



Update on Federal Government's Merger of Family Court and Federal Circuit Court of Australia

Originally set for January this year, plans to merge the Family Court and Federal Circuit Court of Australia now pushed to late 2019 at the earliest

INTRODUCTION

Since the Federal Government's announcement in May last year of their plan to merge the Family Court of Australia (FCA) with the Federal Circuit Court (FCC), the proposed changes have been hotly debated throughout 2018.

Fronted by the Attorney-General, Christian Porter, the proposal seeks to structurally amalgamate the two federal courts to become a single, new Federal Circuit and Family Court of Australia (FCFCA). Additionally, a Family Law Appeal Division (FLAD) in the Federal Court would become available to hear appeals from the FCFCA. With the backing of William Alstergren, Chief Justice of the FC, Porter's plan has made greater headway than other reforms suggested in the past.

Amidst the angst of many disgruntled users of the current court system, Porter suggested that the reforms could streamline family law litigation under one set of court rules by creating a single, accessible point of entry for all litigants. It is suggested that the current overlap between family law jurisdictions in the two parallel courts leads to several inefficiencies, delays, confusions and additional costs for many families. The reforms seek to address the immense backlog of family law cases and the need for better access to justice, with estimates predicting that the merger will resolve up to 8,000 additional cases per year. The need for transfers between the two courts would also be eliminated. PwC's family court assessment report estimated that such transfers currently stack up to almost 1,200 cases per year.

SENATE INQUIRY

Although the need for change is obvious, many deemed the nature and timetable of these proposed reforms to be overly ambitious and short-sighted. The legislation was introduced to a Senate inquiry with the hope of establishing the new court this month (1 January 2019). The Law Council of Australia, however, urged the Senate to reject the Federal Government's push in November last year. Law Council President, Morry Bailes, gave evidence at the inquiry on 12 December 2018 that the proposed merger, as it is currently structured, is not the answer. Similarly, federal Opposition urged the Government to 'start again'.



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Among the concerns, the Law Council noted that the reforms do nothing to escape the fundamental issue of resource funding, which has been lacking in existing court systems and Legal Aid Commissions. Council members also had the view that it would be unwise to expedite the merger ahead of the due date for the Review of the family law system currently being conducted by the Australian Law Reform Commission (ALRC), estimated to be completed on 31 March 2019. Most notably, the Council alleged that the PwC court assessment report, containing information upon which the reforms were based, was inaccurate in its assessment of current court performances. This is on the basis that the report made several incorrect assumptions about current judicial practice

The draft laws passed the first hurdle in the Lower House of Parliament on 27 November 2018. By December, however, it quickly became apparent that both time pressures and a hostile Senate would slow the passage of the reforms. Senator Rex Patrick also unified a cross-bench revolt against the changes by threatening to join Labor and the Greens in order to delay a committee report until April this year. Similarly, Senator Storer urged that “reform is needed, but not in the way the legislation proposes”. This backlash prevented the Senate from completing its inquiry by its planned termination date of mid-January 2019.

Further, Patrick predicts that the legislation would nevertheless be parked in the Senate until after the expected May election. This is because the Government is likely to prioritise the passage of other legislation with only five sitting days to work with. In light of this, the Senate inquiry will now not be finalised until 15 April 2019. Consequently, the Government has been forced to delay the original merger timeline and push back its original commencement date from 1 January to late Autumn. Regardless, Porter remains determined to look “to the Senate to advance this important reform during the next sittings”.

CONCLUSION

With this in mind, we can expect further updates on the merger over the course of the Senate sittings in February. Backed by the ALRC’s Review, it is also likely that more scrutiny and debate will ensue in the coming months with the aim of creating a more efficient and cost-effective family court system.

The recently-announced Federal Election date also raises a question as to when the merger will proceed.



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