

INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE

SIX YEARS ON...



CONTENTS

International Framework For Court Excellence	3
Why Has the Family Court Adopted the Framework?	5
The Family Court Survey	6
The Questions	6
"Don't Know"	6
Qualitative Statements	7
Moderation Sessions	7
The Administration	7
Results	8
What have we learnt?	9
Conclusion	10
Appendix - Survey	11







INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE

The International Framework for Court Excellence was put together by an international consortium consisting of groups and organisations from Europe, Asia, Australia, and the United States and was originally launched in 2008. The goal of the Consortium's effort has been the development of a framework of values, concepts and tools by which courts worldwide can voluntarily assess and improve the quality of justice and court administration they deliver no matter where the court is based.

An attraction of this framework is that it has been conceived for courts by courts. As a result, it is not a managerial system superimposed on judges. Rather, it is a model refined for the unique elements of judicial administration. Crucially, the principle of judicial independence is fundamental to it.

This introduction however begs the questions "why was the framework developed" and "why is such a framework needed"? The answers we provided to judges of our Court can no doubt be debated. However, the following represents the position we have reached.

In a global environment of scarce public resources and unavoidable competition for government appropriations, courts must have well developed systems and processes for managing themselves and for delivery of services.

Judicial independence in other words, cannot be employed as code for lack of accountability or immunity from scrutiny. Equally, any such systems and processes must recognise that judicial independence is challenged fundamentally by externally-imposed "key performance indicators" or such like, that purport to measure judicial deliberation and judging with profit and loss criteria or "business models" not suited to judicial work.

Judging is unique and occupies a particular vital place within a functioning democracy

A balance can be achieved by reference to a process of self-review and self-governance by reference to criteria and processes in which both the Parliament providing the funding and the broader community can have confidence. Perhaps as never before, with independence and self-governance comes appropriate accountability. The international framework provides judges and administrators with the tools for self-governance and accountability and as importantly, it provides a model through which a court can demonstrate effective self-governance. This benefit in turn strengthens a court's independence and boosts the case for a sustainable budget.

The framework also provides a "common language" by which courts in differing jurisdictions (and across international boundaries) can compare, contrast and work together to achieve the balance just referred to.

Courts traditionally have a quite proper aversion to "managerialism", "corporatisation" and "bureaucracy". This is recognised by the consortium and certainly we brought healthy scepticism to those risks which could pertain to a framework like this. However, we accept that this framework is built on the values of the rule of law and that it recognises the crucial function of courts as the independent third arm of government.



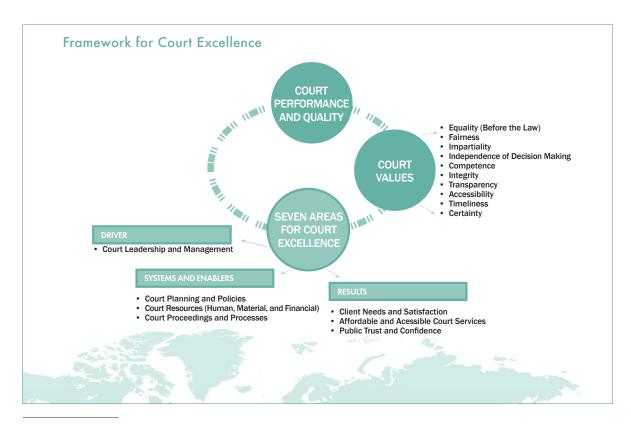


The framework provides a resource for assessing a court's performance against seven detailed areas which are thought necessary for a court to be truly excellent. It provides clear guidance for courts intending to improve their performance and it provides a model methodology for continuous evaluation and improvement that is specifically designed for use by courts. It also builds upon a range of recognised organisational improvement principles while reflecting the special needs and issues that courts face.

Unlike many existing initiatives employed by courts throughout the world to measure or improve specific areas of a court's activities or services, the framework takes a holistic approach to court performance. In other words (and we are persuaded by this point) it represents a "whole of court" approach to achieving an excellent court rather than simply presenting a limited range of performance measures directed to limited aspects of court activity. Although a broad understanding of key areas and standards for court performance does likely exist, courts need more than a collection of disparate qualitative and quantitative performance measures which in and by themselves may be meaningless or worse, misleading.²

The absence of a courts-specific framework (and the inadequacy of existing benchmarking and performance measurement systems at an international and national level) inspired the Consortium to develop this framework. It is the product of an international attempt to identify a process for achieving court excellence regardless of the location or size of a court or the resources or technology available to it. It is designed to apply to all courts and to be equally effective for sophisticated large urban courts and smaller rural or remote courts and including courts striving to evolve in developing countries.

