



Australian Government
Attorney-General's Department

Improving the Competency and Accountability of Family Report Writers

Consultation Paper

© Commonwealth of Australia 2021

ISBN: 00 (Print)

ISBN: 00 (Online)

With the exception of the Commonwealth Coat of Arms, this work is licensed under a Creative Commons Attribution 4.0 International licence (CC BY 4.0) (<https://creativecommons.org/licenses/by/4.0/>).



Attribution

This publication should be attributed as follows:
Australian Government's response to the Functional and Efficiency Review of the National Archives of Australia

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the following website: <https://pmc.gov.au/cca>

Other uses

Enquiries regarding this document are welcome at:

Attorney-General's Department

3-5 National Circuit

BARTON ACT 2600

Telephone: 02 6141 6666

Table of contents

| | |
|--|-----------|
| Introduction | 2 |
| Part I - Family Report Requirements | 4 |
| Family reports and family report writers | 4 |
| Scope and requirements of a family report..... | 7 |
| Part II – Competency and Quality | 9 |
| Competency of family report writers..... | 9 |
| Screening for suitability..... | 17 |
| Quality assurance mechanisms | 19 |
| Transparency | 21 |
| Implementing options for enhancing competency and quality assurance mechanisms..... | 23 |
| Part III – Complaints and Accountability | 26 |
| Court-based review of complaints | 26 |
| Review of complaints by external authorities | 28 |
| Limitations on receiving evidence from family law matters | 32 |
| Issues and risks in investigating complaints | 34 |
| Establishing effective complaints mechanisms..... | 36 |
| Conclusion | 38 |
| Appendix A – Requirements of a family report | 39 |

Introduction

Family report writers play an essential role in family law parenting matters. Family report writers prepare reports that provide information and recommendations about parenting arrangements that are in the best interests of the child or children. Family reports are then considered by the parties, their legal representatives, and judges.

Reports and public inquiries have raised concerns about family reports and the professionals who prepare them. A series of recommendations have been made about improving the skills, competencies and accountability mechanisms of family report writers.¹ The Australian Law Reform Commission's (ALRC) 2019 report into the family law system, *Family Law for the Future: An Inquiry into the Family Law System*, recommended that:

The Attorney-General's Department should develop a mandatory national accreditation scheme for private family report writers (recommendation 53).²

The ALRC also proposed that the Attorney-General's Department consider developing and maintaining a publicly available list of family report writers that identifies their expertise, including qualifications, skills, experience, and relevant training.³

Most recently, the second interim report of the Joint Select Committee (JSC) on Australia's Family Law System, *Improvements in family law proceedings*, recommended that:

The Australian Government lead the establishment of mandatory accreditation, standards and monitoring processes, including complaints mechanisms and ongoing professional development requirements, for family consultants, including family report writers employed by the court and engaged under Regulation 7 of the Family Law Regulations, and privately engaged family report writers (recommendation 9).⁴

In submissions to these reviews, stakeholders have expressed the following concerns in relation to family report writers:

- Some family report writers have an insufficient understanding of family violence, child abuse and the impact of trauma.
- Some reports do not adequately address allegations of violence, or minimise allegations and concerns.
- Conscious and unconscious bias.
- Some assessments and recommendations are beyond the scope of the family report writer's competency and qualifications.

¹ Joint Select Committee (JSC) on Australia's Family Law System, Parliament of Australia, *Improvements in Family Law Proceedings*, Second Interim Report, March 2021, recommendation 9; Australian Law Reform Commission (ALRC), *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135, March 2019, recommendation 53; House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A better family law system to support and protect those affected by family violence*, Report, December 2017, recommendations 22, 30; Senate Finance and Public Administration References Committee, Parliament of Australia, *Domestic Violence in Australia*, Report, August 2015, recommendation 17.

² ALRC, *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135, March 2019, p 410.

³ *Ibid*, pp 385, 413-14.

⁴ JSC, Parliament of Australia, *Improvements in Family Law Proceedings*, Second Interim Report, March 2021, paragraph 2.147.

- Some family report writers do not appropriately engage with or listen to children and do not accurately represent their views.
- Family report writers do not do enough evidence gathering from third parties.
- Some family reports are too general in nature and lack focus on specific issues raised in the proceedings such as family violence or child abuse.

Stakeholders raised these concerns about all categories of professionals who prepare family reports – psychologists, social workers and psychiatrists. This paper therefore considers all professionals involved in family report writing and family assessments.

Purpose and scope

The department has prepared this paper as part of the Government's response to recommendation 53 of the ALRC report. The Government agreed in principle with this recommendation and committed to explore options to improve the competency, quality and overall number of professionals involved in writing family reports.⁵ This paper seeks views from stakeholders and interested members of the public on how the competency and accountability of professionals who prepare family reports could be improved, and the entities and mechanisms that could be engaged to achieve this.

This paper does not consider expanding or varying the roles of family report writer, increasing the time that report writers spend with parties, alternative options to family reports or funding arrangements for family report writers.

Consultation process

The department welcomes submissions from stakeholders and members of the public in response to the issues and options identified in this paper. Submissions should not include the names or identifying details of any individual, family, or specific family report writer. The department cannot investigate any submission that makes a complaint about a report writer. While the department has attempted to ensure the factual accuracy of the information contained in this document, any advice or corrections are welcome.

The department intends to publish submissions, although reserves the right to leave unpublished any submission, or part thereof. Please let us know if you do not want your submission published. Submissions may be subject to freedom of information requests, or requests from Parliament, which the department will consider and respond to in line with regulatory requirements.

Submissions close on **3 December 2021**.

⁵ Australian Government, [Government Response to ALRC Report 135: Family Law for the Future – An Inquiry into the Family Law System](#), March 2021, p 42

Part I - Family Report Requirements

Family reports and family report writers

A family report is a written assessment prepared by a social science expert to assist a judge in deciding parenting arrangements that are in the best interests of the child or children.

Family reports involve an independent forensic assessment of the family, done from a social science and non-partisan perspective.⁶ Family reports usually provide advice about family dynamics including the attitudes and parenting capacity of each parent, the child's relationship with the parents and significant others, the child's wishes and views, and any risks to the family. Where family violence is identified, a specialised family violence assessment is to be included in the assessment and report.

The information that forms the basis of a family report includes interviews and observations of parties and their children, affidavits and other documents filed in proceedings, information from an Independent Children's Lawyer (if appointed), and possibly reports from the child's school or psychologist.⁷

The weight or reliance given to the family report is at the judge's discretion and will vary for each case. However, family reports are commonly used and are of great importance in practice.

While the terms 'family report' and 'family report writer' are commonly understood in family law, they are not specifically defined terms in the *Family Law Act 1975*. Their meaning is derived from a number of provisions in family law legislation, guidelines and operational approaches.

Family consultants and single expert witnesses

The court may order that a report be prepared by a family consultant under sections 55A and 62G of the Family Law Act.⁸ The *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*⁹ define **family consultant's report** as a report concerning the best interests of the child, prepared under sections 55A or 62G of the Family Law Act.¹⁰ A family consultant's report may be a child impact report (a shorter report conducted earlier in proceedings), a specific issues report or a family report.¹¹ The *Family Court Rules 2021* (WA) define **family report** as a report concerning the best interests of a child, prepared under section 73 of the *Family Court Act 1997* (WA) or sections 55A(2) or 62G of the Family Law Act.¹²

6 Family Court of Australia (FCoA), Federal Circuit Court of Australia (FCC) and Family Court of Western Australia (FCWA), [Australian Standards of Practice for Family Assessments and Reporting](#), February 2015..

7 Ibid.

8 *Family Law Act 1975* (Cth) s 55A(2): Where, in proceedings for a divorce order in relation to a marriage, the court doubts whether the arrangements made for care, welfare and development of a child of a marriage are proper in all circumstances, the court may adjourn the proceedings until a report has been obtained from a family consultant regarding those arrangements. *Family Law Act 1975* (Cth) s 62G(2): The court may direct a family consultant to give the court a report on such matters relevant to the proceedings as the court thinks desirable. Note also that family reports are prepared for Convention on the civil aspects of international child abduction (Hague Convention) in accordance with the regulation 26 of the *Family Law (Child Abduction Convention) Regulations 1986*.

9 The *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) commenced on 1 September 2021 and replaced the Family Law Rules 2004 (Cth) and the Federal Circuit Court Rules 2001 (Cth).

10 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 8.11(1).

11 Ibid r 8.11(1) note. Child impact reports and specific issues reports were introduced on 1 September 2021. These report types are not defined in a legislative instrument.

12 *Family Court Rules 2021* (WA) r 4.

Family consultants are appointed in two main ways:

1. **In-house.** These family consultants are employees of the Federal Circuit and Family Court of Australia's Court Children's Service (CCS). In Western Australia, the Department of Justice employs family consultants who are based in the Family Court Counselling and Consultancy Service (FCCCS), a branch of the Court Counselling and Support Services directorate, located at the Family Court of Western Australia. The work of in-house family consultants is organised through the courts and includes family report writing. These family consultants are from the professions of social work and psychology.

On 1 September 2021, the Family Court of Australia and the Federal Circuit Court were brought together under a unified administrative structure. Child Dispute Services is now known as the Court Children's Service (CCS). In-house family consultants are now known as Court Child Experts, to better reflect the range of their duties. Court Child Experts hold both a statutory appointment as a family consultant (conducting assessments and preparing family reports) and an authorisation as a family counsellor. As this document focuses on Child Court Experts' family consultant role, the term 'in-house family consultant' will be used to refer to this group of family report writers.

2. **Regulation 7 statutory appointments.** These family consultants are private practitioners who hold a statutory appointment from the Chief Executive Officer(s) of the Federal Circuit and Family Court of Australia under regulation 7 of the *Family Law Regulations 1984*. They prepare family reports on a fee-for-service basis, paid for by the courts. They are from the professions of social work and psychology. The Family Court of Western Australia does not use regulation 7 family consultants.

In practice, the term 'family report' is also commonly used to refer to a family assessment and report of the same nature prepared by a **single expert witness**.¹³ Australia wide, these private practitioners are jointly appointed by, or on behalf of, both parties to the proceeding. Single expert witnesses are governed by Division 7.1.2 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*. They are usually from the professions of psychology, psychiatry, and social work. The objective of a family report prepared by a family consultant (in-house or regulation 7) and single expert witness is the same and requires experts with similar social science skills and expertise. The financial capacity of each party will assist the court to determine whether a family consultant is assigned to prepare a report, or the parties are to pay for the services of a single expert witness.¹⁴

In this paper, references to family reports include both family consultant's reports and reports of the same nature prepared by single expert witnesses.

¹³ FCoA, FCC and FCWA, *Australian Standards of Practice for Family Assessments and Reporting* February 2015, p 6.

