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Dire Federal Circuit Court backlogs prove family court merger a risk to families, judges

A bill to collapse the specialist Family Court into the generalist Federal Circuit Court (FCC) must not proceed, amid revelations the FCC is facing severe backlogs of more than a year's worth of migration and family law cases.

The FCC's [Annual Report](#), released on Friday, reveals stark concerns that the FCC is simply unable to cope with its increasing workload, putting vulnerable children, Australian families and Judges at significant risk.

The FCC's pending migration law caseload spiked by 58 percent, up from 7,674 applications in 2017–18 to 12,158 applications in 2019-20. If current filing rates continue, the Report concludes that without further resources the pending migration caseload will overtake the pending family law caseload in less than two years.

The FCC disposed of just 62 percent of final order applications within 12 months, falling significantly short of its target of 90 percent for the second year in a row. This is contributing to ongoing delays, leaving families and children in limbo and often at risk while waiting for their matter to be heard.

The FCC's Judges are buckling under the strain, with hearings that have been scheduled for months being cancelled by email and final hearing dates not being available until 2022 at the earliest in some Registries.

In the face of this crisis, the Government is pressing ahead with the merger bill in the Spring parliamentary sitting. A coalition of stakeholders is calling on the Federal Parliament to abandon the bill once and for all, warning these figures confirm the merger will put at risk children, families and survivors of family violence, and further burden judges who are already facing unsafe workloads.

"The merger bill would abolish the specialist, stand-alone Family Court as we know it by subsuming it into one of the country's busiest courts, the lower level FCC. The FCC is already struggling through chronic under-resourcing and under-funding to manage less complex family matters alongside its crushing, growing migration workload," said Law Council President, Pauline Wright.

"When the merger proposal was announced in May 2018, it was opposed out of concern the flawed bill would not realise efficiencies and would harm, not help, children and families. Some families were already having to wait three years, sometimes longer, to have their matters resolved. These concerns are even more acute now. The FCC can't get through existing backlogs and is now staring down a tsunami of incoming migration work and the COVID-19 pandemic which continues to create urgent demand for family law services," said Ms Wright.

"While the recent Budget included funding for the FCC, this is inadequate to address the scale of the present crisis, let alone reverse years of chronic under-funding," Ms Wright said.

"More than 30 per cent of people who seek help from community legal centres experience family violence. Based on our experience, the move away from a specialist family court model would be a retrograde step," said Mr Nassim Arrage, CEO of Community Legal Centres Australia.

“Family violence best practice responses world-wide recommend an enhancement of family violence specialisation in courts - not moves away from it. With about 70 per cent of final matters in the family law courts involving family violence, reforms must prioritise child and victim safety. The Federal Government’s proposed model does not achieve this,” said Ms Angela Lynch AM, Women’s Legal Services Australia spokesperson.

“These reforms will disproportionately impact the most vulnerable including Aboriginal and Torres Strait Islander children and families who need the most support. They will lead to a range of unintended consequences including a reduced number of specialist family law judges, and increased costs for litigants,” said Ms Cheryl Axleby, National Aboriginal and Torres Strait Islander Legal Services Co-Chair.

“From our experience, as Aboriginal organisations, we say that mainstreaming does not achieve efficiency or better outcomes for our people and that specialisation in the law is important and it works. Our main call is for more specialisation and more resourcing into the cultural competence of the family court system. The introduction of specialist Aboriginal Courts in the family law system has seen an increase in Aboriginal participation. We implore the Parliament to do the right thing by our communities and reject this bill which does not address the root causes of these problems. We fear, in the middle of this global pandemic, the bill will exacerbate the issues that our communities are facing,” Ms Axleby said.

In 2018 and 2019, there was sufficient concern within the Parliament not to pass the merger proposal. When reintroduced last December, with a few amendments, the bill was met with fierce opposition from more than [110 individuals and organisations](#) on the front line of Australia’s family law system.

This is because the merger would abolish the existing specialist, stand-alone, multi-disciplinary Family Court system dedicated exclusively to family law matters. This is not a misrepresentation, as some have suggested.

What currently exists as a stand-alone, superior court ecosystem would be collapsed into a division of an inferior, generalist, over-worked and under-resourced Federal Circuit Court, to the detriment of families’ wellbeing. The Federal Circuit Court already struggles to manage the workload of less complex family matters alongside nine other diverse areas including migration and workplace law.

Now is not the time to proceed with the merger. There is widespread agreement that there is a better way.

Now is the time to strengthen a stand-alone, specialist family law court and increase family violence specialisation with the *Family Court 2.0 model* proposed by the NSW Bar Association. Unlike the merger, the *Family Court 2.0 model* would lift and shift the Federal Circuit Court’s family law jurisdiction and judges hearing family law matters into a lower division of a specialist, stand-alone Family Court at the heart of a bespoke ecosystem of interrelated and co-located support, counselling and assessment services.

The Law Council of Australia, Community Legal Centres Australia, Women’s Legal Services Australia and NATSILS have each made submissions to the Senate Legal and Constitutional Affairs Committee inquiry into the bill, outlining further concerns about the merger proposal. These submissions are [available here](#).

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