The recommended holistic approach is achieved by a court working on the so-called seven "pillars" which, if operating in concert, will support a court being truly excellent.



¹ Refer http://www.courtexcellence.com/Resources/ for 2013 Supreme Court of Victoria Report "Implementing the IFCE as a holistic" means of achieving excellence".

² For example, refer Productivity Commission Courts Report on Government Services (often referred to as "RoGS").





WHY HAS THE FAMILY COURT ADOPTED THE FRAMEWORK?

Why has our court chosen to engage in this framework at this time?

We isolated three central reasons why we are persuaded that this model is supportive of our future at this particular point in our Court's history.

The framework implementation has focused our leadership, and for that matter, the minds of all judges commissioned to our Court, on the central importance of planning for our future and not leaving this to others. With independence, should also come self-determination and a will, insofar as we are able, to control our own destiny.

Secondly, there is no doubt that we operate in an economic environment of scarce resources. Political decisions, which are not restricted to budgetary decisions, will also likely have an impact upon the Court and its human and financial resourcing. Government confidence in the Court's capacity to manage itself and deliver value to the public is central to having such measure of control or influence as might be available to us over budgetary and broader policy decisions. We are convinced that implementation of these seven elements of the framework supports our prospects of achieving this.

Thirdly, the Court has a proud history of innovation and is a recognised international leader in court administration and in the way we manage the important jurisdiction of family law. We want to preserve and promote that place and we want to be respected in Australia, and internationally, as a specialist superior court of record. Again, in our view, implementation of this framework supports that effort.

Demonstrable evidence of vibrant, efficient and innovative family courts which are respected throughout the world strengthens the case for proper resourcing

Usefully, the framework gives courts a common language to talk about and compare resourcing, performance matters and issues associated with management and judicial administration. Adoption by courts of this approach sends a message to the world that courts are not immune from having their workings and performance examined and do not fear scrutiny - provided it is done in a way that respects the unique work that courts and their judges undertake.

The framework also promotes mutual respect between the judges of the court and the court administration. There are elements of the framework which are more plainly administrative and others which are judicially led and in discussion of these elements, delineation between judge roles and administration roles may be better understood, aligned and supported.

The framework allows a forum within which ideas between courts can be exchanged. We hasten to add, this is not about "benchmarking" with other courts or competing. In fact "performance" comparisons as between courts we understand, should be actively discouraged as there can never be an "apples with apples" analogy. Courts have different histories, cultures and contextual factors which mean that comparisons are idle and attributions of one "better" or "worse" than another are meaningless. However, a model for courts to discuss together the driving issues in judicial administration is welcomed.

Our Court commends the framework while noting that informed skepticism is not to be discouraged:- it is the foundation of discovery





THE FAMILY COURT SURVEY

A jurisdiction can decide if and when it may engage in the internal survey process recommended by the international consortium. The consortium has produced two "template" survey options for use by courts and those surveys can be found in the consortium booklet.³

The ICFE admits of flexibility in recognition that issues specific to different courts might be created by their governing legal systems, prevailing conditions or, as with the Family Court of Australia, matters specific to a specialist jurisdiction. Those differences might provoke the need to gear survey questions to those differing needs.

Our Court has completed the survey process because our head of jurisdiction determined that this process is timely to our evolution. The Chief Justice appointed a Court Excellence Committee with Justice Murphy chairing a group of six Judges representative of different levels of judicial experience and with a geographical spread. The Committee was supported by Regional Registry Manager, Jane Reynolds. The Committee was charged with producing an internal report on the survey results for the Chief Justice and all Judges. The Reporting was in two volumes. The first volume has been delivered to Chief Justice identifying strengths, weaknesses, opportunities and challenges. Further consultation took place with the Judges and, after further deliberation by the Committee, a series of specific recommendations were made for consideration by the Chief Justice in 2014. All, or almost all of the recommendations are in the implementation phase.

The survey completed by the judges of the Family Court of Australia is Appendix 1 and notably, it differs from those "template" surveys in a number of respects.