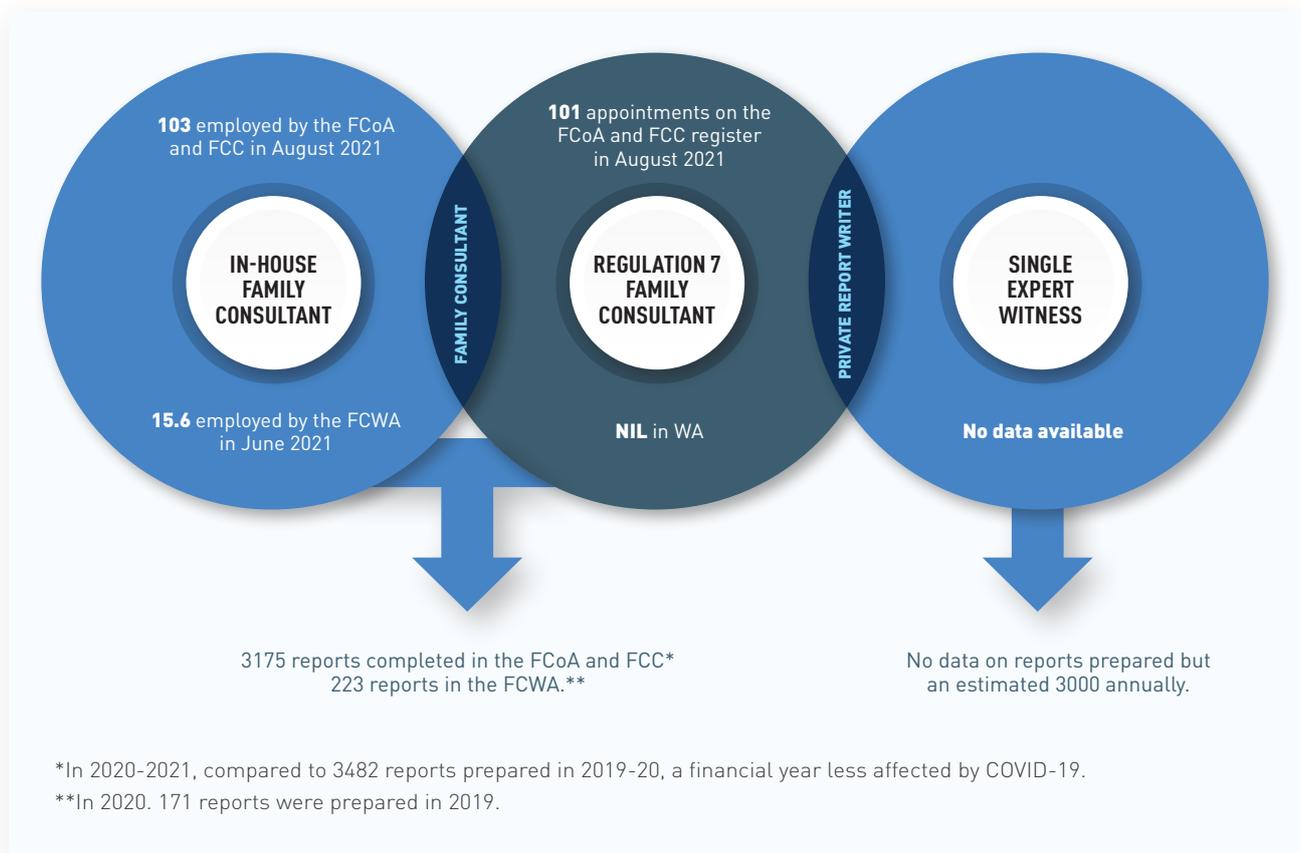
¹⁴ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 8.11(2)(c).

Single expert witnesses may also prepare other specialised private reports at the direction of parties or the court on specific issues, which *are not considered family reports or assessments*. The ALRC noted that some single expert witnesses only provide evidence in family law matters in rare circumstances and may be unwilling to undergo an accreditation process, so did not extend their recommendation to single expert witnesses.¹⁵ However, the JSC noted that consideration should be given to applying an accreditation scheme to single expert witnesses who ‘regularly’ provide family reports.¹⁶

‘Family consultant’ refers to both in-house and regulation 7 family report writers. ‘Private family report writer’ is often inconsistently applied to refer to regulation 7 family consultants, or to single expert witnesses, or both. Diagram 1 depicts these overlapping terms.

This paper considers all types of family report writers, and issues and options to ensure their competence and accountability.

Diagram 1: Types of family report writers



15 ALRC, *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135, March 2019, p 413.

16 JSC, Parliament of Australia, *Improvements in Family Law Proceedings*, Second Interim Report, March 2021, paragraph 2.145

Scope and requirements of a family report

The scope and content of a family report is also not comprehensively prescribed in the Family Law Act. A range of legislation and official documents outline what needs to be included in a family report. Some of these requirements are repetitive across the documents, vary in specificity and detail and do not apply consistently to the different cohorts of family report writers (in-house, regulation 7 appointments and single expert witnesses). What is required of a family report can be summarised as follows:

- The **Family Law Act 1975** requirements apply to family consultants only and provide that a report must establish what is in the best interests of the child, include the views of the child, and any other matters concerning their care, welfare and development.¹⁷
- The **Federal Circuit and Family Court of Australia (Family Law) Rules 2021** define a family consultant's report as a report concerning the best interests of a child,¹⁸ provide that the court must identify the issues to be addressed in a family consultant's report,¹⁹ and provide that a single expert must receive instructions on the issues about which their opinion is sought.²⁰
- The **Australian Standards of Practice for Family Assessments and Reporting** (the Standards),²¹ developed by the Family Court of Australia, Federal Circuit Court and the Family Court of Western Australia, apply to all family report writers including single expert witnesses. The Standards comprehensively outline what the family report should cover, including the views of the child, the child's relationship to their parents, risk assessments, cultural issues and recommendations on parenting arrangements. The Standards also prescribe the methodology and approach that should be taken by the report writer. The Standards are not legally binding.
- Various **Practice Guidelines, Professional Directions and supporting documents** are produced by CCS and apply to family consultants (both in-house and regulation 7). FCCCS also has their own practice guidelines. For both CCS and FCCCS, these internal governance documents are consistent with the Standards.

The Practice Guidelines and Professional Directions for family consultants include a clear structure for family reports and ensure that reports cover the following key issues and risks at a minimum:

- current parenting arrangements
- the history of the relationship and the dispute
- child abuse and the involvement of child protection
- family violence
- mental health
- drugs and alcohol
- the child's and each parent's views
- cultural issues, particularly for individuals of Aboriginal or Torres Strait Islander background

¹⁷ ALRC, Family Law for the Future – An Inquiry into the Family Law System, Report No 135, March 2019, p 413.

¹⁸ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 8.11(1). See also *Family Court Rules 2021* (WA) r 4.

¹⁹ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 8.11(3).

²⁰ *Ibid* r 7.13(3). See also *Family Court Rules 2021* (WA) r 271

²¹ FCoA, FCC and FCWA, [Australian Standards of Practice for Family Assessments and Reporting](#), February 2015.

These guidelines and directions are helpful in ensuring that family consultants produce comprehensive and consistent reports. However, these guidelines are not binding on, nor available to, single expert witnesses.

Stakeholders have reported concerns that family reports are too general in nature and lack focus on, minimise, or do not adequately address issues like family violence, child abuse or cultural needs.²² Stakeholders have called for greater clarity about the main issues to be included in family reports.²³

See Appendix A for a more detailed breakdown of the requirements of a family report.

Question 1: Definition of family report and family report writer

- (a) Should the terms 'family report' and 'family report writer' be defined in legislation to better clarify their purpose and application? What issues would need to be considered in defining these terms?
- (b) Should a legal definition of family report and family report writer apply to all cohorts of report writers (in-house and regulation 7 family consultants, and single expert witnesses) who undertake family and child assessments and reports?
- (c) Should a legal definition of family report writer specify which social science professionals may prepare a family report?
- (d) Should a legal definition of family report include all reports prepared by family consultants under s 62G of the Family Law Act 1975, including child impact reports and specific issues reports?
- (e) Is it appropriate to exclude specialised reports on specific issues by single expert witnesses? Is there a way to clearly differentiate between a specialised report and family report?

Question 2: Content of a family report

- (a) What minimum content should a family report require?
- (b) Should minimum content requirements be legislated or otherwise made mandatory?

Question 3: Data on single expert witnesses

- (a) What is a reasonable estimate as to the number of family reports prepared by single expert witnesses each year?
- (b) What is a reasonable estimate as to how many social workers, psychologists and psychiatrists prepare family reports in the capacity of a single expert witness each year?
- (c) How could data on the number of single expert witnesses who prepare family reports be sourced?

²² ALRC, [Review of the Family Law System](#), Discussion Paper No 86, October 2018, 257.

²³ Women's Legal Service Australia, [Submission No 45](#) to ALRC, Review of the family law system, 15 May 2018.

Part II – Competency and Quality

The department has identified four key areas where the skills and suitability of family report writers and quality of family reports could be improved: competency, screening, quality assurance, and increased transparency. Options for mechanisms implementing these improvements are outlined at the end of this part.

Competency of family report writers

Specific skills for family report writing

Family report writers need to advise the courts on what parenting arrangements they consider to be in the child's best interest. According to the Standards, family report writers should have appropriate training, qualifications and experience to:²⁴

- Form views about the parenting capacity of parents, children's relationships with their parents, and general family relationship dynamics.
- Assess the maturity of the child and the weight to be given to their views.
- Assess risk, especially for family violence, child abuse and neglect, and substance abuse.
- Observe family interactions and form assessments with an understanding of the impact of trauma.
- Engage with children in a developmentally appropriate manner to obtain and accurately represent their views.
- Interview parents about sensitive and emotional family issues in a trauma informed way.
- Understand and be sensitive to gender identity, sexual preferences, mental and physical abilities, and cultural identity.
- Understand and assess the importance of cultural factors when working with Aboriginal and Torres Strait Islander families, including:
 - connection to community and extended family, and
 - the capacity of both parents to provide the support and opportunity for the child to explore the full extent of their cultural heritage.
- Assess court documents such as affidavits and other documents filed in proceedings.
- Write reports to meet the requirements of the judge and Family Law Act.
- Appear as witnesses under cross-examination.

Stakeholders identified the need for improved professional competency in a number of key areas in submissions to the 2019 ALRC report.²⁵

- **Family violence:** Training should include the nature and dynamics of family violence, how to work with vulnerable clients, and the impact of family violence on children.
- **Responding to risk:** Professionals should be able to identify and respond to a broad range of risks, including the risk of suicide and family violence.

²⁴ FCoA, FCC and FCWA, *Australian Standards of Practice for Family Assessments and Reporting*, February 2015.

²⁵ ALRC, *Review of the Family Law System*, Discussion Paper No 86, October 2018, pp 242, 243.

- **Trauma-informed practice:** All professionals should understand the impact of trauma on adults and children. The Australian Human Rights Commission stressed the importance of family law professionals understanding the impact of trauma on children’s attachment and development and suggested that training and resources on trauma-informed practice should include the impact of intergenerational trauma on Aboriginal and Torres Strait Islander people.²⁶
- **Child abuse:** Professionals should understand the impact of child abuse, including child sexual abuse and neglect.
- **Parental conflict:** Professionals should understand the impact of high and continuing conflict on children.
- **Diversity and cultural competency:** Professionals should have an understanding of the specific family dynamics in culturally and linguistically diverse and LGBTQI+ families, and the unique challenges these families face when interacting with the family law system.²⁷
- **Aboriginal and Torres Strait Islander families:** Family report writers working with Aboriginal and Torres Strait Islander families should be culturally competent in their interactions, and able to assess how a child’s connection to kinship networks and country might be maintained. Some stakeholders have proposed that to ensure that this is properly understood and considered, family reports should be prepared by Aboriginal or Torres Strait Islander family report writers, and/or cultural reports should be prepared.²⁸ A cultural report would include information about the child’s connection to family, culture, community and country.²⁹
- **Disability:** A number of training needs relating to working with people with disability were identified, including disability awareness and human rights; intersectional discrimination; the nature and impacts of violence against people with disability; and the barriers to accessing justice faced by people with disability.³⁰

Table 1 sets out a range of skills and competencies relevant to the role of writing family reports, as identified by stakeholders in submissions to the ALRC family law report and the JSC inquiry.

²⁶ Australian Human Rights Commission, [Submission No 217](#) to ALRC, *Review of the family law system*, 15 May 2018.

