and more consistent resolution of disputes.

[7] The ALRC recommended that: the Australian Government should consider options to establish state and territory family courts in all states and territories, to exercise jurisdiction concurrently under the *Family Law Act 1975* (Cth), as well as state and territory child protection and family violence jurisdiction, whilst also considering the most efficient manner to eventually abolish first instance federal family courts. Australian Law Reform Commission, *Family Law for the Future – An Inquiry into the Family Law System* (ALRC Report 135, March 2019)

2. Context of the reforms

Since the introduction of the 2018 Bills, the problems caused by the current federal family law court structure continue to plague Australian families seeking to resolve their family law disputes in the courts. Despite the best efforts of the courts, the backlog of family law matters remains, and Australian families continue to have the resolution of their disputes prolonged, causing unnecessary distress.

The Government's proposed reforms should be viewed within the broader context of other initiatives the Government is undertaking in the family law system more broadly. These reforms were outlined in the department's submission to the Joint Select Committee on Australia's Family Law System, and are at **Attachment A**. It is important to recognise that the proposed reforms are not the only step to improving outcomes for Australian families in the family law system, but they are a necessary foundational step to ensure that current and future initiatives have maximum impact.

The ALRC Report and the ongoing review by the Joint Select Committee on Australia's Family Law System highlights that there are other areas for improvement to the family law system to further advance outcomes for Australian families. The Government is carefully considering the ALRC Report and will also give thorough consideration to the recommendations of the Joint Select Committee. However, the purpose of the Bills is to address a known problem and place the federal family law courts in the best position to deal with matters efficiently and effectively. The implementation of the Bills can be done separately to those reviews, so that Australian families experience the benefits of a more efficient federal family law court system sooner.

To that end, the Government has implemented a number of key changes to the Bills since the 2018 versions were debated in the Parliament. The 2018 Bills lapsed when the Parliament was prorogued following the calling of the last election. The changes result in a departure from the reform model originally proposed by the Government in the 2018 Bills, but importantly the thrust of the reforms is not lost through the changes.

The new Bills have addressed the Committee's recommendations for the provisions of the Bill by:

- providing that family law appeals be heard by the FCFC (Division 1)
- strengthening the appointment requirements for judicial appointments to both the FCFC (Division 1) and (Division 2), and
- allowing the Attorney-General to make regulations providing for a minimum number of judges to be appointed to the FCFC (Division 1).

These changes, along with other key differences between the 2018 Bills and the Bills, are discussed in detail under in the chapter 'Key aspects of the reforms'.

3. Key aspects of the reforms

The key aspects of the 2019 Bills are similar to those outlined in the department's submission to the Committee in relation to the 2018 Bills – see **Attachment B**. However, there are some key differences that should be highlighted between the 2018 version of the Bills and the 2019 version of the Bills. These changes have been made in response to the Committee's previous report on the 2018 Bills as well as to address stakeholder concerns.

Summary of the key aspects

As outlined in the department's previous submission, the legislation was developed with the following key objectives:

- to create a consistent pathway for those Australian families that require assistance from the federal family law courts to resolve their family law disputes
- to ensure family law disputes are resolved in the most timely, informed and cost effective manner possible
- to create a better legislative framework for the courts to implement consistent processes for the early identification of urgent and high risk matters, including in relation to family violence, and
- to retain existing arrangements for general federal law matters.

The approach taken in drafting the legislation is to largely preserve existing provisions governing the Federal Circuit Court and bring across, from the *Family Law Act 1975*, relevant provisions governing the Family Court. The large majority of provisions in the FCFC Bill are the same as existing provisions. Only a small number of provisions are new or substantively changed from existing ones. These changes are designed to facilitate the creation of a more efficient family law court system.

The establishment of the FCFC

The FCFC Bill brings the Federal Circuit Court and the Family Court together into an overarching, unified administrative structure to be known as the Federal Circuit and Family Court of Australia (FCFC).

