



NEW SOUTH WALES
BAR ASSOCIATION*

Our ref:FLC:PWcm128036

6 March 2017

The Hon. Malcolm Turnbull MP
Prime Minister
Department of Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

By email: Malcolm.Turnbull.MP@aph.gov.au

Dear Prime Minister,

Urgent review of resourcing in the Family Court of Australia and Federal Circuit Court of Australia

We are writing in relation to our request of 4 March 2016 that you initiate an urgent review of resources in the Family Court and the Federal Circuit Court to reduce the delays experienced by litigants in family law matters (**copy enclosed**).

The Law Society of NSW and NSW Bar Association continue to be extremely concerned about the impact of current delays in family law matters in both courts on the parties, and their families. There continues to be an urgent need for a review of resourcing in relation to family law matters, and an immediate need for additional judicial and other resources.

The reality for litigants in the Sydney and Parramatta Registries is that it may take up to three years from the time an initiating application is filed until the matter reaches a final hearing before a judge. As a result of the workload of the judiciary, parties may then wait a further lengthy period from the conclusion of the hearing until judgment is delivered and final orders are made.

Given our significant concerns about the impact of the current level of delays on the parties, and their families, the Law Society and Bar Association request an urgent review of resourcing in relation to family law matters.

We would appreciate your consideration of this most urgent issue.

Yours sincerely,



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Copy to: The Hon. Senator George Brandis QC
 Commonwealth Attorney-General



THE LAW SOCIETY
OF NEW SOUTH WALES



NEW SOUTH WALES
BAR ASSOCIATION

Our ref: FIC:GUel1093392

4 March 2016

The Hon. Malcolm Turnbull MP
Prime Minister
Department of Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

By email: Malcolm.Turnbull.MP@aph.gov.au

Dear Prime Minister,

Urgent review of resourcing in the Family Court of Australia and Federal Circuit Court of Australia

We are writing to request that you initiate an urgent review of resources in the Family Court and the Federal Circuit Court ("Courts"), to reduce the delays experienced by litigants in family law matters.

The Law Society of NSW and NSW Bar Association are extremely concerned about the impact of current delays in family law matters in both Courts on the parties, and their families.

According to the most recent figures, the average time taken from lodgement to the first day of a trial in the Family Court is 15.9 months, and 15 months in the Federal Circuit Court.¹ In some registries, particularly Sydney and Parramatta, the average time is much longer.

Not only are there delays in hearing matters. In some cases parties are experiencing extensive delays in receiving judgments. The Courts' benchmark for handing down reserved judgments is within 3 months of the hearing, or receipt of written submissions. It is not unusual for the Law Society to make representations to the Court to expedite matters where judgments have not been delivered one or two years after the final court event.

Experienced legal practitioners have commented that they have never before experienced delays to the extent that has now become common. This is a significant concern in terms of access to justice.

¹ Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Family Court of Australia Federal Circuit Court of Australia, Parliament of Australia, Canberra, 9 February 2016, 50 (Richard Foster, Chief Executive Officer).

When parties to family law matters are exposed to these kinds of delays in the hearing of their matters, this can have adverse impacts on their finances and emotional wellbeing, and the wellbeing of their children. Parties and the community also bear increased costs as a result of delays. In addition, legal practitioners have observed that delays have resulted in an increase in the numbers of independent children's lawyers appointed to cases.

The importance of the timely resolution of high-conflict disputes between parents and children cannot be overstated, particularly where there are allegations of family violence.

We are aware that there are a number of factors that may be causing these delays, including:

- The complexity of matters filed in both Courts has increased over the last decade and many matters involve allegations of family violence;
- The current workloads of judges hearing family law matters in the Federal Circuit Court. The Attorney-General and Courts' Chief Executive Officer have recently stated that "an unusually large number" of Federal Circuit Court Judges have fallen ill. Judges in this Court currently have 500-600 matters in their dockets, which Mr Foster referred to as an "intolerable workload";²
- Statutory limits on the number of judges that may be appointed, at least to the Federal Circuit Court;³
- The different pension entitlements of Federal Circuit Court judges; and
- Limited financial resources for the Courts' administration.

The Law Society wrote to the Commonwealth Attorney-General, Senator George Brandis QC, about these concerns on 23 June 2015. We enclose a copy of that letter, which provides more detail about the resourcing concerns that are being experienced by the Courts.

Given the significant concerns held about the impact of the current level of delays on the parties, and their families, we request an urgent review of resourcing in relation to family law matters.

We welcome the Attorney-General's announcement on 25 February 2016 of four judicial appointments to the Courts. However, these appointments are not a solution to the significant delays in both Courts.

² Ibid (Attorney-General, Senator George Brandis QC and Richard Foster, Chief Executive Officer) 54.

³ Ibid (Attorney-General, Senator George Brandis QC).

We note that the *Courts Administration Legislation Amendment Bill 2015* (Cth) will not address the urgent need for judicial resources in the Courts as it is designed to merge the corporate functions of the Courts. We are aware that the financial savings achieved as a result of these savings are to be reinvested in the Courts, however, the need for judicial resources is immediate. A correspondingly urgent response by Government to this crisis is required.

We would appreciate your consideration of this most urgent issue.

Yours sincerely,



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