



Australian Government

Attorney-General's Department

Improving access to justice - a better framework for federal courts

Consultation on Review of Future Governance Options
for Federal Family Law Courts in Australia

November 2008

Making a submission:

Comments/submissions on the recommendations made by the Report of the Review of Future Governance Options for Federal Family Law Courts in Australia are invited by 6 February 2009 and may be provided by email to fedcourtsconsultation@ag.gov.au, mailed or faxed to:

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This paper is available at: www.ag.gov.au.

Confidentiality:

All submissions will be treated as public, and may be published on the Department's website, unless the author clearly indicates to the contrary.

A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with the Act.

IMPROVING ACCESS TO JUSTICE

1. The Australian Government is committed to ensuring the justice system uses public resources with maximum effectiveness to assist people resolve disputes. Currently, more than 1 in 5 children under 18 have a natural parent living elsewhere. Family law accounts for approximately two thirds of Commonwealth funding for courts and comprises 85% of Commonwealth legal aid spending. Clearly, effective family dispute resolution mechanisms are critical to the Australian community.
2. The Australian Government believes that litigation should be a last resort and that families and the community are best served where family members can reach their own decisions about their future. Significant recent reports including *Out of the Maze: Pathways to the Future for Families Experiencing Separation (2001)* by the Family Law Pathways Group and *Every Picture Tells a Story (2003)* by the House of Representatives Standing Committee on Family and Community Affairs highlight the importance of co-ordinated service delivery in the family law system to enable the resolution of disputes without resort to courts.
3. The Australian Government is substantially upgrading family relationship services infrastructure across Australia. During 2008 the Government has opened 25 Family Relationship Centres, 14 Children's Contact Services and 22 Early Intervention Services. To assist high conflict families, 14 Post Separation Cooperative Parenting services in regional areas have been established, and a selection process is underway for 14 more.
4. In addition, both the Family Court of Australia and the Federal Magistrates Court employ family consultants to deliver family dispute resolution services, assess the needs of families involved in children's matters before the Court, and give information and expert opinion to the Court by way of either oral evidence or family report.
5. The Australian Government is keen to extend the alternative dispute resolution mechanisms available to separating families.
6. The Australian Government recognises that sometimes families are unable to resolve their own differences and require the assistance of a court. Ensuring the courts are structured and administered to deliver the best possible service to the Australian community is a key element in improving access to justice. In particular, court resources and services should be deployed at an early stage to ensure the early identification and resolution of issues in dispute. Court processes

should facilitate resolution, rather than further inflame disputes through their complexity and unnecessary formality. Further, courts should be integrated with other family law dispute resolution pathways to enable cross-referral where possible. Family consultants play an important role in ensuring integration by assessing cases for suitability for family dispute resolution and referring them to outside services where appropriate.

7. The FMC was created by the Howard Government in 2000 in response to a perceived need for less formal and more flexible processes than the Family Court. The FMC was intended to provide a faster, simpler, cheaper option for less complex matters. With an emphasis on active case management by Federal Magistrates, the FMC was intended to provide a ‘service culture’ different from that of the Family Court. Indeed, the Court was originally referred to as the Federal Magistrates Service in order to emphasise this service culture.

A BLUEPRINT FOR ENHANCING GOVERNANCE OF THE FEDERAL COURTS

What led to the Review

8. The FMC was established as a separate court reliant on registry and other support services provided by the Family Court and Federal Court of Australia. It is now the largest federal court, both in terms of number of judicial officers and filings.

9. There have been ongoing difficulties in the governance and resourcing of the courts in relation to family law disputes, with litigants confused over where to file, inconsistent filing procedures, resources and governance not being in alignment, conflicts over resources, and duplication in administration. These difficulties have led to inefficiencies in resource allocation and, in particular, have had a serious effect on the ability of the FMC and the Family Court to deliver timely services in a seamless and consistent way. There have also been a number of publicly aired disputes over resources between the courts.

10. As a result, the Department, assisted by consultant Mr Des Semples, conducted a review into the delivery by the federal courts of family law services. The Report of the Review, *Future Governance Options for Federal Family Law Courts in Australia - Striking the Right Balance (Attachment A)*, provides a blueprint for achieving a more integrated and efficient federal family court system, and also proposes some changes to the way in which general federal law services are delivered.

