

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S PORTFOLIO**

**Federal Circuit Court of Australia**

**Question No. AE17/053**

**Senator Waters asked the following question at the hearing on 28 February 2017:**

1. In response to questions from Senator Lambie (SBE 16/078), on this topic, which followed up questions from the Greens – the Court said that the “financial and logistical impact” of such a requirement as well as the possibility that recording would inhibit “reporting” in family assessments.
  - a. Would it be feasible to record interviews conducted by family report writers who are employed by the Court (as opposed to independent consultants?).
  - b. What would be the financial and logistical impost of requiring recordings?
  - c. Have you actually asked any of those independent consultants about whether this is feasible? Have they provided any estimate of costs?
  - d. I understand that these consultants charge very hefty fees - many thousands of dollars – what is the Department’s basis for the view that they don’t have the resources to record and store interviews?
2. Turning to the concern about inhibiting reporting in family assessments – what is the basis for that concern? I.e. is it based on conversations with professionals who work with children? Is it based on any kind of best-practice guidelines?

**The answer to the honourable senator’s question is as follows:**

1. a. A feasibility analysis of recording interviews has not been undertaken as such recordings are not considered to be consistent with the family consultant’s role of providing expert evidence to the Court.
  1. b. Any cost analysis would need to consider the nature of the recording, in particular whether recording was by way of audio only or audio- visual recording, and any archival or storage requirements.
  1. c. No.
  1. d. Establishing a recording regime for reports prepared externally by Regulation 7 Family Consultants is likely have a significant impact on the fee structure for reports, increasing the costs to the Court. If the requirement to record interviews were to also apply when the Court orders parties to self-fund reports, then this would have an impact on the costs to the parties.
2. The basis of this concern is that there is clinical evidence that individuals, particularly children, are less likely to disclose information when they are fearful of the consequences of that disclosure. If family consultant interviews were recorded for the purpose proposed by Senator Lambie, then these recordings may be required to be admitted as evidence before the court, thus making them available to all parties and possibly subject to cross-examination. Fear of this consequence may cause vulnerable parties to be limited in their disclosures when being interviewed.

More specifically, in regards to the recording of children's interviews, family consultants consider it to be a sound clinical assumption that if a child knows that a parent may have access to the recording of their interview then this could impact the degree to which the child feels comfortable or safe to provide information. This potential limit on access to the views of the child could compromise the capacity of the consultant to consider what is in the child's best interest.

The current practice is that the information a child gives to a family consultant is evaluated and reported to the Court in a way that takes into account any potential risks to the child. An additional concern regarding the recording of children's interviews is that these recordings could place the child at a greater risk of a punitive reaction from a parent who is unhappy about what a child has reported to the consultant.

The recording of interviews is not a requirement placed on other types of experts who provide information to the Court in Australian family law matters. Furthermore, the present practice of not recording interviews is consistent with that in the majority of family law jurisdictions internationally, suggesting that these jurisdictions also consider this as necessary for the protection of vulnerable parties.