The legislation does not abolish either the Family Court or the Federal Circuit Court. Both courts would continue in existence as Divisions of the FCFC.[8] The FCFC would comprise two Divisions. The FCFC (Division 1) would be a continuation of the Family Court – a superior court of record that specialises in the exercise of family law jurisdiction. The FCFC (Division 2) would be a continuation of

[8] FCFC Bill, clause 8.

the Federal Circuit Court – a court of record that exercises both family law and general federal law jurisdiction (including administrative law, bankruptcy, consumer matters, and migration).

The FCFC Bill would preserve the current cohort of judges of the Family Court and the Federal Circuit Court, including their extensive family law and family violence expertise. The legislation would introduce new appointment requirements for both the FCFC (Division 1) and the FCFC (Division 2) to ensure that future appointees dealing with family law matters have appropriate knowledge, skills, experience and aptitude to deal with family law matters, including matters involving family violence.[9]

A single point of entry

The FCFC will provide a single point of entry into the family law jurisdiction of the federal court system. In particular, there would be a bar on applicants filing first instance family law and child support matters in the FCFC (Division 1).[10] Instead, all first instance family law and child support matters would be filed in the FCFC (Division 2) with some matters subsequently transferred to the FCFC (Division 1). It is expected that the bulk of matters being transferred to the FCFC (Division 1) would be through the FCFC (Division 2)'s case management procedures, though matters can also be transferred by order of the Chief Justice including on the application of a party to the proceeding.[11]

A single point of entry into the federal family law courts would reduce confusion among Australian families about in which court they should be filing their family law matter. It would also empower the courts to implement unified and effective case management procedures across both courts, which would reduce the need for matters to be transferred between the courts unnecessarily. Further, risks would be able to be more easily identified and managed, and families with complex needs would receive the early support and assistance they need to resolve their disputes.

Exercise of appellate jurisdiction

Under the FCFC Bill, the FCFC (Division 1) would retain the appellate jurisdiction it currently exercises as the Family Court.[12] However, the FCFC (Division 1) would not have an Appeal Division. Instead, every judge of the FCFC (Division 1) would be empowered to exercise the appellate jurisdiction of the court either as a single judge or as part of a Full Court (noting that the management of matters before the FCFC (Division 1) would be a matter for the Chief Justice of the FCFC (Division 1)).[13] In relation to a judgment of the FCFC (Division 2) or of a Family Law Magistrate of the Magistrates Court of Western Australia, the appellate jurisdiction of the FCFC (Division 1) would be exercised by a single

[9] FCFC Bill, clauses 11 and 111.
[10] FCFC Bill, clause 50.
[11] FCFC Bill, clauses 51 and 149.
[12] FCFC Bill, clause 26.
[13] Note: in accordance with subsection 17(1) of the FCFC Bill a Full Court consists of 3 or more judges sitting together.

judge or, if the Chief Justice considers that it would be appropriate, a Full Court.[14] All other appeals would be heard by a Full Court.[15]

Currently, appeals from the Federal Circuit Court to the Family Court can be heard by a single judge. In 2018-19, however, approximately 82 per cent of appeals were heard by a Full Bench of three Family Court judges.[16] This is in contrast to the Federal Court, where the majority of appeals from the Federal Circuit Court in general federal law matters were heard by a single judge.[17]

The exercise of the appellate jurisdiction of the FCFC (Division 1) by a single judge will contribute to the FCFC being able to hear more matters each year. Further, allowing all judges to hear appeals, either as single judges or as part of a Full Court, would give the FCFC (Division 1) increased flexibility as to how it manages its appeal workload.

Leadership of the FCFC

The FCFC Bill facilitates the operation of the FCFC under the leadership of one Chief Justice, supported by one Deputy Chief Justice. As the Divisions of the FCFC are separate courts, the legislation provides for a Chief Justice and Deputy Chief Justice of the FCFC (Division 1) and a Chief Judge and two Deputy Chief Judges of the FCFC (Division 2).[18] There will be a Deputy Chief Judge (Family Law) and a Deputy Chief Judge (General and Fair Work) in the FCFC (Division 2). The creation of two Deputy Chief Judge roles in the FCFC (Division 2) recognises the strong need for clear management of the family law workload and general federal law workload of the court.

