Thank you Chief Justice Alstergren.

Let me begin by acknowledging the traditional owners of the land on which we meet, the Gadigal people of the Eora Nation.

It is a great privilege to speak at the plenary today – an event that brings together so many distinguished Judges.

Few people would appreciate the challenges of spending your professional life deciding often fraught, difficult matters that have such a significant consequence on people’s lives. Doing the best you can to resolve other people’s problems and help Australian families in public office is an admirable and very challenging pursuit.

Being able to commence a speech like this by noting that the Federal Circuit Court has achieved the highest clearance rate for family law matters in 15 years is a very positive and very important thing.

Clearance rates are far from an arcane statistic. This substantially improved clearance rate translates into substantial reductions in backlogs and time to trial. And at the same time the Family Court of Australia achieved a clearance rate of over 100 per cent for the first time since 2012-13.¹

Having, for the first time, the plenaries for Judges of the Family Court and Judges of the Federal Circuit Court at the same time, provides the opportunity to speak to you all together. Some might see it as symbolic or even portentous. Certainly it provides a unique opportunity to outline the Government’s vision for the courts going forward, being very mindful of the independence of the judicial system.

I would like to thank the Chief Justice for his enthusiasm and drive generally and in seeking to harmonise Rules of Court and case management processes for family law matters across both courts.

---
¹ In 2017-18.
This project is a critical initiative by the courts to create efficiencies and, ultimately, reduce the backlog of thousands of cases to the benefit of Australian families. The implementation of a consistent set of court rules will ultimately improve user experience for Australian families in the courts, reduce confusion for those same Australian families, and promote the adoption of best practice by both courts.

Having Judges of both Courts responsible for the establishment of a common set of rules, forms and case management in the Courts, could prove to create a ground-breaking piece of work.

The Hon Dr Chris Jessup QC is overseeing the work of the harmonisation project. And Dr Jessup, who is assisted by two barristers (Ms Emma Poole and Mr Christopher Lum), is working closely with the Judges in the Working Group to draft the common rules and forms and developing a consistent approach to case management. Dr Jessup will also be actively involved in the consultation process with all Judges, the profession and others that have an interest in the jurisdiction.²

In a real sense, this is the most important project either Court has entered into in the last 19 years. It is the first time a proper process has been put in place to achieve harmonisation and the first time we have been able to achieve the level of collaboration necessary to ensure success.

It is also notable that $4 million was provided by the Government to the courts as part of the development of the Court Reform Bills, including funding to assist with the process of redesigning a single set of rules, forms, procedures, and practices.

The adoption of a consistent set of court rules is a very important goal, and is something that family law stakeholders have been advocating for over many years.

However, it does not address the most fundamental issue.

Court reforms
In the 45th Parliament the Government’s Bill to legislate for structural court reform - to deal with family law matters in an amalgamated structure with two Divisions mirroring the composition of the Family Court and Federal Circuit Court - went through a full, robust process which ultimately was interrupted by an election.

That process confirmed three things for me.

² Joining the Chief Justice on the Working Group are the Deputy Chief Justice, Justice Ryan, Justice Watts, Justice Rees, Justice Williams, Justice Hartnett, Judge Driver, Judge Hughes and Judge Harland. The Courts are exceedingly pleased by the Working Group’s progress to date developing a common case management model and a common set of rules. And it is fundamental to reducing delays and backlogs for litigants and improving judicial workload pressures as it entails the harmonisation of the Family Law Rules 2004 (Cth) and the Federal Circuit Court of Australia Rules 2001 (Cth); and the development of a common case management model for the Courts.
One: that the problems associated with having two separate courts both dealing with family law is a structural problem that is widely accepted as representing a structural failure that needs fixing.

Two: equally rational people may disagree as to what is the better structural fix to that problem would be.

And three: different views about what structural outcome should replace the problematic existing structure simply being perpetually replayed over decades should not become a reason to maintain an unsatisfactory status quo.

Having all agreed on the existence of a serious problem, perpetual disagreement on what outcome is the better model is not in itself an outcome.

I have a deeply held view that doing nothing is not an option.

I recognise that the existing problems of the split court system have not been created by judges.

Having two separate courts exercising largely the same family law jurisdiction in very different ways is a structural problem created by the Executive and the Parliament. That is why, as Attorney-General, I am determined to resolve it to ensure that Australian families are best served by an improved structure.

The family law system is an area of law that more Australians come into contact with than any other new.

