

# Will structural reforms to the Federal Courts help Australian families resolve disputes sooner?

13 June 2018

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On 30 May 2018, Commonwealth Attorney-General Christian Porter announced structural reforms to the Federal Courts, aimed at helping Australian families resolve their family law disputes sooner through a more efficient family law system.

Under the proposed legislation, the two courts responsible for family law matters, the Family Court of Australia (**FCA**) and the Federal Circuit Court of Australia (**FCC**) will be amalgamated and renamed the Federal Circuit Court and the Family Court of Australia (**FCFCA**).

The FCFCA will be established from 1 January 2019. Current family law matters before the Court will not be immediately affected.

It is expected that the structural changes will result in a more streamlined entry to the Court system for Australian families, who are often facing emotional or financial hardship at the time of their application.

In the current structure, the FCA is the superior family law court and hears complex matters, including:

- those involving difficult financial structures;
- cases involving child sexual abuse allegations;
- international parenting matters; and
- protracted family disputes.

The FCC was established in 2000 to provide a more accessible alternative to litigation in the general Federal Court and the FCA as well as relieve the workload of those courts. The FCC hears the majority of less complex family law matters.

The overlapping jurisdiction of the FCA and FCC results in costly delays to families who have commenced in one court, only to be transferred to the other at a later stage.

In 2016-17, approximately 106,000 applications were made to either the FCA or the FCC. While the majority of those applications included divorces, consent orders or applications for interim orders only, an average of 22,000 applications are made each year seeking final orders. It is the applications for final orders which require significant court time and judicial effort and the number of cases pending final hearing grows each year.

The new FCFCA aims to provide Australian families with a single pathway in the first instance and a more consistent and direct approach to case management during the course of the proceedings. It is hoped this will result in an additional 3,000 matters being finalised each year.

Importantly, under the proposed legislation, the appeals jurisdiction for family law matters will now be heard in the Family Law Appeal Division (**FLAD**) of the Federal Court of Australia. This change will free up considerable judicial resources to hear first instance family law matters and assist to reduce the backlog and waiting periods for families.

As many commentators have already observed, the delay and lack of transparency within the Court process can further fuel already acrimonious family disputes and prevent any hope of retaining intact familial relationships. In its' media release, the Commonwealth Attorney General stated that the purpose of the reforms were to improve the efficiency of the system and ensure the system no longer exacerbates the trauma of family break up, especially for children.

However, it is unclear whether the amalgamation is going to be a change welcomed by the community and the profession, or whether it will in fact offer the relief to families that has been suggested. In a climate where there is an ever increasing focus on the shortcomings of the family law system, many continue to argue that a lack of funding and delay in the appointment of new judicial officers are the real issues that need to be addressed in order to improve the Court's efficiency and effectiveness.

The Australian Law Reform Commission (**ALRC**) continues its review into the family law system and anticipates the report containing its recommendations will be released in March 2019. The Government intends to introduce the legislation in the 2018 Spring Parliamentary sitting, prior to the release of the ALRC report. It says the urgency of the matter requires the expedited introduction. If the legislation is passed, the FCFA and the FLAD will commence operation from 1 January 2019.

The Government is yet to announce the level of consultation that will take place with the judiciary, legal profession or other stakeholders prior to implementing any practical changes. However, it is clear that detailed consultation will be necessary to ensure the changes are implemented efficiently and consistently, with as minimal disruption as possible.

For more information, please contact HopgoodGanim Lawyers' [Family Law](#) team.

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