

Reforms court trouble

Let's not dissolve the Family Court. Instead, let's restructure it to make it a specialist court of excellence

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More Australians will have contact with the family law system than perhaps any other part of our justice network.

Although it has not been without criticism, Australia's family law system contributes immeasurable social and economic value to our society. For more than 40 years, the Family Court of Australia has been one of our premier legal institutions: a specialist superior court admired by other family law jurisdictions around the world for its innovative management of the most complex and difficult family law matters.

In recent years, the family law system has been adversely affected by a chronic and sustained lack of resources in both the Federal Circuit Court and the Family Court, resulting from an absence of commitment by successive Governments to the proper funding of the system.

When Federal Parliament resumes in August, the Attorney-General of the Commonwealth will introduce legislation to amalgamate the Family Court into a new entity called the Federal Circuit and Family Court of Australia.

Essentially, the Attorney-General is proposing to merge the Family Court into a division of a generalised lower level court, the Federal Circuit Court and create a new Family Law Appeal Division in the Federal Court of Australia.

There is a pressing need for a national discussion about the future of family law in Australia. A specialist family court should not be disassembled without informed consideration of alternative options.

The New South Wales Bar Association agrees with the Government 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.

However, we believe that further consideration must be given to the question of whether the model proposed by the Attorney-General is the only way forward. There is an opportunity – and a need – for a national discussion to consider whether an alternate federal court restructure might be possible to realise the cost and time efficiencies proposed by the Attorney-General while retaining a single court entity as a specialised, properly resourced Family Court of Australia 2.0.

Family law is factually and legally complex, and emotionally-charged. It produces life-altering consequences for families and children.

Judges working in this area not only require specialist technical knowledge, legal reasoning, fact finding and analytical skills, they also require highly effective communication and interpersonal skills and experience. One of the Family Court's most admired features has been the fact that only those who by reason of training, experience and personality are suited to deal with family law cases are appointed as its Judges.

Unless there are overwhelming countervailing factors, Australians should not be forced to put their families' futures into the hands of a general purpose court already juggling increased migration caseloads if there is another way forward.

The Federal Circuit Court currently has a crushing workload, with delays of up to three or more years in hearing matters and each Judge having approximately 500 matters in their case list. It makes no sense for the Attorney-General to propose to collapse into that Court all of the most complex Family Court matters, which are the most important matters that our court system deals with - the care of children and relationship issues.

Family law is a specialist area and we need to be careful to ensure that we don't lose that speciality to the detriment of children, while creating additional stresses for people experiencing difficult times.

There are many voices that must be heard in this debate: from the mothers, fathers and carers who have first-hand experience of Australia's family law system; to children whose futures are fundamentally impacted by the courts' decisions; to the counsellors and support staff, the judges, solicitors and barristers who face the struggle on a daily basis of working in a family law system that has been neglected and chronically under-resourced by successive governments.

To date, there has been a lack of public consultation about the Government's proposed structural reforms. This is unacceptable. Law reform must not happen in a vacuum.

The Bar Association is proposing that consideration be given to an alternate restructure model whereby:

- the Federal Circuit Court of Australia ceases to operate as a separate, third federal court;
- the Federal Circuit Court of Australia's current family law jurisdiction and workload is transferred into a new lower level division to be created in the Family Court of Australia 2.0;
- the Federal Circuit Court of Australia's non-family law work is transferred to a lower level division to be created in the Federal Court of Australia;
- the Federal Circuit Court of Australia's resources and Judges are divided and re-allocated between the new divisions of the Family Court of Australia 2.0 and the Federal Court of Australia consistent with the proportion of work undertaken; and
- the Family Court of Australia 2.0 retains its appellate family law jurisdiction.

This proposal consolidates and strengthens a single, specialised Family Court of Australia 2.0 with one point of entry, unified court rules and procedures across divisions and appellate jurisdiction.

As a society, we must consider whether maintaining a specialist, properly resourced, stand-alone family court would be more beneficial to the administration of justice than the restructure currently proposed. The Family Court can be a gold star institution once again but this requires reform in two key areas: structural improvement to unify the family law system by creating a single family court; and a proper funding and resource commitment from government.

It is time we had a national conversation about a Family Court of Australia 2.0. And it is time the Government was prepared to listen.