Differences between the 2018 and 2019 Bills

The below points seek to highlight the differences between the 2018 Bills and the current Bills being considered by the Committee.

- The Bills much more clearly provide for the FCFC (Division 2) to be the single point of entry to the federal family law courts for first instance family law and child support matters. Differing to the 2018 Bills, the legislation specifies that all federal family law and child support matters are to be filed in the FCFC (Division 2), and no such matters can be filed in the FCFC (Division 1).

- The FCFC Bill provides that the Regulations may prescribe a minimum number of Judges for the FCFC (Division 1). The Attorney-General has committed to this number being 25.

[14] FCFC Bill, clause 32.
[15] FCFC Bill, clause 32.
[16] Family Court of Australia, *Annual Report 2018-19*, 34.
[17] Federal Circuit Court of Australia, *Annual Report 2018-19*, 46.
[18] FCFC Bill, subclauses 9(2), 10(2). The role of the Deputy Chief Judge of the FCFC (Division 2) will be a newly created role.

- The FCFC Bill includes new qualification requirements for proposed judicial appointments to the FCFC (Division 1) and the FCFC (Division 2). These qualification requirements have been strengthened to explicitly refer to a need for a person appointed as a judge to be a suitable person to deal with family law matters, including matters of family violence.

- Family law appeals will continue to be heard by the FCFC (Division 1) as a continuation of the Family Court. Appeals from the FCFC (Division 2) will ordinarily be dealt with by a single judge from the FCFC (Division 1), but may be heard by a Full Court when the Chief Justice deems it appropriate.

- While retaining the Family Court's appellate jurisdiction within the FCFC (Division 1), judges will no longer be assigned to an 'Appeal Division'. Instead, all FCFC (Division 1) judges will be able to hear appeals, both as individual judges and as members of a Full Court. This will ensure a more flexible and efficient structure to manage family law appeals, while still retaining the ability for the Full Court of the FCFC (Division 1) to hear an appeal if necessary.

- The Bills provide for two Deputy Chief Judges in the FCFC (Division 2), with one responsible for family law matters and the other responsible for general federal law and fair work matters. The Deputy Chief Justice of the FCFC (Division 1) may be dually appointed as a Deputy Chief Judge (Family Law) of the FCFC (Division 2). This dually appointed Judge would act as the Chief Justice/Chief Judge in his/her absence in the first instance.

- The Bills create a position of a Chief Executive Officer and Principal Registrar for the FCFC (Division 1), to assist both the Chief Justice of the FCFC (Division 1) and Chief Judge of the FCFC (Division 2) in managing the administrative affairs of the respective courts.

- The Bills enable the Chief Justice and Chief Judge to make Rules of Court for each respective court for a period of two years during the harmonisation phase before reverting to Rules being made by a majority of judges in recognition of the ongoing importance of judges in the rule making process. This will assist the Chief Justice and Chief Judge to promote the creation of common rules and procedures.

- The Bills provide for a review of the operation of the legislation to be conducted within six months after the fifth anniversary of the commencement of the Act.

4. Misconceptions about the reforms

As outlined in Chapter 3, there are many beneficial aspects of the proposed reforms. Unfortunately, some of these aspects have been misconstrued or some stakeholders have failed to take into account the specific provisions of the Bills. The main misconceptions are that the Bills abolish the Family Court, and that the Bills will result in a loss of family law expertise.

Misconception 1 – the Bills abolish a specialist Family Court

The most common misconception voiced by some stakeholders is that the Bills will abolish the Family Court. This is not the case. In accordance with clause 6 of the FCFC Bill, the Family Court and Federal Circuit Court will each clearly continue in existence, as the FCFC (Division 1) and the FCFC (Division 2) respectively. The FCFC (Division 1) will remain a superior court of record, and will continue hearing all family law appeals. Judges will continue to be appointed to each separate court, with a specific commitment to maintaining numbers of judges in the FCFC (Division 1).