THE QUESTIONS

Reference to the consortium surveys will reveal that the Court decided on variations to the questions posed in the "template" surveys as it was considered that information was needed from judges about matters specific to our Court.

"DON'T KNOW"

It will be seen that we added "don't know" as an additional category of response. We did so for a number of reasons.

First, the Court has undergone a significant change in the last few years including, for example, that 64% of the Court's trial division had been Judges for less than five years and 44% for less than two years. We considered that many Judges may not know about policies and procedures that pre-dated their appointment. Secondly, we considered that a significant response rate of "don't knows" was, of itself, important data – for example, it had the potential to speak of how effectively the Court communicates with its judges. Thirdly, there was the potential for the proportion of don't knows to vary across the seven pillars with the consequent potential to provide information about the areas in which the Court needed to be more proactive about the dissemination of information.

³ Or refer http://www.courtexcellence.com/





The Committee was cognizant that difficulties might be encountered in doing so. For example, a "don't know" answer might mean "don't know and don't want to know" or "don't know and don't care". On balance, it was decided ultimately to include the category for a number of reasons. We consider our decision has been well vindicated. The number of comments received from judges – and, in particular, their thoroughness and thoughtfulness - indicates, we think, that a "don't know" response is not of the type earlier described but, rather, indicative of an area in which greater attention to better dissemination of information and communication is needed.

QUALITATIVE STATEMENTS

The methodological challenges pertaining to analysis of discursive qualitative assessments is given as a reason why the invitation for open text comments should not be included in surveys of the instant type. In the case of this survey within this Court, we disagree.

We consider that the invitation to provide comments gave an opportunity for judges to provide greater insight into the issues of most concern to them within each of the seven pillars of excellence. To that end, each section was prefaced with questions designed to prompt and guide thoughts about possible topics which, as the cover sheet to the survey was at pains to point out, were put to prompt thought rather than to limit or direct responses.

Again, we consider that the number of thoughtful, comprehensive responses given by the judges bears out the decision to seek qualitative responses as the correct one.

In our analysis of the results, we gave very careful attention to the ratings and the open text comments. We note that not all judicial officers entered comments and of those who did, the comments provided were in the main, to express a concern. Therefore, the Committee has been careful to accurately report, proportionately weight, honour and diligently respect these open text comments.

MODERATION SESSIONS

Following the lead and experience of the New Zealand District Court, the Committee determined to conduct "moderation sessions". These sessions, like participation in the survey itself, were both voluntary and confidential.

The moderation sessions, conducted regionally with the Committee member from that region, proved a useful adjunct to the qualitative responses. They provided the opportunity to "tease out" some of the themes emerging from the survey responses and in one case (the use of technology and information technology more generally) provided significant additional data, particularly in respect of the pillar dealing with Resource Management.

Again, we believe the decision to utilise "moderation sessions" is well justified by the nature and depth of the feedback emanating from them.

THE ADMINISTRATION

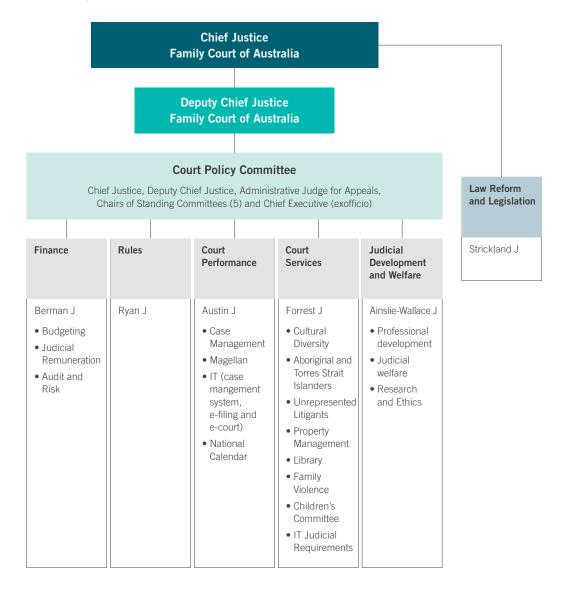
With the support of the CEO, all 670 staff of the administration were offered the option to participate in the survey and this was conducted separately from the survey of judges. The rate of return was 40% with 270 staff submitting a survey return including in many cases, detailed and thoughtful comments.