²⁷ Victoria Legal Aid, [Submission No 61](#) to ALRC, *Review of the family law system*, May 2018; Rainbow Families Victoria, [Submission No 106](#) to ALRC, *Review of the family law system*, May 2018.

²⁸ National Aboriginal and Torres Strait Islander Legal Services, [Submission No 290](#) to ALRC, *Review of the family law system*, November 2018; Victorian Aboriginal Legal Service, [Submission No 101](#) to ALRC, *Review of the family law system*, August 2019.

²⁹ ALRC, [Review of the Family Law System](#), Discussion Paper No 86, October 2018, pp 242, 260.

³⁰ People with Disability Australia, [Submission No 10](#) to ALRC, *Review of the family law system*, May 2018, p 5.

Table 1: Competencies identified by stakeholders as essential to family report writing.

| Children | Complex issues | Working with diverse groups | Courts and report writing |
|--|--|---|--|
| <ul style="list-style-type: none"> Engaging with children and child inclusive practice Child developmental stages and understanding of attachment Impacts of parental separation Impacts of exposure to high conflict Importance of children's relationships with their families, kinship families and grandparents Assessing parents' capacity and willingness to care for their children | <ul style="list-style-type: none"> Identifying and assessing family and domestic violence, including coercive control Child abuse including impact of child sexual abuse and neglect Understanding the intersection of family violence, child protection and family law Impact of substance abuse and mental health on parenting Trauma informed practice and impacts of trauma on adults and children Minimising risks of systems abuse | <ul style="list-style-type: none"> Understanding disability <ul style="list-style-type: none"> human rights based approach intersectional discrimination access to justice barriers family and domestic violence against people with disabilities Aboriginal and Torres Strait Islander families <ul style="list-style-type: none"> connections to family, community, culture and country intergenerational trauma intersections of family violence and cultural competency Cultural competency LGBTIQ+ identity and family dynamics | <ul style="list-style-type: none"> Rules of evidence, acting as a witness and cross-examination Duty to help the court Understanding of bias and unconscious bias in relation to diverse groups and family violence Ability to write comprehensive and clear reports |

Question 4: Competencies and skills

- (a) What skills and competencies should family report writers have? Please provide specific details about the skill/competency.³¹
- (b) Which should be considered essential or core competencies?
- (c) Which should be considered desirable or specialised (not essential) competencies?

³¹ For example, in relation to family violence, Z Ratus, Dr S Jeffries, Dr H Menih and Professor R Field, [Submission No 166](#) to ALRC, *Family Law for the Future*, May 2018, suggested that family report writers should understand: the on-going impact of having lived with DFV on a parent and their children; the frequent continuation of DFV after separation - which partly explains the on-going hyper-vigilance and protection exercised by parents who have separated from abusive partners; the consequences of fear on the well-being of children; how this history affects the parents' post-separation behaviour, conduct and presentation during the assessment process; how charming and convincing some perpetrators can be; there are many reasons children will respond positively to the perpetrator at the assessment; the lack of capacity for selfless nurturing by many perpetrators of DFV; and how the experience of DFV may negatively impact on a parent's apparent nurturing capacity and how this may change when the perpetrator is absent.

Training in skills and competencies relevant to family report writing

CCS training

CCS has identified competencies needed for family report writing and provides relevant training to both in-house and regulation 7 family consultants. This training is not available to single expert witnesses.

In-house family consultants are required to complete a mandatory induction program. This program involves a raft of activities including face-to-face instruction, observing experienced family consultants and undertaking online modules. Induction program activities occur over the family consultant's first 6 to 9 months in the role. The program covers topics including:

- family law and family law court legislation
- the CCS clinical governance framework
- case management and records processes
- cross-examination
- family violence training³²

Regulation 7 family consultants are required to complete an orientation program of 4 to 6 hours.

Additional training is also available to all family consultants, and is mandatory for in-house family consultants. This training includes:

- The Family Violence Training Package. This is a 12-hour online package released in 2019 which includes family violence screening and assessment, the impact of family violence, reflective and trauma informed practice, and work with vulnerable groups.³³ The JSC noted that this training package and the induction could be used to inform and develop an accreditation scheme for family report writers.³⁴
- Safe & Together Model training. The Safe & Together Model is a child-centred model that assists professionals to recognise patterns of coercive controlling violence by perpetrators of abuse and protective efforts by victims of abuse. This training runs for approximately 20 hours online.
- Professional development seminars. These monthly online sessions cover a range of topics relevant to family report writing. Topics have included intimate partner violence in refugee and migrant communities, assessing children with special needs, interviewing children living with family violence, technology facilitated abuse, coercive control, and conducting family assessments with Indigenous families.

CCS's Practice Guidelines and Professional Directions, available to both in-house and regulation 7 family consultants, also aim to ensure a consistent level of competency in key areas including:

- family violence screening and assessment
- culture and diversity

³² Information provided to AGD by the family law courts during consultations in 2020.

³³ JSC, Parliament of Australia, [Improvements in Family Law Proceedings](#), Second Interim Report, March 2021, paragraph 2.132.

³⁴ Ibid, paragraph 2.140.

- working with Australia's Indigenous peoples
- risk management
- interviewing children
- conducting parent-child observations
- writing for the family law courts

FCCCS Training

For FCCCS, most induction training is provided through one-on-one support and feedback. Family consultants also receive additional training on family violence, report writing, interviewing and risk assessment.

Association of Family and Conciliation Courts

The Association of Family and Conciliation Courts Australian Chapter (AFCC), an association of professional practitioners, researchers, teachers and policymakers in family law dedicated to the resolution of family conflict,³⁵ also provide a range of introductory modules both online and in-person specifically targeted at family report writers, including:

- Introduction to Family Law
- The Legal Interface
- Assessment of Families
- Report Writing and Risk Assessment

The AFCC also provide masterclasses for family report writers in a range of subject areas, including: family violence; culturally and linguistically diverse clients; LGBTIQ+ populations; developmental considerations for children; alienation dynamics; cross-examination; and ethics in family law.³⁶

The AFCC has an endorsement program for family report writers.³⁷ To be eligible, a person must:

- Be a member of the AFCC Australian Chapter.
- Be registered as a psychologist with masters or doctoral level qualifications (which would therefore not apply to many psychologists who prepare family reports, see qualifications section below), or registered as a psychiatrist. Social workers are not eligible.
- Have at least 5 years' experience in preparing family reports.
- Provide three references in support of their application.
- Successfully complete the AFCC assessment program, including a practice report and a panel interview.

35 Association of Family and Conciliation Courts: Australian Chapter (AFCC), [AFCC Australian Chapter](#), n.d., accessed 18 August 2021.

36 AFCC, [Family Report Writer Introductory Modules](#), n.d., accessed 18 August 2021.

37 AFCC, [Family Report Writer Endorsement Policy and Practice](#), October 2020, accessed 18 August 2021.

Question 5: Training to meet competency requirements

- (a) What training courses are available that cover the skills and competencies in Table 1 or other identified skills and competencies? Please provide detail on the course name, provider, and what standards they comply with (for example do they meet the Australian Qualifications Framework?)
- (b) Are there any gaps in available skills/competency training? If so, what training modules need to be specifically developed?

Qualifications, professional registration and continuing professional development

Family report writers are from the professions of social work, psychology and psychiatry. These occupations require a minimum qualification of:

- For social workers, a 4 year full-time tertiary degree, including 1000 hours of field education.³⁸
- For psychologists, a 4 year full-time tertiary degree with 2 additional years of supervised practice (this pathway reflecting many family consultant psychologists),³⁹ or a 5 year full-time tertiary degree with 1 additional year of supervised practice, or a 6 year full-time tertiary degree including a 2 year masters.⁴⁰
- For psychiatrists, a 4 to 6 year full-time medical degree, a 1 year internship, and a 5 year fellowship program.⁴¹

Registration

The titles 'psychologist' and 'psychiatrist' are protected titles under the *Health Practitioner Regulation National Law 2009* (National Law).⁴² To use these protected titles, a person must be registered:

- with the Psychology Board of Australia, or
- with the Medical Board of Australia in the speciality of psychiatry, respectively.

Fifteen National Boards including the Psychology Board of Australia and Medical Board of Australia, work in partnership with the Australian Health Practitioner Regulation Agency (Ahpra) to regulate health practitioners under the National Registration and Accreditation Scheme.⁴³ For each profession that is part of the scheme, a National Board registers practitioners and develops standards, codes and guidelines for the profession. This can include ongoing continuing professional development (CPD) requirements.

38 Australian Association of Social Workers (AASW), [Australian Social Work Education and Accreditation Standards](#), March 2020, accessed 18 August 2021..

39 From 1 July 2022, the 4+2 pathway will close, see Psychology Board, Australian Health Practitioner Regulation Agency (Ahpra), [Retirement of the 4+2 internship program](#), February 2021, accessed 18 August 2021.

40 Australian Psychological Society (APS), [Study Pathways](#), n.d., accessed 18 August 2021.

41 The Royal Australian and New Zealand College of Psychiatrists (RANZCP), [Become a psychiatrist in Australia or New Zealand](#), n.d., accessed 18 August 2021.

42 *Health Practitioner Regulation National Law 2009* (Qld) s 113.

43 Department of Health, [National Registration and Accreditation Scheme](#), 12 May 2021, accessed 2 September 2021.

CPD can include a combination of training through courses and conferences, supervision and peer review. Psychologists are required to undertake a minimum of 30 hours of CPD per year to maintain their registration. Psychiatrists are expected to comply with the CPD requirements of the Royal Australian and New Zealand College of Psychiatrists (RANZCP),⁴⁴ the accredited organisation that is responsible for training psychiatrists and whose approved qualification leads to specialist registration. RANZCP requires that psychiatrists undertake a minimum of 50 hours of CPD annually.

There are currently no mandatory registration or accreditation requirements for social workers in Australia. Qualified social workers can choose to become members of the Australian Association of Social Workers (AASW), the professional body for social workers, and members who complete 30 hours of CPD can apply to become Accredited Social Workers.⁴⁵ The AASW have been campaigning to achieve registration in the National Registration and Accreditation Scheme.⁴⁶ Without registration, the AASW has implemented a trademark system to recognise Accredited Social Workers and strengthen the regulation of social workers.⁴⁷

Endorsed areas of practice, subspecialties and credentials

Psychologists may apply to be registered in an 'endorsed area of practice' and this will be noted on the public register of health practitioners.⁴⁸ There are nine areas of endorsement, including forensic psychology, educational and developmental psychology, and clinical psychology. To be eligible for endorsement, a psychologist must complete an approved post-graduate qualification and will need to complete up to 3000 hours of supervised practice with a Psychology Board-approved supervisor.⁴⁹

Psychiatrists can further their knowledge through membership of RANZCP subspecialty faculties.⁵⁰ Subspecialty faculties include addiction psychiatry, adult psychiatry, child and adolescent psychiatry, forensic psychiatry, consultation-liaison psychiatry, psychiatry of old age and psychotherapy. Members of RANZCP may apply for accredited membership of a faculty if they have completed the relevant Certificate of Advanced Training or have significant experience in a specialised area of psychiatry.

The AASW has a credentialing program where social workers can apply to be accredited in child protection, clinical social work, disability, family violence or mental health.⁵¹ To be eligible, the social worker must have two years of post-qualifying, full-time equivalent, supervised and specific practice experience in the past five years. Of the 30 hours of CPD required for accredited social workers, 20 hours must be linked to their area of accreditation.⁵²

None of these endorsed areas of practice, subspecialties, or credentials are specific to family report writing. However, some include skills relevant to family report writing, such as the family violence credential for social workers, and the child and adolescent subspecialty for psychiatrists.

