

**Senate Legal and Constitutional Affairs Committee – FCFA Bills inquiry**

**A. OUTSTANDING - Questions on Notice 6 November 2020**

| Question  | Senator | Transcript | Response  |
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| I'm interested to know what you're doing to address health and safety issues for judicial officers. | Carr    | Pg 6       | <p>The Court refers to its evidence given at the hearing on 6 November 2019 at pages 6-7 of the Transcript:</p> <p><b>Senator KIM CARR:</b> What I'm trying to get to here is whether or not the workload is such that it is actually affecting the health and safety of our judges. The workload is actually too great if you've got these sorts of numbers—</p> <p><b>Mr Pringle:</b> No-one's saying that the workload of FCC judges—that's what you're focusing in on—is anything other than very, very busy. I said that in my opening statement. I think the difficulty, though, in answering your question effectively is that it really does vary on the individual judge as to what's affecting how they're operating or performing at any given time. Sometimes that can be related in part to the number of cases or the issues playing out in their case load. But there are all sorts of other issues, such as personal matters on the home front and health related issues, that can impact on a judge's ability to deal with matters. So we obviously work very closely with the judges, through the case management judges, to make sure that that is being assessed all of the time. We also have judicial wellbeing committees in each court whose job it is to make sure that fellow judges are looked after.</p> <p><b>Senator KIM CARR:</b> Can I ask you to take that on notice. If you think that's a difficult question and you don't want to answer that at this point, can you take that on notice and consider ways in which you can answer it. I'm interested to know what you're doing to address health and safety issues for judicial officers.</p> <p><b>Mr Pringle:</b> I'm happy to do that. If you're happy for me to take it on notice in a general sense, as opposed to delving into the specific matters—</p> <p><b>Senator KIM CARR:</b> Yes. I want to get to that question about the relationship between the workload and the effects on health and safety. As of 1 January, you would obviously have insurer issues and possible claims against the courts relating to workplace health and safety, sexual harassment or bullying claims. Those things would have to be registered statistically, wouldn't they?</p> |

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|  |  |  | <p><b>Mr Pringle:</b> Again, these are the sorts of matters that I would have to take on notice and see how I could—</p> <p><b>Senator KIM CARR:</b> Alright. I probably asked a question to that effect. I'm looking at 2018-19, 2019-20 and 2020-21 through to today. Could you provide any possible details. Are any of the Federal Circuit Court judges on indefinite leave?</p> <p><b>Mr Pringle:</b> Again, matters to do with judges' leave is on their private wellbeing, which I think will be very difficult to answer specifically. I'm happy to look at the general workload issue that—</p> <p><b>Senator KIM CARR:</b> Because time is so precious, I'm just looking at how we can get a better understanding of the effects of workload pressures and stress pressures on judges and whether or not that's measured through leave questions. I'm interested to know if Family Court judges are on indefinite leave, illness leave or leave of a type that might give us some indication of the difficulties on that front.</p> <p><b>Mr Pringle:</b> I think what I can do is take on notice this broad question about workload and the interrelation between that and how judges are. Once we get into matters of why people are taking leave or private health considerations, it will be difficult for the court to be able to go into specifics.</p> <p>In addition, the Courts provide the following:</p> <p>Since the appointment of the Chief Justice of the Family Court of Australia and the Chief Judge of the Federal Circuit Court of Australia, the Hon. Justice William Alstergren, the Court has introduced substantial measures to support and assist judicial officers in performing their duties.</p> <p>This includes a much more in-depth and relevant induction for new judges, a formal program of mentoring and a number of different levels of monitoring to assist the Courts to manage the quality of judgments. The Court has also introduced an informal counselling process with judges of the superior courts and holds monthly national judicial education sessions. Specific Judicial Committees, including the Judicial Wellbeing Committee and the Judicial Education Committee, provide ongoing, regular judicial support and education. The Court has also introduced a counselling process with judges of the superior courts for judges who may need some additional support.</p> |
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|   |        |      | <p>The Chief Justice/Chief Judge has also focused supporting judges through greater assistance from Senior Registrars and Registrars, aimed at alleviating the workloads of, and pressures on, judges. Registrars are doing this by undertaking many high volume duty lists, as well as interim or interlocutory disputes; and by undertaking dispute resolution in both property and parenting disputes where it is safe to do so. Previously the Courts did no parenting dispute resolution and a limited amount of property conciliations. All of these new arrangements are designed to alleviate the pressure on judges, resolve disputes earlier, and to allow judges to hear trials and write judgements as early as they can. To facilitate this enhanced role for Registrars, the Courts have harmonised the delegations of Registrar powers across both courts. The effectiveness of the Registrar support strategy is illustrated through successful registrar lists (including the PPP 500 property list), which allow for 70-80% of the property matters in them to be resolved without the need for judicial intervention; and the COVID-19 List, which allows for urgent disputes nationally to be dealt with initially within 3 business-days.</p> <p>For the reasons previously given, the Court is unable to provide private information regarding the specifics of individual judges' wellbeing or leave.</p> |
| As of 1 January, you would obviously have insurer issues and possible claims against the courts relating to workplace health and safety, sexual harassment or bullying claims. Those things would have to be registered statistically, wouldn't they? | Carr   | Pg 6 | We understand that there is no single register detailing all possible work health and safety, sexual harassment or bullying claims, however some statutory mechanisms have reporting requirements which the Court complies with.   |
| How were the courts consulted before these bills were introduced to parliament?   | Thorpe | Pg 8 | <p>The Court refers to its evidence given at the hearing on 6 November 2019 at pages 8-9 of the Transcript:</p> <p><b>Senator THORPE:</b> How were the courts consulted before these bills were introduced to parliament?</p> <p><b>Mr Pringle:</b> Given that I've been appointed CEO and principal registrar relatively recently, I might throw that question across to my colleague Virginia Wilson to see if it can be answered. Otherwise, we could take it on notice and give you some clarification.</p> <p><b>Ms Wilson:</b> Senator Thorpe, can I just clarify that you are talking about the current version of the bills, the 2019 version.</p>   |