Misconception 2 – the Bills will result in a loss of family law expertise

Misconception 3 – the Bills merge the Family Court and Federal Circuit Court into a single 'generalised' court

Some stakeholders have expressed that the Bill will result in the loss of family law expertise through merging the Family Court and the Federal Circuit Court into one generalised court. Again, the department assumes the reason for these misconceptions is that the two courts will be known collectively as the FCFC, and each court will be called a 'Division' of the FCFC. As described above, the Family Court and Federal Circuit Court will both continue in existence.

Firstly, the Bills enable all judges of the Family Court to continue as judges of the FCFC (Division 1). Similarly, all judges of the Federal Circuit Court continue as judges of the FCFC (Division 2). The judges of the FCFC (Division 2) who currently deal with family law matters will continue to deal with family law matters. These transitional provisions are in Schedule 5, Part 2 of the Consequential Amendments Bill.

Secondly, building on the recommendation in the Senate Committee's report for its review of the 2018 Bills and recommendation 51 of the ALRC Report, the Bill also contains enhancements to the appointment criteria for new judicial appointments. In particular, the Bill includes new qualification requirements for proposed judicial appointments to the FCFC (Division 1) and the FCFC (Division 2) at clauses 11 and 111 respectively. These qualification requirements have been strengthened to refer to a need for a person appointed as a family law judge to be a suitable person to deal with family law matters, including matters of family violence.

While ultimately a matter for the courts, the department anticipates that the most complex family law matters will continue to be dealt with by the FCFC (Division 1) within the framework provided by the Bills.

Misconception 4 – the Bills will fracture family law jurisprudence

Currently, subsection 94AAA(3) of the *Family Law Act 1975* provides for family law appeals from decisions of the Federal Circuit Court and Family Law Magistrates of the Magistrates Court of Western Australia to be heard by a Full Court of the Family Court unless the Chief Justice considers it appropriate to be heard by a single judge. Some stakeholders have expressed concern that a move away from this position will fracture the family law jurisprudence.

In other areas of federal civil law, the presumption is that appeals from the Federal Circuit Court to the Federal Court of Australia will be heard by a single judge unless that judge considers it appropriate for the matter to be determined by a Full Court of the Federal Court. The federal law jurisprudence developed by the Federal Court is not 'fractured' by this arrangement. In fact, the Federal Court successfully exercises a substantial and diverse appellate jurisdiction – whether it pertains to the personal circumstances of individuals (as in migration matters and industrial matters) or to commercial business circumstances (as in corporations matters).

For family law appeals involving well-settled law, it is appropriate for the appeal to be heard by a single judge of the FCFC (Division 1), as they are a family law judge of a superior court. For appeals in which there are benefits to a Full Court hearing the appeal, paragraph 32(1)(a)(ii) of the FCFC Bill provides the Chief Justice with discretion to direct the appeal be heard by a Full Court.

Misconception 5 – some FCC judges hear non-family law matters, meaning the FCC is not a specialist family court

It is a misconception that the Federal Circuit Court does not have family law expertise. The existing Federal Circuit Court, which will become the FCFC (Division 2), deals with the vast majority of final order family law applications handled by the two courts (approximately 88 per cent in 2018-19),[19] including a great number of highly complex parenting and property matters, and the Family Court on the other hand handles more matters involving property than matters involving children.[20] Clause 111 of the FCFC Bill provides that a person is not to be appointed as a judge of the FCFC (Division 2) unless, by reason of knowledge, skills, experience and aptitude, the person is a suitable person to deal with the kinds of matters that may be expected to come before the person as a judge of the FCFC (Division 2). To avoid doubt, subclause 111(2) provides that if the kind of matters that may be expected to come before a person as a judge of the FCFC (Division 2) are family law matters, the person, by reason of their knowledge, skills, experience and aptitude, is a suitable person to deal with those matters, including matters involving family violence.