44 Medical Board, Ahpra, [Obligations on Medical Practitioners](#), 29 September 2016, accessed 18 August 2021.

45 AASW, [Continuing Professional Development Policy](#), 18 November 2020, accessed 18 August 2021.

46 AASW, [National Registration and Accreditation Scheme](#), n.d., accessed 18 August 2021.

47 AASW, [AASW Collective Trade Marks](#), n.d., accessed 18 August 2021.

48 *Health Practitioner Regulation National Law 2009* (Qld) s 98; Ahpra, [Register of practitioners](#), n.d., accessed 2 September 2021.

49 Psychology Board of Australia, [Pathways to endorsement](#), 5 May 2020, accessed 18 August 2021. Psychologists with doctoral degrees in psychology or a combined Masters/PhD can complete 1500 or 2250 hours, respectively.

50 RANZCP, [Faculties, sections and networks](#), n.d., accessed 2 September 2021.

51 AASW, [Everything you need to know about applying for a credential](#), October 2020, accessed 18 August 2021, p 3.

52 AASW, [Continuing Professional Development Policy](#), 18 November 2020, accessed 18 August 2021, p 8.

Family report writers

There are no legislative or regulatory requirements specifying the qualifications or accreditation requirements of family report writers. The Standards provide that family report writers and assessors should:

- Generally, either be eligible for membership or a member of the AASW, or be registered as a psychologist with Ahpra.
- Meet the CPD recommendations of these bodies.
- Have professional clinical experience working with children and families.⁵³

Consistent with the Standards, as a condition of employment/appointment CCS requires in-house and regulation 7 family consultants in the Federal Circuit and Family Court of Australia to:

- Maintain their registration with Ahpra or be eligible for membership with the AASW.
- Undertake a minimum of 30 hours per year of professional development that is directly relevant to their role as a family consultant. As 30 hours per year of CPD is required for both psychologists and accredited social workers, all CPD undertaken by in-house family consultants is related to family report writing.

In-house and regulation 7 family consultants are required to advise CCS if there is any change to their Ahpra registration or eligibility for AASW membership.

In the Family Court of Western Australia, family consultants are required to be eligible for Ahpra registration or AASW membership.

Single expert witnesses are not subject to equivalent oversight or enforcement of the Standards, nor the related CPD requirements for family report writing.

Table 2: Summary of annual CPD requirements based on professions for family report writers.

| Professionals | Annual CPD hours | CPD comprised of: | | Relative to sub-specialty, endorsed area of practice or credential |
|---|---|---|--|--|
| | | Supervision/Peer review | Training/Activities | |
| Psychiatrists ⁵⁴ | 50 hours | 10 hours formal peer review or supervision | 25 hours of self-guided learning | No formal requirement but peer review groups often focus on a specific scope of practice. |
| Psychologists ^{55*} | 30 hours | 10 hours peer consultation | 20 hours activities | 1 endorsement area – 16hrs 2 endorsement areas – 15hrs each 3 endorsement areas – 10hrs each |
| Social workers (accredited) ^{56*} | 30 hours | 10 hours supervision | 15 hours (+5 hrs professional contributions) | 20 hours must be linked to that field of practice e.g. family violence |
| In-house family consultants | 30 hours (pro rata for part-time employees) | 10 hours supervision (pro rata for part-time) | | |

* In-house family consultants must ensure that these are directly relevant to their role as family report writers.

53 FCoA, FCC and FCWA, Australian Standards of Practice for Family Assessments and Reporting, February 2015.

54 RANZCP, *Continuing Professional Development Program 2021*, 2021, accessed 18 August 2021, p 6.

55 Psychology Board of Australia, *Registration Standard: Continuing Professional Development*, December 2015, accessed 18 August 2021, p 2.

56 AASW, *Continuing Professional Development Policy*, 18 November 2020, accessed 18 August 2021, p 8.

Question 6: Professional registration and membership

What registrations or memberships should be required for family report writers?

Question 7: Requiring and demonstrating competencies

- (a) Should the attainment of identified core competencies be mandated?
- (b) Are existing continuing professional development requirements sufficient or should there be specific requirements for family report writers? If so, what could this include?

Questions on how this may be achieved are located on pages 24 and 25.

Screening for suitability

Family report writers occupy a position of trust in the family law system. In addition to qualifications, skills and competencies, suitability for this position involves consideration of past and present behaviour. There is no uniform screening of family report writers, though some are screened through their professional registration bodies or as part of their employment.

Criminal history

Ahpra will conduct a criminal history check the first time a person applies for registration as a psychologist or psychiatrist.⁵⁷ The check includes disclosure of every conviction, finding of guilt and charge against the person. Practitioners must disclose any changes in their criminal history when they renew their registration. Throughout the registration period, psychologists and psychiatrists must inform the relevant National Boards if they are charged with an offence punishable by 12 months imprisonment or more, or convicted of an offence punishable by imprisonment. The onus is on practitioners to disclose any changes to their criminal history. The relevant National Board undertakes audits of criminal history declarations via random sampling and may obtain a written report about the practitioner's criminal history from law enforcement agencies at any time.

Social workers applying for AASW membership are required to disclose every conviction, charge, finding or plea of guilt, or involvement in criminal proceedings, in Australia or overseas.⁵⁸ They are also required to disclose any matters related to their fitness to practise the profession safely and effectively. Applicants are required to renew their membership each financial year, and declare any changes to their fitness to practise.⁵⁹ The onus is on the applicant to make disclosures as the AASW does not have authority to obtain criminal history.

The court runs a national police check on all new family consultants (in-house and regulation 7).

There are limitations on what a criminal history check will disclose. It will not disclose if a person is under investigation, or has been accused and investigated but not charged with an offence.

⁵⁷ Ahpra, [Criminal History](#), 18 August 2018, accessed 3 September 2021.

⁵⁸ AASW, [Membership application](#), n.d., accessed 18 August 2021.

⁵⁹ AASW, [Renewing my membership](#), n.d., accessed 18 August 2021.

Working with Children Checks or Working with Vulnerable People registrations

Some employers will require professionals to undergo and maintain a Working with Children Check (in New South Wales, the Northern Territory, Queensland, Victoria and Western Australia) or acquire a Working with Vulnerable People registration (in the Australian Capital Territory and Tasmania) prior to employment or appointment. These checks incorporate criminal history considerations and also consider:

- Information about any order imposed on the person by a court relating to child protection, apprehended violence or domestic or family violence.
- Criminal charges, including where a conviction has not been recorded because a proceeding has not been heard or finalised by a court, or where charges have been dismissed or withdrawn.
- Relevant information from disciplinary or regulatory entities.

CCS and FCCCS require their family consultants (including regulation 7 appointments) to undergo these checks prior to employment or appointment.⁶⁰

State and territory legislation outlines who is required to have a Working with Children Check or Working With Vulnerable People registration. The requirements vary across jurisdictions and typically depend on the nature of the work and frequency of engagement with children. At present, there is no requirement under Commonwealth legislation for single expert witnesses appointed as family report writers to obtain a Working with Children Check or Working with Vulnerable People registration.

Table 3: Suitability screening requirements by profession and report writer type.

| | Social worker | Psychologist | Psychiatrist |
|---|---|--|--|
| In-house family consultant | C + VP | C + VP | NA |
| Regulation 7 family consultant (on appointment) | C + VP | C + VP | NA |
| Single expert witness | Nil (unless required by an employer or state legislation) | C (VP if required by an employer or state legislation) | C (VP if required by an employer or state legislation) |

*C = Criminal History Check, VP= Working with Children Check or Working with Vulnerable People registration

Screening mechanisms, such as a Working with Children Check or Working with Vulnerable People registration, could be implemented for all cohorts of professionals engaged to prepare family reports where this is available. This would help ensure that family report writers have high standards of integrity and ethical behaviour

Fit and proper person or suitable to perform duties and functions

Factors demonstrating the suitability of a person to be engaged as a family report writer need not be limited to a person's criminal history, but could include a requirement that a person be of good character or involve an assessment of any employment disciplinary issues. For example, the 'fit and proper person' test is included in the National Law and applies to psychologists and psychiatrists.

⁶⁰ In some jurisdictions, including Queensland and the ACT, registered psychologists are exempt from the requirement to hold Working With Children Checks and Working with Vulnerable People registrations, respectively. In Queensland, some applications have been rejected as psychologists are considered ineligible to apply.

The National Board of a profession will decide whether an individual is a fit and proper person for registration.⁶¹ This test is defined in case law to include a basic level of honesty, integrity and trustworthiness, but takes its meaning from the context of the profession.⁶²

Question 8: Screening

Should family report writers be subject to suitability screening?

If so, what type of screening is relevant?

Questions on how this may be achieved are located on page 25.

Quality assurance mechanisms

Quality assurance mechanisms help ensure the ongoing quality of work. Quality assurance mechanisms can include, but are not limited to:

- Periodic supervision and peer review (psychologists are required to undertake peer consultation and psychiatrists are required to undertake formal peer review or supervision, see **Table 2**).
- Peer or specialist review in specific circumstances, such as family reports concerning Aboriginal and Torres Strait Islander families, parents or children with disability or child abuse.
- Quality assurance checklists applied by the author or by an employer.
- Reviews or audits.
- Demonstration or evidence of completion/attainment/maintenance of certain training, registration and screening requirements.

The quality assurance and oversight mechanisms specific to family report writers varies based upon the method of their employment or appointment.

Quality assurance mechanisms for family consultants

A high level of quality assurance is applied by CCS and FCCCS for in-house family consultants and the family reports they produce. Regulation 7 appointments have less oversight of their work compared to in-house family consultants. Recently, CCS has made efforts to build the quality and consistency of reports prepared by regulation 7 family consultants.

61 *Health Practitioner Regulation National Law (Qld)* s 55(1)(h)(i).

62 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, at 380; *Expetito v Victoria Police* [2013] VCAT 739 at 14.

Table 4: Current quality assurance mechanisms for family consultants.

| Mechanism applied by CCS* | In-house | Regulation 7 |
|---------------------------------------|--|---|
| Recruitment requirements | Candidates have at least 5 years relevant experience and undertake a rigorous skills and knowledge assessment. | Candidates have at least 5 years relevant experience and undertake a rigorous skills and knowledge assessment. |
| Induction | Nationally consistent, structured induction for up to 9 months (see page 12). | Nationally consistent orientation program (see page 12). |
| Supervision | Formal supervision framework. Mentoring and close supervision by a senior family consultant for the first 6 months, then 10 hours per year of direct professional supervision (pro-rata for part-time), in addition to ongoing informal supervision. | Option to contact a senior CCS staff member to discuss a case. |
| Review/audit by a senior practitioner | All reports are reviewed by a senior practitioner. Senior staff undergo training in quality assurance. | Quality assurance of the first 4 to 6 reports completed and further quality assurance as required. Annual report auditing process undertaken with all regulation 7 family consultants, where reports are randomly selected and quality assured. |
| Quality assurance checklist | A quality assurance checklist is provided for self-administration, and for use by senior CCS staff when undertaking quality assurance activities. | A quality assurance checklist is provided for self-administration, and for use by senior CCS staff when undertaking quality assurance activities. |
| Performance review | A structured performance management agreement and review is conducted. | Annual review meetings are part of the annual report auditing process. More regular reviews are conducted where concerns are identified. The court will not continue to use the regulation 7 family consultant if their work does not reach a satisfactory standard. The Regulation 7 Family Consultant Register is reviewed on a regular basis. |
| Clinical governance documents | Clinical governance documents are used to guide practice and ensure consistency (see pages 7 and 12). | Access to clinical governance documents through an online platform. A Professional Direction outlines the court's expectations of regulation 7 family consultants. |
| Training | Mandatory training requirements, including CPD to maintain currency of skills, which must be logged. CCS provides ongoing professional training to meet these requirements (see page 12). | Access to optional training provided by CCS through a platform that allows CCS to monitor which family consultants have completed it. |
| Knowledge remains up to date | Fortnightly updates are provided with recommended articles. Half a day per month is allocated to reviewing this research. Attendance at monthly CCS professional development seminars. | Fortnightly updates are provided with recommended articles. There is also a quarterly newsletter for regulation 7 family consultants, outlining operational and clinical issues as well as emerging research. Invitations to attend monthly CCS professional development seminars. |

*Since February 2021, a National Regulation 7 Family Consultant Coordinator manages many of the mechanisms outlined above for regulation 7 family consultants.