RESULTS

The Committee recommendations were fully endorsed by the Chief Justice of the Family Court of Australia. An early reform her Honour pursued was related to the Court's governance structure. A new framework for policy and administration was implemented as follows with strong judicial participation in the management of the court.



As well, the survey resulted in recommendations concerning:

- Resources to the Appellate Division
- Transformation to judicial support and public services via technology
- ► Improved training for judges with respect to technology
- ► Enhanced induction process for judges
- Refreshed approaches to judicial welfare





- Examination of case management approaches to allow some regionalised differences and honour nationally agreed case management principles with a particular focus on timeliness
- ► Continue periodic court user surveys to ensure that the services delivered to the public by registries are contemporary, convenient, professional and relevant especially for those litigants who are not represented
- ► Ongoing investment in staff development to support the requirement for high quality support to Judges and to the community

WHAT HAVE WE I FARNT?

- ► The Framework is very flexible and can be readily adapted to suit any court or tribunal needs. For example both the Family Court and the Federal Circuit Court each revised the self-assessment survey to suit their respective requirements and neither adopted the measurement scaling system.
- ► The framework cannot be implemented by the judges alone or the administration in isolation it must be a partnership. Do not proceed without the full support of the head of jurisdiction and the CEO.
- ► The framework must be introduced and explained to judges and staff to achieve confidence and participation. This requires leadership at judicial and administrative levels. Some of the "management" concepts are not always easily received or understood by some judges and need to be framed to support and reinforce judicial independence and accountability.
- ▶ It's a marathon and not a sprint. Holistic implementation of the framework takes time and the outcomes are not immediate. "Cherry picking" for quick wins is an option but the more comprehensive investment and implementation will result in deeper and more sustainable change.
- ► The most effective implementation is achieved by investing resources through the establishment of judicial committees, identified "thought leaders" and senior advisors.
- ► This work should not be a marginalised special project. It should be implicitly part of mainstream management of the Court or Tribunal. Otherwise the investment (which is considerable) is not likely to reap returns and will be an expensive distraction from "core business".
- ► The self-assessment process is not for the faint hearted. The feedback is likely to be candid and robust. Once the questions are asked and the data is returned, the court or tribunal must make a response or otherwise the entire exercise lacks integrity and has a negative, rather than positive, impact on performance, culture and confidence.
- ▶ The process, while intensive, does deliver results and pushes change.

Our surveys indicate that about 80% of court users are overall, satisfied with their experience at our registries





CONCLUSION

Our Court moved to incorporate the international framework soon after its release in 2008. Chief Justice with CEO support, identified two areas in particular for development and those were implementation of court user surveys (pillar 5 of the framework) and investment in improved statistical reports on case management (pillar 4 of the framework).

However, the Court has come to appreciate that true and deeper implementation of this system requires a "whole of court" or holistic approach whereby each of the elements are methodically assessed (by the survey process discussed above) with full and genuine judicial and administrative participation. The Family Court of Australia is presently engaged in the framework with this principle in mind.

The survey of course is not an end in and of itself. The next years are our window of opportunity to crystallise results and look to transformation where we need it and preservation of the areas where we are already strong.

In conclusion, this is not a process for the faint hearted! However, for any court aspiring to leading international best practice, this framework is an essential element.



Family Court of Australia Court Excellence

International Framework for Court Excellence Internal Survey

This survey seeks your views and ratings in regard to seven areas which are central to the functioning and future of the Court: leadership and management; planning and policies; management of resources; court processes and proceedings; court user satisfaction and feedback; access; and public confidence. It is designed for internal court use only and the results are not reported externally unless the Court so chooses.

Your participation is confidential and voluntary. Your response is also completely anonymous:- when your completed survey is submitted your identity will not be apparent to the survey administrator. A summary report will be provided to the Chief Justice and the Chief Executive on the overall themes emerging from judicial and staff responses. The Chief Justice has indicated that the results and proposed outcomes and changes emanating from the results will be communicated by her.

You will see that each area of the survey permits you to make such comments as you see fit in respect of that area. You should appreciate that it is not intended that your views in respect of any of the areas surveyed be restricted. This is an opportunity for you to inform us confidentially about all areas of the court's performance, operation and future direction on which you have opinions and to provide feedback on the court's strengths, weaknesses, opportunities or threats. In that regard, you should not concern yourself unduly whether a particular view more aptly fits within one area rather than another.

