

14th September 2018

The Committee Secretary

Senate Legal and Constitutional Affairs Committee

Parliament House

Canberra ACT 2600

Dear Senators,

FAMILY LAW DELAYS : The two Bills miss the key non legal issue

I used to be a partner in a family law firm in Sydney. I am now a full-time mother of twins in Brisbane. Both are high stress jobs- living with 3 rabid male Maroons fans is no easy task, let me tell you. With motherhood you almost always see the best of human behaviour. With divorce it's most often the worst of behaviour - by just about everyone.

One of the reasons I was very happy to escape family law was the **enormous pressure on female law partners just to get clients into court for any reason, even when both lawyers are quite capable of solving matters on their own**. As a proud Christian I was repulsed by the demand that anyone with a house worth more than \$ 1,500,000 be targeted for litigation. As a proud feminist I was appalled by widespread "advice " aimed at mothers during a vulnerable time for them, always urging confrontation and the benefits of "doing nothing". We lawyers know this leads to lower child maintenance payments and screaming matches. We know it transfers value to us. We know "your best case" is as responsible as saying don't invest your superannuation, just buy lottery tickets. Family lawyers sell delay, not justice. A great many female lawyers share my views. So whatever name the family courts must use going forward just to stop the voter bleeding to PHON, **this predatory culture simply has to end**.

The delays in the family law system are not primarily caused by politicians worried about law reform options (you will be pleased to know), nor lack of Treasury funding, nor by self-represented litigants "wasting judges time", nor by "totally leftist lesbian judges" (as one bitter self-represented male litigant once screamed at me). **Delays arise because delay is profitable**. Unable to throw clients at public courts, many family law firms would close within 9 months. That is why the Law Society is acting in such a deranged manner about the Bill in front of you. That is why two gladiatorial middle-aged males are "loudly leading the charge". Just like the Light Brigade, really.

Australia will follow the inevitable international trend towards fewer family lawyers, greater compassion, and lower cost. Litigation is really just another form of family violence; this time financial violence as sanctioned by the state. The argument about the name and form of the court is not the key issue here. Unless you are destined to be on the wrong side of history, this is a debate to ignore. On the other hand, delaying the inevitable will inevitably look stupid. Your place in Australian history deserves so much better than this. So do the families you represent.

Family courts operate more like a country club than they do a traditional court. Court queues would be cut in half by Christmas if the existing law was applied properly, not selectively, by:

- Family Court appellate judges using **legal precedent consistently** rather than defying The High Court –so if the decision in Wallis v Manning (2017) FLC 93-759 was reversed and the approach of Justice William Deane was restored; and
- Judges used **existing powers to triage disputes**. The vast majority of property disputes can be shrunk by 65% by solicitors on filing under the Rules, and 10% at the first mention. Judges “exercise of discretion” to pay lawyers first, and clients last, thus making litigation lucrative, is the main cause of delay. Solvency, thereby funding early equal legal representation, is critical to fast problem solving. But smaller disputes mean smaller legal fees.

Deciding cases one at a time is absurd. Its unaffordable. And its unfair because litigation is an arduous journey. Financial stress is the MAIN cause of divorce. Exacerbating those problems is not what the Parliament intended. Exhortations like new S 48 are a good idea but they are sound bites, not substantive change.

Family lawyers like to win. It is very aggressive. Many have mental health issues. We misuse the system to bankrupt businesses, we do cause suicides, nice kids are kicked out of private school as judges kindly allow our fees to obtain a priority over children’s education. Not always, but far too often. Rarely maliciously, but too often in fact. Yet instead of apologising to our fellow Australians we blame everyone else and loudly demand politicians spend more public money so we can commit more financial violence. Oddly, or not, suspending “family law cowboys” and only allowing specialists to appear, or capping legal fees, are never mentioned as part of the cure by any of the 7 Law Societys. The only cure they can stomach is always lots more cash and no change to the existing process. What a surprise.

The Senate and the House have **ALREADY given** judges **BROAD POWERS** in the 1975 Act. Judges simply refuse to use these powers for public good. Despite repeated failures, and multiple requests to reverse their failures, judges find it so much easier to continue to under deliver for their fellow Australians, while demanding more resources. No wonder so many cynically refer to it as The Family Lawyers Act 1975.

You do not need to wait for yet another report on family law. Parliament hasn’t done a thing about 6 of the last 7 reports, including The Australian Productivity Commission Report of 2014. No debate at all. Zero. Professor Helen Rhoades is a wonderful Australian, but she is not an oracle. So whatever the name of the court must be next year, “kicking the can down the Rhoades” is both irresponsible and petulant. Delay is such a stupid idea that not one family lawyer is offering to defer one dollar of payment until enactment of her thoughts occurs. Ever wonder why the people who understand the risk the best run fastest from it ?

In this hopelessly dysfunctional political environment The Senate are now the peoples only “representative swill”. The House has lost public confidence. So please use your power wisely. Send an emphatic in the two Bills before you that judges **must use their existing powers to fix up the awful mess they have made**. Or as a motion on the floor of the Senate. Everything else is just hot air until you make these critical changes to culture, not law, at your earliest opportunity.