While the courts can set expectations and requirements relevant to the role, there is no statutory regime for the management and removal of regulation 7 family consultants once they are appointed. As a statutory appointment, any decision to remove a person from appointment is potentially subject to administrative review. For FCCCS, quality assurance includes regular supervision by a line manager, regular review and approval of reports by a line manager, and training and professional development opportunities as required and relevant.

Single expert witnesses

There is no independent professional quality oversight for family reports prepared by single expert witnesses. The Psychology Board requires psychologists to participate in a minimum of 10 hours of peer consultation to meet registration standards. RANZCP requires psychiatrists to complete 10 hours of formal peer review activities. These requirements do not mandate supervision in family report writing. If the expert has an employer, they may be required to engage in additional supervision as a requirement of their contract.

Question 9: Need for quality assurance mechanisms for family report writers

Should all family report writers be subject to quality assurance mechanisms as part of their appointment/employment?

Questions on how this may be achieved are located on pages 24 and 25.

Transparency

Prior to the appointment of a family report writer, the extent to which all parties are aware of the report writer's qualifications, experiences, competencies and specialisations is unclear.

The ALRC family law report proposed that the department maintain a publicly available list of accredited family report writers including details on qualifications and experience.⁶³ This would enable parties to ascertain whether a proposed report writer has acquired and maintained the relevant competencies and would address calls for greater transparency and consumer choice in the selection of family report writers. The JSC also noted that professionals who are appropriately qualified and have undertaken family violence training should be easily identifiable to parties who wish to use their own expert.⁶⁴

All family report writers are advised that they should provide particulars of their qualifications and experience as part of their report.⁶⁵ Single expert witnesses are also required by the rules to state their qualifications.⁶⁶

⁶³ ALRC, *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135, March 2019, p 410.

⁶⁴ JSC, Parliament of Australia, *Improvements in Family Law Proceedings*, Second Interim Report, March 2021, paragraph 2.140.

⁶⁵ FCoA, FCC and FCWA, *Australian Standards of Practice for Family Assessments and Reporting*, February 2015.

⁶⁶ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 7.22(2)(a).

Publicly available information

Ahpra maintains a public register of practitioners, which includes all individuals registered as psychologists and psychiatrists.⁶⁷ The public register provides information on:

- the registration type and expiry date
- the status of the practitioner
- any endorsements
- notations
- conditions
- any undertakings or reprimands as a result of complaint investigations.

The list does not specifically identify family report writers or competencies relevant to family report writing.

Ahpra also publishes a list of practitioners who have had their registration cancelled.⁶⁸ However, if a practitioner has not renewed their registration, or has surrendered their registration, any subsequent adverse findings are not available on this register unless ordered by a tribunal, in which case the practitioner's name and any adverse findings will be published.

Names of professionals who are members of associations may be available on membership lists. However, these lists do not provide advice on whether their members are family report writers.

The **RANZCP member list**⁶⁹ provides a list of psychiatrists, with search functions including languages spoken, location, experience, expertise, treating age groups and the services they offer. The list requires practitioners to 'opt in'. A search of all Australian members (without filters) resulted in only 1103 practitioners out of a possible 5353.⁷⁰

The **AASW membership practitioner list**⁷¹ provides a search function that filters for location, client type and expertise or interest areas including mental health, substance abuse, trauma/harm, skill development, relationships, and workplace needs. It provides a filter for specialist support such as legal (including family law and court reports), consulting, and language preference.

The **Australian Psychological Society (APS) membership list**⁷² is an optional list for members and includes the ability to search by issue, name, location and area of practice.

Question 10: Public sources of information on family report writers

- (a) Is there sufficient information available to families about the skills and qualifications of family report writers? Where is this information available?
- (b) What information should be available to the public and parties about family report writers that is not currently available?

Questions on how this may be achieved are located on pages 24 and 25.

⁶⁷ Ahpra, [Register of practitioners](#), n.d., accessed 2 September 2021.

⁶⁸ Ahpra, [Cancelled, disqualified and/or prohibited health practitioners](#), 8 July 2020, accessed 18 August 2021.

⁶⁹ Your Health in Mind and RANZCP, [Find a psychiatrist](#), n.d., accessed 3 September 2021.

⁷⁰ As at 3 September 2021.

⁷¹ AASW, [Find a Social Worker](#), n.d., accessed 18 August 2021.

⁷² APS, [Find a Psychologist](#), n.d., accessed 18 August 2021.

Implementing options for enhancing competency and quality assurance mechanisms

This paper has outlined the various areas in which the competency of family report writers could be demonstrated or improved. The mechanisms needed to assure the competency of family report writers and quality of family reports, and which entity, or combination of entities, is best placed to oversee implementation and compliance must be considered. The choice of mechanism and entity needs to account for the cost and benefits of implementation, and include consideration of existing resources and regulatory frameworks, with a view to minimise duplication of functions and ensure a proportionate and efficient regulatory response.

List of mechanisms

Revised standards: The standards, which are now 6 years old, could be revised in line with stakeholder feedback to ensure they are fit for purpose.

Mandated standards: All professionals engaged in family report writing could be required to meet a minimum standard prescribed by regulations. Standards could include:

- minimum qualifications, skills and competencies
- required training on specific competencies
- registration requirements
- the need for a vulnerable persons/children check

For example, elements or extracts of the *Standards of Practice for Family Assessments and Reporting* could be made legally binding, or the Practice Guidelines or Professional Directions relevant to family report writing could be extended to single expert witnesses.

Declaration: All professionals engaged in family report writing could be required to complete a competency declaration prior to being able to be appointed as a family report writer. A pro forma declaration could require information specific to the professional's education, qualifications and work experience relevant to report writing; identify relevant competencies, training and CPD acquired; declare any registrations or memberships; outline relevant screening checks; and confirm any quality assurance requirements that have been met (for example, employer oversight, peer review and mentoring/supervision).

Training and CPD: Key industry bodies could establish or endorse training sufficient to meet relevant family report writing competencies. A specific family report writer training program aimed at achieving or recognising agreed competencies could also be developed.

Quality assurance documents: Quality assurance checklists could be developed and made available to support all family report writers to produce high quality family reports and assessments.

Quality assurance processes: Family report writers could be required to have all or some of their reports reviewed by another professional at specified periods. Similar to CCS and FCCCS processes, new family report writers could be required to work under the supervision of a more experienced report writer for their first few reports.

Auditing of reports: Family report writers could be required to provide their reports to a suitably qualified auditing entity on a prescribed basis for the purposes of quality assurance.

Public register: A public register of family report writers could be developed where professionals outline their relevant qualifications and expertise.

Registration requirements: Family report writers could be required to register with a relevant registration body. Registration could provide recognition that a person engages in CPD, has certain competencies, and meets relevant screening tests.

Accreditation scheme: Accreditation is the act of granting formal recognition that the services provided by that entity or person, are delivered to or exceed a pre-determined set of minimum quality standards covering a range of service delivery aspects. Similar to and an extension of a registration process, this could involve an application and assessment process showing the individual has appropriate qualifications and competencies and has met relevant screening tests. An individual could be required to verify that they have undertaken CPD to maintain accreditation.

Question 11: Mechanisms to ensure competent writers and quality reports

- (a) What approaches would best assure family report writer competency and report quality?
- (b) To what extent can existing approaches be utilised or enhanced, or do new ones need to be established?
- (c) How would the approach(es) apply consistently and fairly for all report writers and manage the risk of deterring qualified professionals from undertaking the family report writer role? Do different mechanisms need to apply based on appointment type or profession?

Question 12: Information availability

What approaches would best ensure that information about family report writer qualifications/skills/competencies is made available for family law system users (for example, a public register, a declaration)?

Establishment and oversight

A range of individuals and entities, from family report writers themselves through to a statutory regulator, could have a role in establishing competency requirements for family report writers and overseeing compliance. The department seeks feedback on the most appropriate mechanisms and entities to implement or manage these approaches.

Table 5: Entities that could provide for competency and quality assurance of family reports and report writers.

| Family report writers | Parties/lawyers | Judges |
|---|--|--|
| <ul style="list-style-type: none"> Self-declaration provided to parties and the court before an appointment can be finalised Self-declaration completed and published on a public website for access by parties/lawyers | <ul style="list-style-type: none"> Provided with a report writer's declaration/qualifications before an appointment is confirmed May cross-examine the report writer at trial | <ul style="list-style-type: none"> Require a declaration from a report writer that they meet relevant standards, prior to an appointment |
| Court employment services | Private employers | Professional training providers |
| <ul style="list-style-type: none"> Establish and provide relevant training courses Quality assure family reports Facilitate audits of reports Maintain declaration register for family consultants Ensure currency of criminal record and working with children/vulnerable people checks | <ul style="list-style-type: none"> Ensure CPD in relevant courses concerning family report writers Ensure quality assurance requirements are met, including working with children/vulnerable people checks | <ul style="list-style-type: none"> Develop and provide training and CPD courses relevant to report writing |
| Industry associations | Existing regulators of family report writer professions | Government/new statutory regulator |
| <ul style="list-style-type: none"> Establish or recognise training in relevant report writing competencies Maintain register of declarations and information of report writer professionals including competencies and CPD Provide a quality assurance or audit function | <ul style="list-style-type: none"> Maintain criminal history checks as part of professional registration Auditing and review of family reports when a complaint has been made and evidence received | <ul style="list-style-type: none"> Facilitate family report audits Establish and maintain a public registration/accreditation scheme Establish and maintain a website of declarations, or registered or accredited family report writers Implement legislation to establish and underpin competency requirements |

Question 13: Appropriate entities to establish and oversee competency and quality

Which entity or combination of entities is well placed to:

- ensure and assess competency
- establish training modules to address identified competency requirements
- conduct training in identified competency requirements
- screen family report writers for suitability
- assess the quality of reports, and/or
- maintain and facilitate public visibility of family report writers and their competencies.

Part III – Complaints and Accountability

A complaint mechanism for professional services enables relevant members of the public to raise issues and have these investigated and resolved. An effective complaint mechanism is particularly important where a decision or service of a professional can impact on an individual's or the public's health and wellbeing. An effective complaint mechanism can improve the reputation of a profession, enhance public trust, increase the satisfaction of users, and provide data on scope for improvement. Good complaint handling is accessible, timely and fair.⁷⁴

There is currently no single complaints entity for family report writers. The available complaints mechanisms vary based on the profession of the report writer (psychologist, psychiatrist or social worker) and how they are appointed (as a court employee, regulation 7 appointment or appointed by the parties as a single expert witness). The courts, regulatory authorities, professional associations and employers may receive and investigate complaints related to the competency, performance and conduct of professionals who undertake family reports. However, each of these entities has limitations in how they can assess and respond to the complaint. The complaint process for family report writers has been described by stakeholders as 'unclear' and 'almost impossible'.⁷⁵ The JSC recommended the establishment of complaints mechanisms for all categories of family report writers, noting this would provide parties with an avenue to address perceived bias or incompetence.⁷⁶

Types of complaints that have been made about family report writers include report writers misconstruing facts, short interviews which are insufficient to make appropriate recommendations and minimising allegations of family violence and abuse.⁷⁷

This section sets out information about the existing avenues of complaint for family report writers, their limitations, and the risks and issues that must be addressed in considering the potential establishment of new or enhanced complaints mechanisms.