Just over 70 per cent of family law disputes are resolved amicably without using lawyers, the courts, or family and relationship services. However, some separating families – around 7 per cent – will require court assistance. In 2017-18, around 106,000 family law applications were made to the Family Court and Federal Circuit Court. Families whose disputes reach the family courts are likely to be going through some of the most difficult, distressing times of their lives. You all know this all too well, seeing it in your work on a daily basis.

Reform of any long standing structural problem is challenging. However, I am confident in saying that the proposed reforms are the least radical path to end unnecessary, confusion, costs and delay for thousands of Australian families that have arisen by virtue of the split system.

When the legislation was introduced to the Parliament last year, one contention raised against it was that the reform legislation would effect the end of the Family Court. This is not the case. The legislation very clearly provided for the continuation of the Family Court as the Federal Circuit and Family Court (Division 1). And, if further was needed, I had no difficulty in adopting an amendment to secure crossbench support that would have set a floor of judges under which number the new Division 1 would never fall, and I am committed to setting this floor at 25 judges, which was the number previously recommended in the Semple Report.

The Bill was also amended so that family law appeals would continue to be heard by the Division 1, rather than the Family Court’s appellate jurisdiction being removed to the Federal Court of Australia.

The amended Bill would also vest rule making power in the Chief Justice, after proper consultation with judges during the harmonisation phase, and then returning to a majority of judges.

I have also formed a view that the new entity would likely benefit from having its own CEO rather than being assisted by the CEO of the Federal Court.
For anyone who thought this structural reform was something other than conservative and modest structural reform, recommendation one of the ALRC might have provided an interesting comparator. In a sense the ARLC recommended the most radical structural reform option available; to end all trials of family law matters at a Federal level.

For a variety of reasons this seems to me a largely impractical option but in its radical Gordian knot approach it expresses both a frustration with and radical solution for the current structural problem. And simply put, for those who do not prefer the present amalgamated option, the ALRC options demonstrate that all other options to structural change are less modest and some very radical indeed.

Another criticism was that the legislation would lead to a loss of family law expertise in the courts. Again, this is simply not the case. The Government will continue to appoint appropriately skilled people as Judges of both courts to deal with the wide range of family law and general federal law matters that come before the courts. Indeed, the legislation that was before the Parliament last year went further, and added an additional qualification for judges appointed to Division 2 that they must have appropriate knowledge, skills, and experience to deal with the kinds of matters that may come before that the FCFC (Division 2).

One recurrent suggestion to improve outcomes is simply to appoint more judges. While the notion of appointing more judicial resources is not without authority, it does nothing to fix the inherent problems of having a split federal family court system. Appointing more judges without resolving the structural problems is treating the symptom rather than the disease.

Relevant to the resourcing issue is that at the end of the 45th Parliament, additional resources had been allocated to the court but they were, and are in future, contingent on some reform occurring. The reform-contingent resource increase would see an extra Family Court judge, two additional Federal Circuit Court judges, and an additional registrar, above current budgeted funding.

The amended Bill that lapsed at the end of the 45th Parliament had been rationally amended and some of the changes may also be made. But ultimately suggestions raised as part of the Senate Committee process were listened to, particularly regarding the previously proposed pathways for family law appeals. Noting that the final Bill also no longer proposes that the Family Court’s appellate jurisdiction be removed to the Federal Court of Australia.

Instead, it is appropriate that family law appeals will continue to be heard by the Division 1.

While there will be further opportunity to consult with key family law stakeholders prior to reintroducing the legislation to the Parliament to ensure that the reform model might benefit from any further suggested improvements, I must stress again doing nothing is an absolute non-option.

Reform of the family law system
While structural reform to the federal courts is a priority, the Government is also looking at other measures to improve the family law system and outcomes for Australian families.

As you know, the Australian Law Reform Commission (ALRC) has completed its review of the family law system. The ALRC’s Report makes 60 recommendations which are largely focused on the legal aspects of the system, and aim to improve outcomes for families and children, including by:

- simplifying and clarifying the decision-making pathway for parenting orders under the Family Law Act;
- raising accreditation standards and family violence competency for professionals and services in the system; and
• improving information sharing between the family law system and state and territory child protection and family violence systems to enhance the safety of children and families.

This report presents an opportunity for significant, system-wide reform. However, as the ALRC itself acknowledged, improving outcomes for families and children in the system requires reforms across both the legal and non-legal sectors.