You will also see that the comments sections in which your general views are sought are headed with a number of questions. These are designed as nothing more than a guide to assist in directing your thoughts to matters that have been raised either individually or collectively from time to time. These prompt questions are NOT prescriptive or restrictive.

You will also see that each of the seven areas within the survey contains a number of questions in response to which we seek a rating. We encourage you to read through the whole of the survey and to look at the specific questions it poses before you complete your more general comments. Again, doing so is NOT designed to be prescriptive or restrictive of the matters about which you may wish to comment in the general comments section. However, reading the whole of the survey and the specific questions may help to prompt and guide your thoughts and comments about areas of the court's work and its future direction.

You may think that some questions in the survey pertain more to the work of the administration than they do to Judges or vice versa. But, it is important that we receive the perceptions and concerns of each from their differing perspectives.

"PLEASE NOTE:- If you start responses and then close this on line survey, you cannot re-open and resume where you left off. In other words, the program will not save to your desk top system. If you wish to print your responses you must print each page before selecting the next page".

Please now indicate to which of the following categories you belong so that we can ascertain those differences.

Judicial Officers
Registrar
Family Consultant
Senior Executive (SES 1 - SES 3)
Manager / Team Leader (APS 5 - EL2)
Registry Officer (Client Service or Judicial SUpport)
Administrator or Corporate Services Officer
Please indicate your length of commission/service by selecting one of the below:
0 - 4 years
5 years or more



amily Court of Australia Court Excellence		
Section 1 of 7 - Court Leadership and Management		
Section 1 Court Leadership and Management For this section, assume as appropriate that leaders of the Cou Deputy Chief Justice, Case Management Judges and other jud Chief Executive Officer and senior managers	·	
1.1 The leaders of the Court plan for the future: - they consult, review feedback, appraise court		
performance and identify, communicate and implement improvements 1.2 The leaders of the Court communicate effectively to you their vision and plan for the future of the Court		
1.3 The Court has published/communicated a statement on the future of the court		
1.4 The Court's decision making and governance arrangements are clear, transparent and operate effectively		
1.5 You have appropriate opportunity to contribute to the development of the Court and your views are heard and considered		
1.6 Decisions made by the Court's leaders are communicated, transparent and implemented effectively		
1.7 The Court's leaders are actively concerned with judicial/or staff well being, and support is appropriately given in order that people can perform their role effectively		
court leadership and management		



amily Court of Australia Court Excellence	
Section 2 of 7 - Court Planning and Policies	
Section 2	
Court Planning and Policies 2.1 The Court has short, medium and long term plans in regard to its size, function and	
jurisdiction	
2.2 The Court has short, medium and long term plans setting out goals, targets and improvements	
2.3 The Court has processes for actively involving judges and staff in planning and problem solving	
2.4 The Court has processes to regularly review targets and performance (on for example current and projected workloads and time standards)	
2.5 The Court has published policies that support its procedures, values, targets and plans	
2.6 The Court regularly reviews its policies to ensure continuing effectiveness	
COMMENTS	
or example, if the Court were to develop a "strategic plan" what	t in your view would be
nprovement.	
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Family Court of Australia Court Excellence Section 3 of 7 - Court Resources (Human, Material and Financial) Section 3 **Court Resources (Human, Material and Financial)** 3.1 To your knowledge, the Court has appropriate financial management and budget estimates processes and regularly monitors/reports and accounts for expenditure in accordance with accounting standards and legislative obligations 3.2 Resources (people, assets, budget and technology) are developed and assigned in accordance with the Court's strategic plans and performance targets 3.3 Judges and Staff have appropriate opportunity to contribute to and understand decisions concerning assignment or allocation of resources (people, assets, budget and/or technology) 3.4 Court has the technological infrastructure and operational processes to ensure access to relevant, reliable data and information to support judicial and administrative decision making 3.5 The Court's technology infrastructure and services are supportive of the court's business, are contemporary and responsive to community expectations for convenience and access (may include desk top computers, telecommunications mobile and landline, lap tops, ipads, video conferencing for meetings and court events, helpdesk and support services, web page and portal; case management data base being 'casetrack') 3.6 Court has identified induction, professional development and training needs of judges and/or court staff and meets them 3.7 The Court manages for the future by building capacity in our people and attending to 3.8 Court physical facilities and registry environments are adequate, safe and provide the appropriate ambience COMMENTS Outline any matters in regard to management of resources whether people, assets, finance or technology and the services you receive in respect of those areas (for example: judicial support; corporate services; technological services; systems and support; financial management and associated information; your chambers/court/office/registry facilities). Comment if you wish, on any question you have on the new administrative arrangements (commencing 1 July this year) for this Court and the Federal Circuit Court. For example, have these arrangements been adequately explained to the Judges and to the staff members (who need to understand them? What input do you consider appropriate for Judges and the staff members in question to have into the allocation of resources and monitoring of the allocation and use of such resources under the new arrangements?