Court-based review of family report writer complaints

Cross-examination

Family reports and assessments are admitted into evidence and the court's role is to establish the truth of the evidence and the weight it will be given.⁷⁸ The expectation is that concerns relating to a family report or family report writer are to be raised within proceedings and tested through cross-examination.⁷⁹

Cross-examination is an essential feature of the adversarial trial system. The purpose of cross-examination is to test and challenge evidence, and to obtain the response of the witness.⁸⁰ The benefits of this approach for family reports is that a complaint can be raised and addressed within a reasonable timeframe, and considered with other evidence. The judge takes into account all issues and evidence and makes decisions in the best interests of the child. Cross-examination also retains the privacy of the parties in the matter. This approach is consistent with the way other expert evidence is treated by the courts.

⁷³ ALRC, *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135, March 2019, p 410.

⁷⁴ NSW Ombudsman, *Effective complaint handling guidelines*, 28 February 2017, accessed 18 August 2021.

⁷⁵ Rathus, Jeffries, Menih and Field, *Submission No 700* to JSC, *Improvements in Family Law Proceedings*, January 2020, 17; Women's Legal Service Australia, *Submission No 80* to Senate Community Affairs References Committee, *Complaints Mechanisms Administered under the Health Practitioner Regulation National Law*, February 2017, p 4.

⁷⁶ JSC, Parliament of Australia, *Improvements in Family Law Proceedings*, Second Interim Report, March 2021, paragraph 2.121.

⁷⁷ Ahpra pers com 24 July 2020; Ms Z Rathus, Dr S Jeffries, Dr H Menih and Professor R Field, *Submission No 166* to ALRC, *Family Law for the Future* (May 2018) 14.

⁷⁸ *Family Law Act 1975* (Cth) s 62G(2); *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) rr 8.11(5)(b), 7.03(2), 7.04(1); *Family Court Rules 2021* (WA) r 235(b).

⁷⁹ Federal Circuit and Family Court of Australia, *Complaints Policy*, 1 September 2021.

⁸⁰ Law Council of Australia, *Submission No 26* to Senate Legal and Community Affairs Legislation Committee, *Family Law Amendment (Family Violence and Cross-examination of Parties) Bill*, July 2018, 7.

However, as a mechanism to address complaints, cross-examination of family report writers and their reports has a number of limitations:

- It can be difficult for unrepresented litigants to conduct effective cross-examination.
- While capable of testing the evidence base for assertions in the report, lawyers or litigants may not have the skills or knowledge to test the professional competency of the report writer properly.
- Most matters resolve before trial and parties are frequently encouraged to resolve matters before trial once a family report is available, therefore reports and report writers may not be subject to cross-examination.
- The cost of cross-examination is to be met by the cross-examining party and therefore their ability to challenge the report is subject to their ability to pay for the expert's attendance.⁸¹
- As any issue or complaint may be cross-examined, the cross-examination process enables litigants to raise and prosecute vexatious complaints concerning the family report writer that may not relate to the competency of the report writer or their assessment.
- Cross-examination requires the professional report writer to defend their competency, if it is challenged, potentially in an emotional, hostile and adversarial environment.
- Cross-examination does not enable a broader picture to be gained of professionals who are subject to multiple complaints.⁸²

Complaints to the family law courts

A senior practitioner at CCS or FCCCS will review all complaints made to the court about family consultants.⁸³ This includes reviewing the report and any other relevant documents. CCS or FCCCS may take a number of internal actions if considered warranted. This includes raising thematic issues with the family consultant during supervision or providing specific training. The complainant is advised that their complaint has been closely reviewed by a senior practitioner and that their feedback will be used for continual improvement and training purposes. They are also advised that the appropriate forum for raising their concerns is in the course of the proceedings. Family consultants are not advised that there is a complaint against them while the matter is still before the court.

The courts, CCS or FCCCS may notify Ahpra if they have specific concerns about a psychologist's professionalism or conduct. As social workers do not have a regulator, they cannot be referred to one.

Complaints about single expert witnesses are not considered by CCS or FCCCS, unless the single expert witness is also on the Regulation 7 Family Consultant Register.

81 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 7.09(3).

82 Ms Z Rathus, Dr S Jeffries, Dr H Menih and Professor R Field, [Submission No 166](#) to ALRC, *Family Law for the Future*, May 2018, 14.

83 Federal Circuit and Family Court of Australia, [Complaints Policy](#), 1 September 2021.

Review of complaints by external authorities

Ahpra (excluding New South Wales and Queensland)

A National Board can determine whether a psychologist or psychiatrist should be investigated. An investigation may be undertaken because the relevant National Board receives a notification about a practitioner, or for any reason. Social workers are not regulated by Ahpra or another regulatory body. As noted above, the AASW has been campaigning to join the National Regulation and Accreditation Scheme, to improve the regulatory requirements for social workers.

General complaints process

Notifiable conduct

A notification made to a National Board is managed administratively by Ahpra. The grounds for notifications are set out in sections 141-144 of the National Law, including:

- Mandatory notifications:
 - Practising while intoxicated by alcohol or drugs
 - Engaging in sexual misconduct in connection with the professional's practice
 - Placing the public at risk of substantial harm because of an impairment
 - Placing the public at risk of harm by practising in a way that constitutes a significant departure from accepted professional standards.
- Voluntary notifications:
 - Conduct, knowledge, skills or judgement of a lesser standard than that which might reasonably be expected of the practitioner
 - Contraventions of the National Law or a condition of the practitioner's registration.

Each notification is presented by Ahpra to a delegate of the National Board. The delegate will determine the pathway a notification will follow under the National Law.⁸⁴

Assessment

All notifications received are assessed. The practitioner who is the subject of a notification will usually be contacted to respond to the information contained in the notification.

Assessment involves considering:⁸⁵

- the information provided with the notification
- the response provided by the practitioner (where this is sought)
- the practice setting and the nature of the practitioner's practice
- regulatory history information about the practitioner, including their notification and disclosure history
- whether appropriate risk controls have been implemented by the practitioner in response to the notified information or by an organisation responsible for the delivery of health services.

⁸⁴ *Health Practitioner Regulation National Law 2009* (Qld) s 150.

⁸⁵ Ahpra and National Boards, [Assessing notifications](#), 26 November 2020, accessed 3 September 2021.

After assessment, a National Board can:

- **Close the matter**, where the concern is misconceived, lacking in substance, frivolous, vexatious, has been adequately dealt with by the practitioner, their workplace or another entity, or if there is no risk to the public.
- **Take a regulatory action** under the National Law, which can include issuing a caution, accepting an undertaking, or imposing conditions with a focus on improvement when the actions of an individual or health service are not enough.
- Refer the health practitioner **for investigation**.
- Refer the health practitioner **for a health or performance assessment**.

Where the concerns are serious and the risk to the public is significant, an investigation is likely to occur. National Boards can also take immediate action to limit or restrict a practitioner from practising their profession while an investigation is carried out where the risk is serious or there are public interest grounds for taking interim action.

Investigation

An investigation will consider whether a practitioner has complied with a National Board's registration standards, codes and guidelines.⁸⁶ Information required for the investigation may include:

- information from the person who raised their concern with the National Board (the notifier)
- responses and explanations from the practitioner being investigated
- contents of patient records
- information or statements from other practitioners who may be involved
- information or statements from witnesses (for example, family members, other patients or staff members)
- independent opinions from experts or information from professional bodies
- police reports, and/or
- information from other sources such as pharmacy records, health insurers or Medicare Australia.

The investigator will prepare a confidential report for the relevant National Board.

Complaints process – Family report writers

When Ahpra receives a complaint about a psychologist or psychiatrist in the context of preparing a family report, it is mindful of the need to ensure family law proceedings that might be on foot are not prejudiced. During assessment, Ahpra writes to the relevant court to enquire as to the status of proceedings, and may enquire as to the practitioner's method of engagement for the purposes of preparing the family report. Ahpra will also ask if there has been any comment made within a judgment of the court about the conduct of the practitioner or the contents of the practitioner's report, and if so, asks the court to provide a copy or details of that section of the judgment. Where such comment or judgment has been made, this is provided to Ahpra.

⁸⁶ Ahpra and National Boards, [Investigating practitioners](#), 16 November 2020, accessed 19 August 2021.

Historically, complaints were often put on hold and were not investigated until the court matter had been finalised. Today, with information sourced from the relevant courts, Ahpra tends to recommend that the relevant National Board takes no action on the notification if the complainant is involved in ongoing proceedings and can challenge the recommendations of the family report through cross-examination. If the complaint concerns a serious risk, including inappropriate behaviour towards parties, a preliminary assessment will be undertaken and immediate action will be taken if it is necessary to protect the public and ensure the behaviour is not continued.

Where proceedings are concluded, Ahpra is more likely to recommend action by the relevant National Board in relation to a registered practitioner if the court had been critical of the behaviour, conduct or performance of the practitioner during their engagement to prepare the family report.

Powers and actions available to National Boards

Once a concern is raised with a National Board regarding a practitioner's behaviour or conduct, action may be taken resulting in a number of possible outcomes:⁸⁷

- **No further action:** Either because there is no ongoing risk identified, or the actions taken by the practitioner and their workplace are enough to manage future risk.
- **Undertaking:** A National Board may accept a voluntary undertaking from a practitioner. This becomes a legal obligation on the practitioner and there is no right of appeal. Accepted undertakings are published on the register of practitioners.
- **Conditions:** A National Board may impose a condition on a practitioner's registration to either compel or prevent them from doing something. Conditions are published on the public register but are removed when a National Board decides they are no longer necessary to protect the public.
- **Caution:** A National Board may caution a practitioner with a written warning. Cautions are not usually recorded on the public register but may be if the Board considers it appropriate.
- **Suspension:** A National Board may suspend a practitioner if they believe the practitioner presents a serious and immediate risk to the public and a suspension is the proportionate way to address that risk. A National Board may refer a matter to a tribunal or health panel, who may suspend the practitioner's registration.
- **Reprimand:** A National Board can issue a reprimand as a formal way of rebuking or expressing disapproval of a practitioners conduct. A reprimand can occur after a performance or professional standards panel by a National Board, or after a hearing by a tribunal. Reprimands are published on the public register.
- **Cancellation of registration:** Health practitioners' registrations can only be cancelled by a court or tribunal. Once registration has been cancelled, the practitioner is forbidden from practising in the profession. This is recorded on the 'Register of cancelled, disqualified and/or prohibited health practitioners'.

⁸⁷ Ahpra and National Boards, [Possible outcomes](#), 16 November 2020, accessed 19 August 2021

Health complaints processes in New South Wales and Queensland

Notifications processes are different in New South Wales and Queensland.

New South Wales

In NSW, all investigations of notifications or complaints of health practitioners are undertaken by the Health Professional Councils (supported by the Health Professional Councils Authority) or the Health Care Complaints Commission, not Ahpra and National Boards.⁸⁸

Grounds for making a notification or complaint in NSW are outlined in section 7 of the *Health Care Complaints Act 1993* and include complaints concerning the professional conduct of a health practitioner or health service which affects or is likely to affect, the clinical management or care of an individual client.