So while I’m committed to amending the legislation that underpins both the Family Court and the Federal Circuit Court to fix the issue that the NSW Bar described by saying that “the experiment of sharing jurisdiction between two federal courts and running family law matters in separate courts with separate rules and procedures has failed”.

As it is the structural reform is really the critical starting point for change. Other changes will be required to achieve broader improvements to the family law and legal assistance systems.

It’s important that we get those broader reforms right, which is why I am carefully considering the ALRC’s report, as well as the detail of previous reviews.

I will engage broadly in developing a response to the ALRC and a plan for reforming the system.

However, some serious responsibility will also fall on stakeholders in the family law sector to work towards sensible consensus changes and reforms and not fall into the trap of letting unending disagreement underwrite a status quo in need of significant improvement.

A backdrop of this coming post-ALRC review process is the fact that the Government has already committed to a range of measures to ensure that families can resolve their disputes as efficiently and safely as possible, including:

• $160 million per year to enable families to resolve their disputes outside of court;
• $50.4 million over four years as part of the Government’s 2018 Women’s Economic Security Package for family law property mediation to help families to reach agreement on their property disputes through mediation; and
• approximately $370 million per year from 2020-21 as part of the Legal Assistance Package, to provide important legal assistance services to vulnerable Australians, a large proportion of which relate to family law issues.

Family Advocacy and Support Services (FASS)
The Government has also committed an additional $22.6 million over three years and $31.8 million over three years respectively to continue funding for the Family Advocacy and Support Service (FASS) and the specialist domestic violence units and health justice partnerships – both essential family violence services established by this Government.

The FASS has been operating since 2017 and currently runs in 14 family law court registries across Australia. An evaluation of the FASS was completed in October 2018. The final report of the evaluation found the FASS to be an effective program which fills a gap in both legal and social service provision to family law clients with family violence matters. The FASS received strong positive feedback from the majority of stakeholders consulted in the evaluation, including clients, legal practitioners and the courts. The evaluation found that provision of legal advice to self-represented parties in the family law courts is beneficial to both parties to a matter. Provision of support to self-represented parties impacted positively on their preparedness and the completeness of evidence and contributed to a significant reduction of court time spent on self-represented matters.

Positive impacts of connecting family law clients to social services on families, the courts, legal aid commissions and other support services were also identified.
Several Judges interviewed as part of the evaluation also reported that the FASS had been beneficial in supporting self-represented parties. A Judge in one jurisdiction said that when they knew that a party had been assisted by the FASS duty lawyer, they could see that this support had been “critical” in the quality of submissions. Some Judges identified that when they could see that a self-represented party needed advice, they knew that they could stand the matter down and refer them to the FASS or to another duty lawyer. Further, a Judge interviewed in Melbourne commented on the positive impact of having a dedicated men’s worker in court, saying that this “immediately changes the tone of the (court) room.”

In addition to the additional $22.6 million over three years to continue funding the FASS, in the 2019-20 Budget, an additional $7.8 million was committed over three years for dedicated men’s support workers to be engaged in all FASS locations.

**Prohibition on Direct Cross-Examination**

As many would also be aware, the *Family Law Amendment (Family Violence and Cross-examination of Parties) Act 2018* came into effect on 10 March 2019, and prevents the direct cross-examination of victims by alleged perpetrators of family violence in certain circumstances.

If direct cross-examination is prohibited, cross-examination must be conducted by a legal representative.

As part of the Women’s Economic Security Package, the Government has provided ongoing funding, initially $7 million over three years, to establish the Family Violence and Cross-examination of Parties Scheme in which Legal Aid Commissions have been provided funding to represent parties in cases where the ban applies, and private legal representatives have not been engaged.

I would like to thank the courts for the positive and considered engagement in the development and implementation of the measures brought about by this legislation.

My Department will soon commence data collection in order to evaluate the implementation of this policy and ensure it is operating as intended. I would like to thank you in advance for your assistance with this project.

**Family Programs’ Input**

The Government is also committed to bridging the gap between the family law, child protection and family violence systems. Of critical importance is ensuring that, as Judges, you have the information you need to respond to family safety risks and safeguard the welfare of children.

In March 2019, the Government announced that it would provide $10.4 million over three years as part of the 2019–20 Budget to co-locate state and territory officials, such as child protection practitioners and policing officials, in the family law courts. This measure will help ensure that the courts have the right information to identify and manage risks to family safety.

