

MEDIA RELEASE

RESERVATION FEES A DISTRACTION FROM THE FAMILY LAW COSTS AND DELAYS FLAWED MERGER BILL WILL CAUSE



NEW SOUTH WALES
BAR ASSOCIATION

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The Government's flawed merger bill, which is currently before the Senate, will only increase delays and costs for families in need of assistance and should be opposed, according to the New South Wales Bar Association.

New South Wales Bar Association President, Michael McHugh SC, said comments by the Government, reported in today's [Sun Herald](#), do not accurately reflect the New South Wales Bar Association's policy position on what have been labelled "reservation fees" and distract from the fact that the merger will hurt families by increasing delay and costs.

"The Association is concerned about the costs of accessing justice for families, which is one reason we oppose the Government's proposal to collapse the specialist, stand-alone Family Court into one of Australia's busiest courts - the generalist Federal Circuit Court," Mr McHugh SC said today.

"Comments today about reservation fees are a distraction from the Government's second attempt to force its flawed merger proposal through Parliament, despite significant opposition from more than 110 stakeholders, including former Chief Justices of the Family Court, Elizabeth Evatt AC and Alastair Nicholson AO RFD QC. Last week the bill was opposed in the House of Representatives by the Opposition, Greens and all Cross-bench members.

"The single most significant driver of legal costs in family law is delay in having matters proceed through the courts and this will be compounded by the Government's proposed abolition of the Family Court as a specialist and stand-alone Court. This is the real issue for parents and children in family law matters," Mr McHugh SC said.

"The merger will mean that all family law matters will have to come in through the Federal Circuit Court's door. While this measure is intended to streamline court processes, the reality is that it will lead families into gridlock and greater delay. The Federal Circuit Court already struggles through lack of resourcing to manage family law matters alongside its work in migration, administrative, admiralty, bankruptcy, consumer, human rights, intellectual property, privacy and workplace law. Its judges are already chronically under-resourced and overburdened. On average, Federal Circuit Court judges have more than 300 cases in their dockets. Some have more than 600. The merger will increase pressures on those judges and mean longer delays and stress for families.

"The legal profession is the only stakeholder that stands to gain from the merger, with the further delay, costs and confusion it will create. However, we remain opposed to this bill because it is not in the best interests of families.

"Reservation fees are not charged by all barristers and are intended to promote access to justice. A barrister is not entitled to charge a "reservation fee", which as noted are rare, unless it is covered by the fee disclosure and costs agreement with the client and certain other conditions are present, including that no other work is taken.

"Settlements up to a court hearing are actively encouraged by barristers where appropriate best to promote clients' interests. If a barrister is able to obtain further work for the remainder of the unused days, the barrister will not charge for that period. The assumption, however, that barristers can instantaneously pick up alternative work when tomorrow's case settles is misconceived. Clients are protected by the *Legal Profession Uniform Law* (NSW), which provides that barristers may not charge fees which are not "fair and reasonable" or "proportionately and reasonably incurred and proportional and reasonable in amount", and must comply with strict disclosure requirements."

The New South Wales Bar Association was asked its position in relation to reservation fees at a [hearing on the Government's flawed family court merger proposal](#) on 9 October but were disrupted in answering by divisions in the Senate. Further information was provided by the Association to the Committee, which is [available here](#).

“The Bar takes very seriously any specific allegations about over-charging as this undermines public confidence in the profession and tarnishes the reputations of ethical practitioners. No one is above the law,” Mr McHugh said.

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