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|  |  |  | <p><b>Senator THORPE:</b> Yes.</p> <p><b>Ms Wilson:</b> We might need to take that on notice, but I can make some broad comments. There was the 2018 version, and, at the time, submissions were made by both courts on that. And then, in the Family Court submission—and that was obviously in the 2018 version; appeals were going to go to the Federal Court—the Chief Justice noted that some judges may choose to do individual submissions. Following that, at a plenary of judges in August 2019, the Attorney-General spoke to judges across both courts and it was noted that there would be some changes to the 2018 version of the bills. I think they've been referred to in the Attorney-General's submission on the 2019 version of the bills. Most notably, that includes that appeals will stay with the Family Court. There was a discussion about those points at the plenary. Following on from that, there was an opportunity for the courts to make a submission on the bills. Each court decided not to make a submission. It was also open for individual judges to make submissions on the bills if they so wished. So I think there have been opportunities through that. In terms of broader consultation with the courts, there have been discussions with the heads of jurisdiction. I can't speak to that.</p> <p><b>Senator THORPE:</b> Was the consultation sufficient if there are areas that may not have had the same opportunity, particularly given how much these bills would change the courts?</p> <p><b>Ms Wilson:</b> You're saying 'how much they would change the courts'. To clarify: you're saying 'between the 2018 and 2019 versions'? Obviously there were comments put on the record about the 2018 versions. You're talking more broadly now in terms of subsequent changes, or just generally in terms of the changes the bills will effect?</p> <p><b>Senator THORPE:</b> Given the massive changes this will have on the system, I'm trying to work out whether the consultation was sufficient in coming up with a position one way or another. I don't think there's enough detail around the consultation process that gives weight to how these decisions are being made. So maybe you could provide on notice details of the consultation process and who was involved in the consultation.</p> <p><b>Ms Wilson:</b> We're happy to do that. I will make some general points—and David might wish to add to this. Obviously there has been a lot said about changes to the structure of the courts and what the bills are seeking to do. We've said it's not a</p> |
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|  |           |       | <p>matter for us to talk about that; the structure is a matter of policy for the government. We are obviously aware of the commentary around what the structural changes are going to do. Obviously both courts will continue as chapter 3 entities; that has been made clear. What we have said there is general and there are limits to what we will comment on. In terms of broader consultation, we can take that on notice.</p> <p>In addition, the Courts provide the following:</p> <p>Both the Family Court of Australia and the Federal Circuit Court of Australia made submissions on the 2018 version of the Bills. The submission from the Family Court provides that as Head of Jurisdiction, the Chief Justice does not consider it appropriate for the Court to comment on Government policy or the structure of the Court. Nevertheless, notwithstanding existing protocol, individual Judges of the Court were at liberty to make their own submissions on the 2018 version of the Bills. In August 2019, at a plenary of judges the Attorney-General spoke to judges across both Courts and outlining intended changes to the 2018 version of the Bills.</p> <p>In relation to the 2019 Bills, reference is made to the letter from Chief Justice Alstergren to the Committee Chair dated 12 November 2020, which noted that the Family Court of Australia 'relies upon its previous submissions made on 14 December 2018' and that, as Head of Jurisdiction, the Chief Justice does not consider it appropriate for the Court to comment on Government policy or the structure of the Court. However 'individual Judges of the Court are at liberty to make their own submissions on Government policy if they wish to do so and a few have'.</p> |
| Are you aware of any judge or anyone working for any judge who has sought any sort of data from you as to the performance of the courts, including matters such as the time to trial, in the last couple of weeks or so? | Henderson | Pg 11 | <p>There are commonly internal requests for data by Judges, such as Case Management Judges, for a variety of purposes, including to assist Judges operationally and in the performance of their duties. In relation to the specifics of any individual request by a judge for data, such requests are matters pertaining to the business of the Court and/or the management of judicial workload, which is the responsibility of the Chief Justice, and are not considered appropriate for public dissemination.</p>   |