Family Court of Australia Court Excellence	
Section 4 of 7 - Court Proceedings and Processes	
Section 4 Court Proceedings and Processes	
4.1 The Court meets its published standards for timely finalisation of cases and delivery of judgments	
4.2 The Court's case management approach is effective and cohesive	
4.3 Registries adhere to agreed central principles for case management to broadly provide for consistency in the Court	
4.4 The Court case management approach is explained and transparent to court users	
4.5 The Court maintains up to date and efficient case files and records systems	
COMMENTS	
Does the Court spend, and has it spent in the past, too much time of case management matters particularly having regard to the nature	of the jurisdiction
and the nature of the litigants and practitioners who regularly appe	
concerns you have as to our case management approach or in reg	ard to our timeliness
in disposal of cases (first instance and/or appeal) or in the quality of	of our decisions as a
whole. Do you consider national consistency an essential objective	<u>-</u>
of or otherwise accept regional variation? Please address any othe	r matter which
occurs to you in respect of court proceedings and processes.	



mily Court of Australia Court Excellence	
ction 5 of 7 - Client Needs and Satisfaction	
ection 5 lient Needs and Satisfaction	
.1 The Court surveys and seeks regular feedback from all court users on their satisfaction with its rocesses, procedures and services	
.2 The Court implements changes identified by surveys and feedback	
3 The Court reports publicly and regularly on changes made in response to surveys and edback	
.4 The Court effectively informs the community and court users on its services, standards and erformance	
.5 The Court uses technology and innovation to deliver higher quality services to all court users	
OMMENTS	
or example, in designing surveys of our court users, how do we	take account of
edback in the context of the nature of our jurisdiction and also p	plan ahead for the
utline any other matters which are pertinent to our efforts to res sers' expectations	pona to our court
	~



ection 6		
fordable and Acces	sible Court Services	
The Court has processes in p	lace that promote affordable court proceedings	
2 The Court publishes information urced how, when and where the	on on court services and access arrangements which can be court user chooses	
Physical access to court buildi	ings is easy	
The Court provides support fo d services	r people with disabilities to ensure easy access to its registries	
easures to mitigate barriers sucl	ure equal treatment and access for all court users (for example in as interpreters, fee waivers in cases of financial hardship, ants, assistance in cases of mental health or intellectual disability mess principles).	
The Court provides informatio	n to assist those who are unrepresented	
7 The Court uses plain language	e to assist all court users	
The Court has electronic and	remote access available to overcome geographical, safety or	
ner barriers		
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Section 7 of 7 - Public Trust and Confidence	
pection for femalic frust and confidence	
Section 7 Public Trust and Confidence	
7.1 The Court publicly reports and accounts for its role and performance	
7.2 The Court publishes judgments and judgments are in a form which facilitates access and comprehension.	
7.3 Court ensures all court users understand the court's processes, services and decisions made	
7.4 Court has a complaints policy and reports on its handling of complaints	
7.5 Court conducts regular independent audits on expenditure in accordance with relevant legislation	
COMMENTS	
public confidence and the reputation of the Court. Or, in your operand has it in the past, sought to become too involved in public of the impression that it applies policies rather than strict law? Do expectations that cannot be fulfilled in relation to its handling of other matters you would like to record in respect of public trust you perceive the Court is regarded by other courts, government our other 'stakeholders'. Do you have any comment on Court me (social media or traditional media) and whether it can, should on in managing the profile and reputation of the court?	debate and has it given es it build up public f complaints? Are there in the Court and how t, the legal profession or edia management
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Family Court of Australia Court Excellence **THANK YOU** You have completed all the questions contained in this assessment survey. Thank you for the time you have given to this process. Once you close this on line survey, you cannot return to it. Once you submit, your survey response is finalised.

