



Our Ref CJB 180006

Your Ref

Date 6 December 2018

Dr Sean Turner
Secretary,
Legal and Constitutional Affairs Legislation Committee

BY EMAIL ONLY

EMAIL: legcon.sen@aph.gov.au

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Thank you for your letter of 24 November (copy of the first page **enclosed**) inviting me to make a submission to the Inquiry into the Federal Court and Family Court of Australia Bill 2018 and the Bill regarding consequential amendments and transitional provisions.

This short letter comes from someone who practises law in a large regional centre rather than in a capital city. I acknowledge that in the capital cities, everything is larger in the sense of the number of Judges, number of matters filed and number of cases awaiting hearing. Having said that, the same concerns for parties and lawyers about delays in having matters heard, are common in our area.

In the Family Court, Townsville and Cairns are served by Justice Tree. In the Federal Circuit Court, Judge Middleton is in Townsville, Judge Willis is in Cairns and Judge Demack is based in Rockhampton and sits in Mackay as well.

In my view, a merger between the Family Court and the Federal Circuit Court should be of benefit to the many people who unfortunately, come before those courts each year in disputes about parenting and property. It seems to me that the positives of a merger outweigh the negatives however, the negatives or potential negatives.

The positive aspects of a merger would include

- A single set of documents to be use.
- A clear and simple pathway for all litigants before the court.
- Doing away with issues which we have now (admittedly in a reasonably low percentage of matters) in deciding in which court a matter may be filed.
- No unnecessary delays.
- Costs saving for clients in having a single court to deal with all family law matters, including for married and de facto relationships.

One issue which has caused a difficulty from time to time is that lawyers with little previous experience in family law have been appointed as Judges. I am aware that

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Governments have taken the view that this is not necessarily a bad thing. Arguments in favour of appointing "outside" lawyers to the Family Court and Federal Circuit Court include that practitioners who are appointed Judges should have a wide range of experience. Property settlements involving significant amounts of wealth and companies and trusts are to a large extent commercial disputes notwithstanding the marriage relationship, a view with which I agree. There may be an understandable view that it is not always of benefit to appoint only lawyers from the "family law club" if such a thing exists.

In my experience, practitioners with little experience in family law have not been successful on the bench. Whilst I accept that it is not the case that all "family lawyer" appointees have been successful, I must say that my experience has been that non-family lawyer appointees have been unsuccessful.

As I understand the proposed Bills, the Federal Court rather than the Tier 1/Family Court Justices, will hear appeals. I am not able to comment on whether there will be more or less of a delay in the Federal Court having to deal with Family Law appeals in addition to other appellate work. I do have a concern however that as referred to above, Justices with little or no family law background will become the appeal Judges in family law. I do not see this as a benefit.

As I said at the beginning of this letter, I appreciate the opportunity to make a submission to the Committee. Should you wish to discuss any of the contents of this letter or any other matter which the Committee might consider relevant, I will be able to make myself available by telephone or email communication.

Since writing the above, I confirm that I have been contacted by Ms Pothida Youhorn who has scheduled an appointment for me to appear before the Committee in Townsville on Friday 14 December. Thank you for the courtesy of this invitation and the arrangement put in place. I confirm my advice to Ms Youhorn that my office is reasonably close to the Hotel Grand Chancellor. If the Committee is running either early or late on 14 December or has other time constraints, my appointment can be rescheduled and I can be contacted (direct line) on

Yours faithfully

Chris Bowrey