

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

**Group: 2**

**Program: Other Agency**

**Question: BE14/064**

**Senator Waters asked the following question at the hearing on 26-29 May 2014:**

1. Both the Australian Law Council and the Chief Justice of the Family Court, have expressed serious concerns about the impacts of the \$15 million cut to legal aid funding. Is the Court aware of any modelling showing the impact of these cuts on women and families subject to violence?
2. Does the Court have a record of the number of victims or alleged victims of domestic or family violence who are self represented?
3. Do these individuals comprise a greater percentage of self-represented litigants than the population in general?
4. Does the Court know whether self-representation is discouraging women from seeking relief through the Family Court system?
5. By not resolving matters thru the Family Court, what options do women have open to them?
6. Does the Court have any information about the length of waiting periods women and children in violent situations are subject to in waiting to have their matters settled by the court?

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

1. No.
2. The Court collects information on domestic or family violence where the parties identify allegations or evidence by lodging of a Notice of Child Abuse, Family Violence or Risk of Family Violence (Form 4). For reporting purposes, the information in Table 1 is where one or more of the parties (men and women) identified as unrepresented at some point in the proceedings.

In finalised cases (settled or via judicial decision) for the period 1 July 2009 to 31 May 2014, approximately 17% of cases where a Notice of Child Abuse, Family Violence or Risk of Family Violence was lodged, had at least one party unrepresented at some point.

**Table 1****Number of Final Orders Applications in the Family Court of Australia by Party Legal representation and Concurrent Notice of Child Abuse or Risk of Family Violence****Finalised in the period 1 July 2009 to 31 May 2014**

<b>Financial year</b>	<b>Legal representation</b>	<b>Yes</b>	<b>No</b>	<b>Grand Total</b>
2009-10	Both have Representation	85%	78%	79%
	Neither have representatives	2%	4%	4%
	One party had representative /one party SRL	12%	18%	18%
2009-10 Total		100%	100%	100%
2010-11	Both have Representation	86%	79%	80%
	Neither have representatives	1%	4%	4%
	One party had representative /one party SRL	13%	16%	16%
2010-11 Total		100%	100%	100%
2011-12	Both have Representation	85%	78%	79%
	Neither have representatives	3%	5%	4%
	One party had representative /one party SRL	13%	17%	17%
2011-12 Total		100%	100%	100%
2012-13	Both have Representation	80%	79%	79%
	Neither have representatives	4%	4%	4%
	One party had representative /one party SRL	16%	17%	17%
2012-13 Total		100%	100%	100%
2013-14	Both have Representation	80%	78%	79%
	Neither have representatives	3%	5%	5%
	One party had representative /one party SRL	17%	16%	16%
2013-14 Total		100%	100%	100%

3. The Court does not collect this information, hence is not in a position to answer this question.
4. The Court is not aware as to whether this is a factor.
5. Other court options include the Federal Circuit Court of Australia, State Magistrates Courts for Apprehended Violence Orders (AVO's) or criminal courts if there are offences committed. In the case of State Magistrates Courts, conditions can be placed on contact between the victim and perpetrator and the child or children. In the case of criminal courts, conditions of bail for example sometimes include a provision for no contact. Notifications can be made to state welfare authorities who, if deemed appropriate can seek orders in the Children's Court. Parents who wish to resolve matters outside the court process can seek a range of options including consensual parenting plans, mediation or other forms of alternative dispute resolution (ADR) through community based organisations, Family Relationship Centres and Legal Aid bodies.
6. The Court has processes for dealing with cases where there is evidence of, or allegations of violence made by lodging of a Notice of Child Abuse, Family Violence or Risk of Family Violence (Form 4), which includes consideration within eight weeks where appropriate (section 67ZBB).

From 1 July 2013 – 31 March 2014, statistics indicate the target is being achieved in 93.5% of cases where it was deemed appropriate (see Table 2).

The Court considers any allegations of violence, abuse or risk within the specified time periods including notifying the relevant welfare agencies where appropriate. Where a case requires an urgent interim hearing, this is managed by the Court accordingly. This includes cases that are resolved either by the parties themselves or by judicial decision.

7. The Family Court of Australia has offered for some time a specialised 'Magellan' list for cases involving sexual and/or serious physical abuse. Magellan is a case management system, designed to ensure that the cases which are the most resource intensive, involving the most vulnerable children, are dealt with as effectively and efficiently as possible. The time it takes in some matters to have a final hearing, especially those in the Magellan list, may vary. The date of trial may be affected where there are related investigations by the police and/or welfare authorities and sometimes criminal proceedings. However, urgent interim hearings are conducted as appropriate to ensure protective orders are in place pending the final hearing.

Cases involving allegations of violence and/or abuse (or the risk of same) are carefully managed by judges, registrars and family consultants to ensure the most relevant and appropriate steps are taken. This may include separate events, and in many cases an increase in the number of events to ensure the safety of all parties, which contributes to an increase in the overall time to finalise a case. Cases involving allegations of, or evidence of, violence and the risk of violence, and abuse and the risk of abuse, usually involve entrenched conflict and fall into the category of the most complex.

**Table 2**

Form 4 Notices, and Final Orders registrations where Parenting orders are sought  
with statistics on concurrent Form 4 filings, by location  
within FY2013-14 (July 2013 to March 2014 inclusive)

<b>Form 4 Lodgements</b>							
		Referred to Welfare		Considered		Considered	
						within 8 weeks	
Registry	Number	Number	Percent	Number	Percent	Number	Percent
			(/Lodged)		(/Lodged)		(/Considered)
ADELAIDE	11	10	90.90%	10	90.90%	7	70.00%
BRISBANE	35	25	71.40%	33	94.20%	31	93.90%
CANBERRA	2	2	100.00%	1	50.00%	1	100.00%
DANDENONG	1	1	100.00%	1	100.00%	1	100.00%
DARWIN	.	.	.	.	.	.	.
HOBART	11	10	90.90%	11	100.00%	10	90.90%
MELBOURNE	61	58	95.00%	52	85.20%	51	98.00%
NEWCASTLE	49	44	89.70%	49	100.00%	42	85.70%
PARRAMATTA	66	54	81.80%	62	93.90%	59	95.10%
SYDNEY	69	67	97.10%	67	97.10%	66	98.50%
TOWNSVILLE	11	10	90.90%	10	90.90%	9	90.00%
<b>National</b>	<b>316</b>	<b>281</b>	<b>88.90%</b>	<b>296</b>	<b>93.60%</b>	<b>277</b>	<b>93.50%</b>