'Reform' hurts those at the mercy of a flawed family court system

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The Commonwealth Attorney-General has made it clear that he will proceed with the government's proposed reforms to merge the Family and Federal Circuit Courts in the last parliamentary sitting days before the election.

Zealous promises are not unusual in an election year. Yet in maintaining this position in the face of widespread opposition, the government continues to refuse to consult with the community about the core problems confronting the family law system, and the best way to address them.

The family law system and its courts are a critical piece of social justice infrastructure and they are in crisis. This infrastructure has been chronically neglected in successive budgets by governments of both persuasions, leaving Australian children and families to pay the price at a time when they are already at their most vulnerable.

If you separate from your spouse today and need the assistance of the Australian court system, you may never be able to have a hearing. That is the view currently being expressed by a Family Court judge to litigants of that Court. Families are having to wait three years for a hearing in Sydney and Parramatta, in some cases longer. Yet the government continues to reject the need to consult with those who stand to be most affected by changes proposed.

In 2011 the now Prime Minister, the Hon Scott Morrison MP, acknowledged that in family law 'no-one can claim any perfect solution because there is not one'. In addressing changes then proposed to the courts he said that 'I am concerned that these amendments may only serve to create more confusion when we ought be seeking clarity. However, I am open to the discussion and to listening to the points that are raised'.

This begs the question, what has changed? Why is the government so determined on the eve of an election to wreak wholesale structural change to what was once a well-functioning and internationally lauded Court system, without careful consideration and consultation with stakeholders?

A parliamentary committee has recently released a report on two Government bills before the Senate which would fundamentally restructure the family law system and abolish the stand-alone, specialised Family Court as we know it. There was emphatic agreement across submissions and testimony received by the Committee that greater resourcing of the system and legal aid is required to improve the quality of justice delivered.

The Attorney-General, the Hon Christian Porter MP, has announced an intention to dramatically alter the bills by abandoning longheld plans to relocate specialist family law appellate jurisdiction to the Federal Court, which were at the heart of much-vaunted efficiencies said to be attainable by the merger. In recent weeks the Attorney has also made a spate of appointments to the Courts without evident regard in all instances to the need for experience in family law as recognised by the Senate Committee. Neither development has been the subject of consultation. Whether either is part of a comprehensive and considered plan has not been shared.

Desperately-needed court resources should not be made available on an ad hoc basis to seek to secure the passage of flawed legislation that has been comprehensively rejected by stakeholders. Appointing further judges is not the only requirement for meaningful reform. Reports that Centre Alliance Senators may be prepared to support the flawed proposals in exchange for more court resources for South Australia are alarming.

Yes, there is widespread agreement on the need to reform Australia's family law system.

But there is also agreement amongst the legal profession and domestic violence service providers that the Bills are not the solution and should not be passed. There is a real risk that the Bills if enacted will only further increase cost, delay and confusion for families.

More immediate and significant reform could occur by properly funding the courts, legal aid and using existing powers to create consistent court rules and a single point of entry. These are changes the government and courts could make today.

There is also agreement that this discussion is only just beginning. Later this month the Australian Law Reform Commission will hand down the first root and branch review of the *Family Law Act 1975* in more than forty years. Any recommendations put forward by the ALRC must be carefully considered in consultation with court users, the judiciary and the legal profession.

What is required is widespread consultation and considered, holistic reform of the family law system to ensure a meaningful, long-term investment in our most important social justice infrastructure.

Parliament should be careful to learn from the mistakes of the past, which led to the pre-emptory creation of the then Federal Magistrates Court and in no small part to the current problems.

Reform for reform's sake is not only bad politics, it is an abrogation of the government's responsibility in this most important area to provide a functioning, effective Court system to support vulnerable children and families.

Australians deserve more than a myopic, rushed and deeply flawed approach to family law policy. What we need is less fight and more forethought.

Published in The Australian *newspaper on Friday, 22 March 2019*