The Health Care Complaints Commission in NSW notes on its website that the Commission may determine not to take further action on a complaint about medico-legal assessments and family court reports, as 'it is not uncommon for people to disagree with the content of a medico-legal or family court report'.⁸⁹ The website states that 'the correct body to make a complaint or appeal to is the body that has requested the report' and refers visitors to the website of the Federal Circuit and Family Court of Australia.

Queensland

In Queensland, complaints are first made to the Queensland Office of the Health Ombudsman who is required to retain serious matters and may manage any matter directly or refer it to the appropriate National Board for action.⁹⁰

Professional associations

Complaints about family report writers can also be made to relevant professional bodies, such as the AASW or the APS. However, this is contingent on the professionals having a membership with that organisation.

Social workers who are members of the AASW may be subject to complaints of serious professional misconduct under the AASW Code of Ethics, which can result in suspension or cancellation of their AASW membership.⁹¹

Psychologists who are members of the APS can have complaints made against them by other members for breaches of the APS Code of Ethics. These complaints are considered by the APS Ethics Committee. Complaints are usually referred to Ahpra and the Psychology Board of Australia.⁹²

Psychiatrists can only be investigated by Ahpra and the National Medical Board. RANZCP does not have the authority to investigate complaints about psychiatrists.⁹³

88 Ahpra and National Boards, NSW and Qld, 16 November 2020, accessed 19 August 2021.

89 A Health Care Complaints Commission (HCCC), [Make a complaint: The content of a medico-legal or family court report](#), n.d., accessed 19 August 2021; HCCC, [Frequently Asked Questions – Health Consumers](#), 3 June 2020, accessed 19 August 2021.

90 Office of the Health Ombudsman, [Working with Ahpra](#), n.d., accessed 19 August 2021.

91 AASW, [How to make an Ethics Complaint](#), n.d., accessed 19 August 2021.

92 APS, [Public complaints about psychologists](#), n.d., accessed 19 August 2021.

93 RANZCP, [Complaints about psychiatrists](#), n.d., accessed 19 August 2021.

Limitations on receiving evidence from family law matters

Restrictions apply to the sharing of family reports. In practice this limits reports being received by Ahpra and the AASW for complaint investigation.

Section 121

Section 121 of the Family Law Act provides that a person who publishes (or otherwise disseminates to the public or a section of the public), any personal identifying information of a family law proceedings or any part of the proceedings commits an offence. This applies to information identifying a party to the proceedings, as well as a witness in the proceedings or a person who is 'in any other way concerned in the matter to which the proceedings relate'. This includes family report writers.

Provision of evidence

Section 121 is designed to protect the privacy of families and children from sensational and intrusive media reporting. Case law provides that the prohibition in section 121 'should be taken as a reference to widespread communication with the aim of reaching a large audience'.⁹⁴ Section 121 expressly does not apply to communications to a disciplining body of the legal profession.⁹⁵ There is no such express exclusion for social science or medical professionals or regulators. The ALRC noted that section 121 has caused 'considerable confusion',⁹⁶ and differing views persist, including that a report cannot be provided to other statutory bodies unless the court has made an order authorising it.⁹⁷ The ALRC recommended that section 121 be redrafted to clarify the scope and operation of the privacy obligations owed under the Act.⁹⁸ The Government has agreed to this recommendation.⁹⁹

The JSC noted that while the Standards provide that a social worker should be a member of the AASW, the AASW considers it is not able to investigate complaints if investigation would require access to a family report.¹⁰⁰ If a social worker who prepares a family report engages in professional ethical misconduct incidental to the contents of a report, but not directly related to the content of a report, this may be addressed either by the courts or the AASW, as appropriate, following the conclusion of the court matter.

The JSC supported further consideration of an amendment to section 121 to allow independent professional bodies to consider misconduct of their members.¹⁰¹

Publishing the identity of a family report writer

The JSC also supported further consideration of amendments to section 121 that would allow independent professional bodies to report publicly on any negative findings. Section 121 currently operates to prevent publishing the identity of a family report writer who has been disciplined by a regulator or professional body, or charged or convicted.¹⁰² This prevents parties from having full information before engaging a report writer. The JSC stated that the identification of these family report writers would be in the public interest as it would increase transparency and parties' confidence in the family report writer.

⁹⁴ *Re Edelsten; Ex parte Donnelly* [1988] 18 FCR 434 at 436.

⁹⁵ *Family Law Act 1975* (Cth) s 121(9)(b).

⁹⁶ ALRC, *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135, March 2019, paragraph 14.70.

⁹⁷ Prof Richard Chisholm, *The Sharing of Experts' Reports Between the Child Protection System and the Family Law System*, March 2014, p 19.

⁹⁸ ALRC, *Family Law for the Future – An Inquiry into the Family Law System*, Report No 135, March 2019, recommendation 56.

⁹⁹ Australian Government, *Government Response to ALRC Report 135: Family Law for the Future – An Inquiry into the Family Law System*, March 2021, 43.

¹⁰⁰ JSC, Parliament of Australia, *Improvements in Family Law Proceedings*, Second Interim Report, March 2021, paragraph 2.133, citing AASW, *Complaints relating to Social Workers and the Family Court of Australia and Federal Circuit Court of Australia*, July 2014.

¹⁰¹ *Ibid*, paragraph 2.146.

¹⁰² *Ibid*, paragraph 2.138.

Some stakeholders have suggested that section 121 should be amended so it does not apply to family consultants and expert witnesses at all.¹⁰³ This would mean journalists could publish the names of family report writers, regardless of any negative findings by a professional body. These stakeholders argue that the current lack of transparency prevents journalists from informing the public when an independent expert witness is found guilty of misconduct or charged with criminal offences.¹⁰⁴ These stakeholders also argue that s 121 prevents the identification of patterns by researchers, including the frequency of reports provided by particular experts, and how they are used and applied in the judge's decision.

Rules of court

The *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* and *Family Court Rules 2021 (WA)* provide that the court may identify who a copy of a family report prepared by a family consultant may or may not be shared with.¹⁰⁵ If the court gives a copy of a family report to a person, a notice stating the people who may receive a copy of the report, along with the potential consequences for unauthorised publication of information contained in the report, must be included. The rules also provide that the court may order that a report prepared by a single expert witness not be released to a person, or that access to the report be restricted.¹⁰⁶

Standing orders

In the Family Court of Western Australia, there are standing orders prohibiting the sharing of single experts' reports or complaints being made about single expert witnesses without first obtaining leave of the court.¹⁰⁷ The standing orders provide:

1. The parties and the Independent Children's Lawyer be restrained and an injunction is hereby granted restraining each of them from providing copies of any Single Expert's report prepared for the purpose of these proceedings, or permitting any other person to do so, to any person or entity other than their solicitor or counsel in these proceedings, without first obtaining leave of the court.
2. The parties and the Independent Children's Lawyer be restrained and an injunction is hereby granted restraining each of them from making any complaint to a professional body or association concerning the conduct of the Single Expert or concerning the content of the Single Expert's report, or permitting any other person to do so, without first obtaining leave of the court.
3. The preceding orders shall remain in full force and effect following completion of the proceedings.
4. For the purposes of the preceding orders, leave of the court may be sought by:
 - a. the filing of a written request by the Independent Children's Lawyer, copied to both parties to the proceedings;
 - b. the filing of a Minute of Consent orders signed by the Independent Children's Lawyer and all parties or their legal representatives; or
 - c. by a formal application with a brief affidavit in support.

¹⁰³ Evidence to JSC - Improvements in family law proceedings, [Dr David Curtl, For Kids Sake Chief Executive Officer](#), 12 March 2020, p 44.

¹⁰⁴ Australia's Right to Know, [Submission No 530](#) to JSC, *Improvements in family law proceedings*, January 2020.

¹⁰⁵ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 8.11(6) and *Family Court Rules 2021* (WA) r 235

¹⁰⁶ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 7.05(h). and *Family Court Rules 2021* (WA) r 271

¹⁰⁷ AFCC, [Submission No 38](#) to Senate Standing Committee on Community Affairs, *Complaints Mechanism Administered under the Health Practitioner Regulation National Law*, 2017.

Issues and risks in investigating complaints about family report writers

The investigation of complaints about family report writers arising from family law proceedings presents a range of challenges and issues, particularly in fairly and appropriately balancing the needs of the parties, the courts, the report writer and the public. Particular issues and challenges are discussed below.

Vexatious and malicious complaints

The nature of family report writing, which assesses and critiques parenting capabilities and recommends parenting arrangements, is prone to attracting complaints from dissatisfied parties.¹⁰⁸ This is reportedly at a greater rate than complaints received for other areas of professional practice, and theoretically could apply to every matter where a report writer is involved.¹⁰⁹ Complaints may not be truthful and may be made for strategic reasons of delaying proceedings, or in the hope that a new family report writer may be appointed that may be more favourable to the complainant.¹¹⁰ Other complaints may be made with malicious intent, seeking revenge on the report writer. Social media is a tool frequently used by disgruntled parties to vilify a report writer. Exposure to this type of criticism can be a disincentive to professionals practicing in this area.

Complaints and delayed resolution can deter professionals from undertaking the report writing function

Being the subject of a complaint to a regulator or authority can be a stressful and time-consuming process. The average time taken to complete an investigation by Ahpra is 175 days.¹¹¹ Having a report writer subject to multiple unmeritorious or malicious complaints, unless they are resolved early in the process, would be a further disincentive to undertaking such a role, and there is a risk that professionals would opt out of report writing. A long delay in assessing complaints is also problematic for families where the report is crucial to the establishment of parenting arrangements. Family report writers who are social workers are not currently subject to similar regulatory review.

Some family report writers are potentially subject to multiple complaint avenues. For psychologists this includes cross-examination (which is often an adversarial interrogation); review by an employer such as CCS for in-house family consultants; Ahpra if a complaint is made to the regulator and also potentially the APS if they are a member. An investigation by Ahpra also has implications for the psychologist's entire professional practice, and not just family report writing.

A legal and evidentiary process

Family report writers provide forensic services for the purpose of providing expert evidence to the court.¹¹² A family report aims to assist the court by providing an assessment from a social science perspective and is considered in the broader context of evidence. This forensic role is different to a health care and therapeutic treatment model of practice, although clearly draws on those assessment skills.

108 Australian Psychological Society Family Law and Psychology Interest Group, [Submission No 10](#) to Senate Standing Committee on Finance and Public Administration, *Inquiry into the administration of health practitioner registration by Ahpra*, 11 April 2011, p 1.

109 AFCC, [Submission No 232](#) to ALRC, *Review of the family law system*, 21 May 2018, p 47.

110 Australian Psychological Society Family Law and Psychology Interest Group, [Submission No 10](#) to Senate Standing Committee on Finance and Public Administration, *Inquiry into the administration of health practitioner registration by Ahpra*, 11 April 2011, p 2.

111 *Ahpra pers com* 24 July 2020.

112 *Family Law Act 1975* (Cth) s 62G(8); *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* rr 8.11(5)(b), 7.03, 7.04.

Risk of impeding court proceedings

The best timeframe for investigation of complaints is an important and complex consideration. While it is desirable that investigations do not stall parenting proceedings, which are already often long in duration, adverse conduct or performance affecting a family report may also need to be addressed as soon as possible.

Impact on judicial decision if a complaint is upheld

If an investigation of a complaint results in a finding that the report writer's professional standards or conduct did not meet professional requirements, it does not necessarily follow that the decision in the matter was compromised. Judges rely on reports to varying degrees that differ from matter to matter.

Managing risk of bias

Becoming aware of a complaint lodged during proceedings could risk the objective and impartial assessment of a report writer. Contacting a family report writer to inform them of a complaint by a family law litigant during proceedings may compromise the practitioner and raise issues of apprehended bias.¹¹³ This may impact the quality and integrity of a report, or performance as a witness at a trial, or otherwise result in the removal of a family report writer from the matter, adding further cost and delay.

