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Opinion Piece: Merging family courts ahead of system review is to put the cart before the horse

Australia's family court system is under unprecedented stress.

Chronic underfunding for more than a decade has led to a court system that continually struggles to serve the growing number of vulnerable people who need it.

The breadth and complexity of the issues dealt with by the courts on a daily basis have also increased, including as a result of the proper recognition afforded to the prevalence and impact of family violence.

Australians, and in particular families, enter the court system during some of the worst times of their lives. The sad reality is a family's pain is now further compounded by a system that is unable to keep up with the demands placed upon it. Families can spend up to three years, sometimes more, waiting for a legal conclusion to their misery.

Thankfully the Australian government has understood this and that is why last year it directed the Australian Law Reform Commission to conduct its comprehensive family law review, which the former attorney-general called "the first comprehensive review of the family law system since the commencement of the Family Law in 1976".

This review is due to be delivered to the Attorney-General on March 31 next year.

Rather than waiting for the recommendations from its own landmark review, Attorney-General Christian Porter is pushing for a total restructure of the family courts by the end of the year — a merging of the Federal Circuit Court and the Family Court into a single entity.

The difficulty with that approach is one of timing. The breadth and depth of the reform requires very extensive consultation including proper consultation with the public.

To do less is potentially a grave mistake. But it also treats a merger of the courts as if it is entirely independent of the ALRC review — which it is not.

To start a new court on January 1 next year just months away from the delivery of the ALRC report is of great concern.

As it stands, the measures introduced into parliament provide no extra funding for the chronically under-resourced court system or associated support services, which enable the court system to deal with cases more quickly.

It may also heap extra pressure on already overburdened Federal Circuit Court judges.

The Law Council's current understanding is there will be no new appointments of judges to the specialised Division 1 of the new court at least by the current Attorney-General.



The Senate recognised the need to properly scrutinise the reforms when it voted for a mid-April 2019 reporting deadline on the bills. This was, in large part, so it could hear the recommendations of the ALRC.

But there is now a government push for completed submissions within the month. The Senate has kicked back, and on the Wednesday just past, extended this submission deadline until November 23. Public hearings must follow this date, meaning the Senate committee can undertake wide and extensive consultations of urban, rural, regional and remote Australia into early 2019. The committee can then report on April 15 next year, and after the ALRC report.

The Attorney-General has argued that the Law Council was given ample time to consider the merger.

We respectfully disagree. For the record, we were given four business days for four Law Council representatives to view a confidential exposure bill of some 530 pages in order to give feedback.

In our respectful view, that time was inadequate. We know that the Australian Bar Association, through its own statement this week, feels the same.

As part of the consultation on the bills the government needs to hear not only from the legal profession, but from the wider community of stakeholders who are involved in the system.

It needs to hear from those families who have unfortunately been caught up in the system.

It will be hard for these mums and dads to tell their stories; it will take time. But if they are prepared to tell it, we must be prepared to hear it, particularly given the impact on our nation's children, our most valued yet vulnerable asset.

This is a problem that has been decades in the making. While reform is needed urgently, Australians are never served best by rushed parliamentary decisions.

We should ask why after decades of letting the courts be eroded by funding cuts, by both sides of government, we are now asked so very quickly to sign up to a significant structural change without the benefit of the ALRC report and with seemingly minimal support from the sector. We owe it to the people caught up in the family law system not to give this a simple tick-and-flick.

The biggest changes to the family law system in 40 years need to come after the most comprehensive review ever held into the system.

Australian families rely on the courts, and right now the system is failing them. This is an opportunity for the government to show it is putting policy, not politics, first.

Opinion Piece by Law Council of Australia President, Morry Bailes – published in [The Australian](#) Friday, 14 September 2018.

Patrick Pantano: Public Affairs

P 02 6246 3715

E Patrick.Pantano@lawcouncil.asn.au

Sonia Byrnes: Communications

P 0437 078 850

E Sonia.Byrnes@lawcouncil.asn.au