Building on successful models in Melbourne and in the Family Court of Western Australia, this measure is designed to ensure that courts have timely access to accurate information, helping to make sound decisions in respect of family safety. The measure is also geared towards promoting greater cooperation between the courts and investigative agencies.

The Government is working closely with the states and the family law courts to implement this new initiative.

Newcastle
I would also like to note how these executive initiatives complement several impressive reform initiatives of the courts themselves.

- improving accommodation arrangements in the Newcastle registry is a significant and successful project.
- I am also pleased to acknowledge the proactive approach of the federal courts in realising some of the opportunities presented by new technologies. The implementation of digital court files has been a significant undertaking across the federal courts, but of course this is also only the first step.
- I note also the broader consideration being given to the potential benefits of artificial intelligence as a tool to assist dispute resolution, and the role of ‘smart courts’ in the digital age more broadly.

By way of an example, the Australian Government is proudly supporting the development of an Online Dispute Resolution ‘App’, an additional innovative approach to address the increased number of family law matters awaiting resolution and the increase in the median time taken to reach trial.

The App is an Artificial Intelligence based solution which is designed to reduce the need for families to go through the traditional family court pathway and/or incur expensive legal fees when separating.

There is the potential for the 70% of families that primarily resolve their family disputes between themselves to achieve better settlements with the assistance of Artificial Intelligence. Further, a number of those who currently go to court could instead use Artificial Intelligence to resolve their dispute.

The App is being developed by the Legal Services Commission of South Australia. It can be downloaded to a user’s smart phone, and employs a machine-learning model using legal precedents to develop parenting plans and suggest an equitable division of family assets based on information entered by separating couples. The developers of the App have been working closely with the courts in the development of the App, to enable relevant, up-to-date case law to be utilised by the App.

It takes users through the process in a simple but structured way, using simple language to explain complex legal terminology. It will also incorporate technology which supports positive engagement, by detecting rude or aggressive language.

It is expected to improve the lives of separating couples and their children by providing them with the opportunity to avoid the trauma often associated with formal dispute resolution pathways.

I am very excited about the potential of the App. An application like this provides another alternative pathway for families who have more simple disputes to resolve. It is anticipated it will most likely be used by those families that already use some form of alternative dispute resolution to resolve their disputes. However, it still has the potential to reduce the backlog and waiting times for disputes to be heard in the family courts.

I expect the App to be publicly available in 2020.

**Proposals from the Chief Justice**

I have also been approached by your Chief Justice about a number of issues and proposals.

One of those things is an electronic bench book.

There is currently no single resource available to assist all judicial officers undertaking family law work.
An electronic bench book would ensure that up-to-date information is available on key areas such as domestic violence, parenting arrangements and property division. The proposal put to me is to create a single resource comprising commentary, precedent orders and checklists, to be hosted on a separate platform by the Courts so that it is accessible to all judicial officers exercising jurisdiction under the Act.³

This is a worthy ambition, and I am intent on working with the Court to bring it to fruition.

And finally, I have also committed to the possible additional family law resources asked for by the Chief Justice. While I have said that I do not believe appointing more judges without structural reform is the answer, I am intent on working with the Chief Justice on the resourcing of the Court, and ensuring that as part of the Court reforms the needs of the Court are met. From discussions with the Chief Justice, he has proposed that this could include judges, registrars and associates, and I will continue working with him on these matters.

And, of course, finishing this address where it commenced, I note that the Government’s structural reform, when it was last before the Parliament, was accompanied by additional judicial resources to the court of precisely the type and scale now sought.

I would like to reiterate that it has been a privilege to be able to address both the Judges of the Family Court and Judges of the Federal Circuit Court together today.

To the Judges of the Family Court, I have no doubt your Annual Judges’ meeting was productive and enriching.

It has been a pleasure to speak to you today - thank you again for this opportunity.

³ An electronic bench book could provide a range of potential benefits, including:

- providing an accurate and comprehensive resource to assist with the initial orientation of new judicial officers including registrars;
- facilitating high standard practice in family law with a likely reduction in appeal rates and the time needed to write judgements;
- harmonising standard orders, which would save judicial and administrative time, reduce the need for amendments under the slip rules, and ensure greater consistency for the profession and litigants;
- supporting for judicial officers in dealing with matters involving family violence; and
- supporting the policy delivered by the National Judicial College of Australia in providing family law training for State and Territory judicial officers.