Privacy considerations

The privacy of parties to family law matters is to be protected during and after proceedings. Family reports often contain sensitive information about family violence and other personal issues. Any use of a family report outside of the court system should account for this. The JSC stated that it would be in the public interest for independent professional bodies to report publicly on negative findings and identify particular family consultants, and this could be done without identifying the parties to the proceedings.¹¹⁴

Ensuring accountability of practitioners and protecting parties and children

If family report writers are not subject to an appropriately robust complaints review process, there is a risk that some may be able to practice at a low or dangerous standard. In those matters where judges place significant reliance on a report, this could severely compromise the wellbeing of children and their caregivers. Some stakeholders speak of the difficulty in complaining about 'repeat offender' family report writers whose reports seem to repeatedly deal inadequately, or minimise, allegations of family violence and child abuse.¹¹⁵

113 AFCC, [Submission No 232](#) to ALRC, *Review of the family law system*, 21 May 2018, p 50.

114 JSC, Parliament of Australia, [Improvements in Family Law Proceedings](#), Second Interim Report, March 2021, paragraph 2.146.

115 Rathus, Jeffries, Menih and Field, [Submission No 700](#) to JSC, *Improvements in Family Law Proceedings*, January 2020, p 17; Women's Legal Service Australia, [Submission No 80](#) to Senate Community Affairs References Committee, *Complaints Mechanisms Administered under the Health Practitioner Regulation National Law*, February 2017, p 4.

Establishing effective complaints mechanisms

Improving the investigation and assessment of complaints

A number of approaches have been proposed by stakeholders to improve avenues for making complaints and the processes of assessing complaints concerning family report writers. A non-exhaustive list is provided below.

Amendments to section 121: Subsection 121(9) of the Family Law Act could be amended to enable family reports and other relevant evidence to be shared with relevant investigative entities.

Complaints screening process: To avoid unnecessary investigations raised by vexatious litigants where there is no merit to the complaint, an initial screening process could be established. This could be operated by an entity comprised of individuals with family law experience and an understanding of the standard expected of the professionals who undertake report writing.¹¹⁶ This may involve a new entity, or enhancing existing functions of Ahpra (for complaints about psychologists and psychiatrists), the family courts and/or the AASW.

Specialised investigators: For complaints warranting further investigation, existing entities and/or new entities could have investigators that are competent in forensic investigations and family law. This could include a multi-disciplinary panel comprised of a legal practitioner with family law experience, a person from the same profession as the professional subject to the complaint, and a person with expertise in the central issue to the complaint, e.g. family violence.¹¹⁷

Specialised oversight: To address the lack of general oversight of family report writers, an independent specialist body could be established to deal with complaints. This body could develop a 'bird's eye view' of report writer conduct to take note of practitioners who have had numerous complaints raised about them.¹¹⁸

Consistent timing: Arguably, the timing of complaints investigations should be consistent across practitioner cohorts. Current practice and some stakeholder views are that investigations are (and should be) postponed until the conclusion of a matter.¹¹⁹ However, there is recognition that in high risk matters it may be necessary for investigations to progress while legal proceedings are ongoing.¹²⁰

Establish court processes for when complaints are substantiated: A specific process could be established for those family law matters where a complaint has resulted in an adverse finding against a family report writer.¹²¹ This process would need to be consistent with court processes and legal principles.

Recorded interviews: It was proposed to the JSC that interviews with family consultants could be recorded and this evidence made available to investigators of complaints.¹²² This approach raises a number of risks that would need to be considered, including that the recording could become evidence and available to both parties, be subject to cross-examination, increase the risk of abuse of one or more parties, and that vulnerable parties including children may be less likely to disclose critical information in a recorded interview.

116 AFCC, [Submission No 232](#) to ALRC, *Review of the family law system*, 21 May 2018, p 43.

117 Rathus, Jeffries, Menih and Field, [Submission No 700](#) to JSC, *Improvements in family law proceedings*, January 2020, p 17.

118 Ibid.

119 AFCC, [Submission No 232](#) to ALRC, *Review of the family law system*, 21 May 2018, p 42.

120 Rathus, Jeffries, Menih and Field, [Submission No 700](#) to JSC, *Improvements in family law proceedings*, January 2020, p 17.

121 Ibid 18.

122 JSC, Parliament of Australia, [Improvements in Family Law Proceedings](#), Second Interim Report, March 2021, paragraph 2.148.

Establishment and oversight of complaint mechanisms

A range of entities could have a role in managing and assessing complaints about family report writers. Some options for who might be best placed to implement or manage these mechanisms is provided in **Table 6** below.

Table 6: Entities that could play a role in managing complaints.

| Court employment services | Employers | Industry associations |
|--|---|---|
| <ul style="list-style-type: none"> Manage complaints concerning in-house and regulation 7 family consultants including when parties would not otherwise take their matter to trial. Refer complaints to regulators or relevant entities. | <ul style="list-style-type: none"> Conduct initial reviews of complaints and refer to a relevant entity if required. | <ul style="list-style-type: none"> Establish a complaints function for family report writers who are members. This could be assisted by amendments to section 121 and could be particularly useful for social workers. |
| Ahpra | Independent specialised complaint body | Government |
| <ul style="list-style-type: none"> Review complaints about psychologists and psychiatrists concerning compliance with the Health Practitioner Regulation National Law. Changes to section 121 and specialised investigators could assist with this. | <ul style="list-style-type: none"> This could involve a multi-disciplinary panel of experts. A preliminary screening for vexatious complaints could be conducted. The JSC supports consideration of a dedicated complaints mechanism.¹²³ | <ul style="list-style-type: none"> Legislate amendments to section 121(9) and relevant court rules to enable family reports and other relevant evidence to be shared with investigative entities. Establish an independent complaints investigation body. |

Question 14: Complaints mechanisms

- Are improved avenues for complaints about family report writers required?
- Which entity or combination of entities is best placed to investigate complaints about family report writers? Why?
- Could existing regulatory complaints mechanisms (Ahpra and state complaints bodies) be more effectively utilised to investigate complaints about psychologists and psychiatrists who are family report writers? If yes, what enhanced role could they play?
- What could be an appropriate complaints mechanism for social workers undertaking family reports?
- How would any proposed mechanism(s) best manage the issues and risks that have been identified, such as efficiently identifying and responding to vexatious complaints?

¹²³ Ibid, paragraph 2.146.

Question 15: Access to evidence

Which entities should be able to receive family reports for the purpose of investigating complaints?

Question 16: Publicly identifying a family report writer

- (a) Should section 121 be amended to enable the names of family report writers to be published?
- (b) Should this be limited to situations where a report writer has been convicted of an offence and/or subject to an adverse finding by a regulator?

Conclusion

The department welcomes feedback on the questions posed in this paper. We would appreciate this feedback **by 3 December 2021**. Once this feedback has been received, the Government will be better placed to consider ways to improve the competency, accountability and transparency of family report writers going forward.

Question 17

Is there anything else that Government should consider to improve the competency, accountability and transparency of family report writers in Australia?

Appendix A – Requirements of a family report

Requirements in the Family Law Act

Reports prepared by family consultants:¹²⁴

- are to include such matters as the court thinks desirable that are relevant to the proceedings concerning the care, welfare and development of a child¹²⁵
- must include the views of the child (unless not applicable)¹²⁶
- may include any other matters that relate to the care, welfare or development of a child¹²⁷
- establish what is in the best interests of the child,¹²⁸ which is a reference to section 60CC of the Family Law Act.

Requirements in the Federal Circuit and Family Court of Australia (Family Law) Rules

The *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* provide that the court must identify the issues to be addressed in a family report prepared by a family consultant.¹²⁹

The rules also outline requirements for reports prepared by single expert witnesses and include that the report must be in relation to a substantial issue in the case.¹³⁰ Specific requirements include that the report must:

- state the reasons for the expert witness's conclusions;
- include a statement about the methodology used in the production of the report; and
- include the following in support of the expert witness's conclusions:
 - the expert witnesses qualifications;
 - the literature or other material used in making the report;
 - the relevant facts, matters and assumptions on which the opinions in the report are based;
 - a statement about the facts in the report that are within the expert's knowledge;
 - details about any tests, experiments, examinations or investigations relied on by the expert witness and, if carried out by another person, details of that persons qualifications and experience;

Best interests of the child - section 60CC

Primary considerations:

- The benefit to the child of a meaningful relationship with both parents
- The need to protect the child from physical or psychological harm from abuse, neglect or family violence

Additional considerations:

- The views of the child
- The child's relationships with each parent or any other persons
- The parents attitudes and willingness to spend time with the child and participate in decision making
- The effects of any changes in the child's life
- Any practical difficulties in spending time with a parent
- The capacity of parents to provide for the child
- The maturity, sex, lifestyle and background of the child and parents
- Any cultural considerations for an Aboriginal or Torres Strait Islander child
- Any family violence involving the child or members of the family
- Any family violence orders
- Preventing further proceedings

124 These requirements apply to family consultants only, and not single expert witnesses.

125 *Family Law Act 1975* (Cth) s 62G(2).

126 *Ibid* s 62G(3A).

127 *Ibid* s 62G(4).

128 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 8.11(1); *Family Court Rules 2021* (WA) r 4.

129 *Ibid* r 8.11(3).

130 *Ibid* r 7.03(1).

- if there is a range of opinion, a summary of these opinions and the basis of the expert witness's opinion;
- a summary of the conclusions reached;
- if necessary, a disclosure that:
 - a particular question or issue falls outside the expert witness's expertise;
 - the report may be incomplete or inaccurate without some qualification and the details of the qualification; or
 - the expert witness's opinion is not a concluded opinion because further research or data is required or because of any other reason.¹³¹

Requirements in the Australian Standards of Practice for Family Assessments and Reporting

The Standards were endorsed by all family courts – the Family Court of Australia and Federal Circuit Court of Australia (now known as the Federal Circuit and Family Court of Australia) and Family Court of Western Australia – and provide guidance to all family report writers (family consultants and single expert witnesses), family reports and family assessments.¹³² The Standards are detailed, exceed thirty pages and are not legally binding. The Standards require family reports to cover:

- The views of children, how the views were obtained, the weight given to the child's statements and perceptions and their maturity to independently express such views.
- Individual assessments of each child as an individual, in a family setting including sibling relationships and all caregivers, and in the broader social environment.
- Assessment of relationships between each child and all adults who perform a caretaking role with the child including the capacity of the parent to relate to and manage the child.
- An expert family violence assessment where family violence is identified as an issue.
- References to research that supports and does not support assessments.
- Assessment of any cultural considerations.
- Assessment of the level and nature of risks to the welfare of children.
- Recommendations on long term parenting arrangements.
- Opinions and evidence about the personality characteristics of an individual.
- The particulars of qualifications and experience of the assessor.

The Standards also prescribe the methodology and approach that can be used, including that family assessors should strive to use multiple data gathering methods in order to increase accuracy and objectivity, that they conduct interviews and spend sufficient time with significant people, what and when they may communicate with parties and third parties and when they may not.

Requirements in the Professional Directions and Practice Guidelines for Family Report Writers

CCS also provide Professional Directions and Practice Guidelines for family reports which are made available to their family consultants (in-house and regulation 7 appointments). These cover issues including the content of family reports, and include requirements such as: culture is recognised and considered, risk factors alleged by parties or identified by the family consultant must be included and at a minimum provide commentary on family violence, child safety and wellbeing, drugs and alcohol, and mental health.

¹³¹ *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth) r 7.22.

¹³² FCoA, FCC and FCWA, *Australian Standards of Practice for Family Assessments and Reporting*, February 2015.