[19] Federal Circuit Court of Australia, *Annual Report 2018-19*, 30 (17,070); Family Court of Australia, *Annual Report 2018-19*, 17 (2,225).
[20] Family Court of Australia, *Annual Report 2018-19*, 17 (52% of final order cases filed in 2018-19 were financial only).

5. Overview of consequential amendments and transitional provisions

The Consequential Amendments Bill makes the necessary amendments to other Commonwealth Acts and Regulations affected by the passage of the FCFC Bill. A brief description of each Schedule of the Consequential Amendments Bill is included below.

Schedule 1 makes significant amendments to the *Family Law Act 1975* to remove provisions relating to the establishment and operation of the Family Court. These provisions have been replicated with necessary changes in the FCFC Bill. It amends the *Federal Court of Australia Act 1976* to account for the single Chief Executive Officer of the FCFC and provides for the transfer of certain cases to the Federal Court from the FCFC (Division 2). Schedule 1 also contains the relevant provisions for the making of rules of court by judges, or a majority of judges, of the FCFC (Division 1) and the FCFC (Division 2) respectively after a two-year period.

Schedule 2 amends other Commonwealth legislation, as necessary, to reflect the continuation of the Family Court as the FCFC (Division 1) and the Federal Circuit Court as the FCFC (Division 2).

Schedule 3 provides for the repeal of the *Federal Circuit Court of Australia Act 1999* and related savings and transitional arrangements. The provisions of the *Federal Circuit Court of Australia Act 1999* are replicated with necessary changes in the FCFC Bill.

Schedule 4 provides for contingent amendments to legislation potentially affected by other Bills before the Parliament at the time of the introduction of the FCFC Bills. The commencement of these amendments is contingent on the passage of the relevant amending legislation.

Schedule 5 provides transitional arrangements to preserve and transition the offices, appointments, and roles of those in the Family Court and the Federal Circuit Court (including Judges, office holders, and other personnel of the two courts) to the FCFC (Division 1) and the FCFC (Division 2) respectively.

6. Conclusion

There remains a pressing need to reform the federal family law courts so that Australian families spend less time in the court system and more time with loved ones. The pressing need for this has not changed since the Government first introduced legislation in 2018 to reform the structure of the federal family law courts. The backlog of family law matters in the federal family law courts needs to be reduced, and the courts need to be equipped with legislation that allows them to implement efficient, effective and consistent case management practices and rules of court. The Bills are an important step towards achieving these outcomes.

The Government has listened to the concerns raised by stakeholders regarding the 2018 Bills. Targeted changes have been made to the reform model proposed in those Bills to address stakeholder concerns, while still maintaining the fundamental thrust of the reforms. In particular, the Family Court will retain its appellate jurisdiction as the FCFC (Division 1), but the FCFC (Division 1) will be given increased flexibility to deal with appeals in family law matters.

Additionally, the Government has adjusted the appointment criteria for judges in both the FCFC (Division 1) and the FCFC (Division 2) to require that judges hearing family law matters be suitable persons to deal with family law matters, including those involving family violence.

As has been noted by some stakeholders, the Federal Circuit Court and the Family Court are taking positive and productive steps to attempt to develop a common set of rules across both courts for family law matters. However, the Bills provide a mechanism for implementing common set of rules, given that a common set of rules has not eventuated despite persistent calls for it. The Bills provide an important safeguard for ensuring common rules of court and forms, and common practices and procedures.

There is clearly a need for the reforms provided in the Bills. The Bills are not the sole answer to issues in the family law system, and they have not been the only initiative of the Government in the family law system, but they provide an important foundation to ensure that future additional reforms are effective and that any future additional funding has maximum impact.

The department thanks the Committee for considering this submission. The department will provide any further information to the Committee as required.