

## Questions on notice – PwC responses

PricewaterhouseCoopers Australia, Legal and Constitutional Affairs Legislation Committee hearing, Adelaide, 11 December 2018

*Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018, Federal Circuit and Family Court of Australia Bill 2018*

Number	Question on notice	Response
1	Senator PRATT: There are different kinds of judges who can hear different matters. How do you deal with that in your statistics?	<p>We were provided with data on case types handled by individual judicial members. As our comparison focused on the operation of the courts, rather than on individual members within it, the data we presented shows aggregate averages.</p> <p>Key differences relating to different case types between the courts were identified in our report:</p> <ul style="list-style-type: none"><li>• Of family law matters handled by the FCoA and FCC, the FCoA hears proportionally more financial-only matters. The FCC hears proportionally more children-only matters (52% of all family law matters). Only a small proportion of matters heard in each court involve both children and finance (14% and 12%, respectively). Details can be found at page 30 of the report.</li><li>• In numeric terms, FCC judges dispose of more first instance family law final order matters than FCoA judges each year. This is the case for all but one FCC judge. On average, in absolute terms, FCC judges dispose 304 matters each year compared to 33 per FCoA judge. No account has been made for FCC judges who are only partly responsible for family law matters; i.e. they may clear many more matters each year if general law finalisations are also included. Details can be found at page 47 of the report.</li></ul>
2	Senator PATRICK: Thank you. Okay. In terms of the consultation that you had with judges and court staff—perhaps it might be easier to provide this to the committee on notice, unless you know it already—what were, firstly, the levels of the people you spoke to? I understand the need to perhaps de-identify people, but were you talking to heads of jurisdiction? Did you talk to an appellate justice? Did you talk to an original jurisdiction justice? Did you speak to someone	<p>We engaged with:</p> <ul style="list-style-type: none"><li>• one judge from each of the FCC, Family Court of Australia and Federal Court of Australia; and,</li><li>• senior employees, consultants and other employees in the FCC, Family Court of Australia and Federal Court of Australia.</li></ul>

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	from a regional jurisdiction? Did you speak to someone from the FCC in your consultation?	
3	Senator PATRICK: As an aggregate, how much time did you spend with employees of the court?	<p>Scheduled consultations were undertaken with judicial officers, senior employees and consultants. In addition, we worked closely with other employees of the court to understand the nature and appropriate treatment of the data provided to PwC. In aggregate, we estimate we spent approximately seven business days across our team members undertaking these formal consultations.</p> <p>Significant time was also spent by our team reviewing, analysing and validating data so that time spent with court employees was able to be focused on key operational issues. We also spent additional time discussing current state issues, validating observations and testing the draft recommendations.</p>
4	Senator PATRICK: But you can't recall approximately how long you spent. Was it days? Was it hours? Was it that, across the entire six weeks, you went to the court every day?	As per response to question 3.
5	<p>Senator PRATT: We have been told by submission 71 that there are inaccuracies in the data:</p> <p><i>Under the Heading Judicial Resourcing of the Courts (page24), the report asserts that during the 2016-2017 year there were 37 judges in the FCoA. Technically this is correct as the judges in the FCWA have a dual commission, but other than occasionally sitting on an appeal in Western Australia when the Full Court is sitting in Perth, they are not involved in the work of the FCoA.</i></p> <p>Were they included in the figure as a consequence, and could they have been included erroneously in the consideration of the amount</p>	<p>The four justices of the Family Court of Western Australia have not been included in calculations in the report.</p> <p>The judicial FTE of the FCoA varied across the year due to secondments and retirements. At June 2017, there were 31 FTE (23 first instance judges and 8 Appeal Division judges). This excludes the Chief Justice (who is a member of the Appeal Division), 4 FCoA WA judges and the one retiring judge, giving a total of 37. However, given the retiring judge had worked for the majority of the year, the 24 FTE basis has been used in performance and potential efficiency gain calculations throughout the report.</p>

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	of work the Family Court does?	
6	Senator HANSON: I think that what the government is trying to do is make it more efficient for cases to be heard in the court system. Is it taking consideration of the workload of the judges, the cases that they're given? Do you have facts or average figures on how many days a year family law court judges work?	From the data provided by the courts, on average, FCoA (first instance) judges sit 129 days a year and FCC judges sit 150 days a year. This data is presented on page 48 of our report.
7	Senator HANSON: Was it your recommendation, then, and correct me if I'm wrong—how many cases do appeal court judges hear a year? Do you know?	A total of 773 applications were finalised in 2016-17 in the Appeal Division, both with and without judicial determination. Of these, 72% are judicially determined.  Applications comprise applications for appeals (52% of all applications), as well as applications for extensions of time in an appeal, applications in an appeal (for instance, an application to adjourn a hearing) and cross appeal applications. Details can be found at page 42 of the report.

Additional question taken on notice by Senator Pratt in response to the Hon Diana Bryant's submission.

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8	<p>Inaccurate data</p> <p>i. Under the Heading Judicial Resourcing of the Courts (page 24), the report asserts that during the 2016-2017 year there were 37 judges in the FCoA. Technically this is correct as the judges in the FCWA have a dual commission, but other than occasionally sitting on an appeal in Western Australia when the Full Court is sitting in Perth, they are not involved in the work of the FCoA. It is</p>	<p>Responses to the Hon Diana Bryant's submission at page are structured against the points raised below:</p> <p>i. The four justices of the Family Court of Western Australia have not been included in calculations in the report. During 2016-17 there were 37 judges in the FCoA. Eight of these were Appeal Division judges, 24 were first instance judges and the remaining 5 judges are comprised of the Chief Justice and 4 justices of the Family Court of Western Australia.</p> <p>ii. The judicial FTE of the FCoA varied across the year due to secondments and retirements. At June 2017, there were 31 FTE (23 first instance judges and 8 Appeal Division judges). This excludes the Chief Justice (who is a member of the Appeal Division), 4 FCoA WA judges and the one retiring judge, giving a total of 37.</p> <p>iii. In 2016-17, one judge was seconded. This judge has not been captured in FTE or case figures presented in the report. Aside from secondments, individual leave has not been factored into calculations to assist in year-on-year comparisons (as it is to be</p>

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	<p>thus not clear why they are included in this figure and as a consequence, how they may have been included (erroneously) in a consideration of the work of the FCoA.</p> <p>ii. “It is said there were eight Appeal Division judges. Excluding the Chief Justice, who sat regularly on appeals this is correct. It includes the Chief Judge of the FCWA who appears to be counted twice as to arrive at the figure of 37, he is counted again ( ‘the remaining 5 judges are comprised of the Chief Justice and 4 justices of the FCWA’).</p> <p>iii. The PwC report accurately reports the number of first instance judges at 24, but does not take into account, as the Annual Report records, that Justice Coate was not a sitting judge in that year as she was a full-time Commissioner on the Royal Commission into Institutional Responses to Child Sexual Abuse. Hence the number of first instance judges was 23 and the figure does not take account of any judges absent on account of taking long leave to which</p>	<p>expected that leave entitlements will be accessed each year, and specific variations across each year are difficult to compare/make comment on). For this reason, FTE has been used as the basis of calculations.</p>

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	they are entitled by statute. It is not clear what effect the inclusion of Coate J would have to the conclusions.	