Findings of the Review

11. The Review found that the existence of two courts with largely concurrent jurisdiction in family law matters has led to several difficulties:

- complexities in planning, finance and administration
- competition for general and judicial support resources, and
- confusion among litigants about the appropriate court to handle their matters.

12. The Review concluded that:

- there exists a significant level of duplication of administrative structures and corporate services across the Family Court and the FMC
- this duplication is not financially sustainable and utilises resources that could be directed more effectively to assisting litigants, and
- the combined future level of expenditure will, under current arrangements of the Family Court and FMC, significantly exceed their annual allocations and be unsustainable for future years.

13. Feedback received through the Review indicated support for change, focussing on the:

- desirability of having a single family law court with a single administration
- role and status of Federal Magistrates
- importance of retaining the FMC's existing culture, and
- need to eliminate unhealthy competition between the courts for resources and filings.

Recommendations of the Review

14. The recommendations of the Review are to:

- combine the Family Court and the Federal Magistrates determining family law matters into a single family law court, with two Divisions: one comprising existing Family Court judges to handle appeals and complex cases, and one to which these Federal Magistrates would be offered appointment (the general Division)
- direct savings identified through streamlined administration back in to support for the family law system, and
- offer appointment to a lower Division in the Federal Court to Federal Magistrates exercising general federal law jurisdiction.

15. The Review recommends that, as part of the changes, offers of appointment to Federal Magistrates to the general Division of the single family law court be under a new title which recognises their constitutional status as Chapter III judges. The Review also proposes that, under the changes, the number of judges within the Division of that Court handling appeals and complex cases be reduced over time as judges retire, to reflect the workload of that Division.

16. The Review suggests that restructuring the Family Court and FMC into one family court with two Divisions would have the following benefits:

- family law litigants (including self-represented litigants) would be able to file and have their matters handled in one court
- quick and suitable procedures for shorter and less complex matters would be available
- financial and other resources to support judicial officers would be allocated and utilised more efficiently
- greater flexibility would be possible in the transfer of matters to enable more efficient management of court lists, and
- planning and coordination across all family law services would be improved.

Future vision for the family law system

17. The Australian Government is concerned to ensure the timely, efficient and informal resolution of family disputes and to maintain and build upon the existing service culture of the FMC, while at the same time ensuring the most efficient use of court resources.

18. A well-functioning family court would have the following characteristics:

- a single point of entry
- accessibility in regional Australia
- early deployment of resources to enable non-adversarial resolution of disputes
- timely and efficient resolution of disputes
- less formal proceedings
- cost-effectiveness
- flexibility
- simple and user-friendly rules, procedures and forms, and
- integration with other family law services.

19. The Australian Government is concerned that the present court structures for family law are unsustainable. They do not always satisfy the characteristics above, or properly meet the needs of people in situations of family breakdown. As noted by the Review, a well-functioning and integrated court system is ‘vital to the well-being of the Australian community’. The Review has highlighted the undesirability of having two family courts competing for resources and litigation – instead, recommending one court entry point for family disputes to avoid confusion among litigants.

20. A streamlined federal court system with more effective governance and administrative structures would facilitate more timely resolution of disputes, paving the way for:

- *Simpler procedures*
Where possible, rules of evidence and procedure should be limited and simplified. Forms and affidavits should be minimised and procedures should be easily understood. In the Family Court, a number of initiatives are currently underway to simplify its procedures, at the same time ensuring procedures suit the complex matters handled by the Court. The success of Federal Magistrates in dealing with less complex cases in an effective and timely way will be continued but also extended in a restructured court system.
- *Front end support for users*
Where people involved in legal disputes have been unable to resolve them through other means and need to access the courts, court resources (in particular, family consultants) should be deployed as early as possible to enable a greater number of disputes to be resolved as quickly and as efficiently as possible without the cost and trauma of protracted litigation.
- *Better integration of courts with other dispute resolution services*
The interface between the Courts and the range of associated services funded by government needs to be as productive and seamless as possible.

Comments are sought on the recommendations made by the Review.

Comments are also sought on the following issues raised by the Review:

- If there is to be a single family law court, what should it be called?
- What new procedures should be adopted in the new court to ensure the timely, efficient and informal resolution of matters? Should these be different depending on the Division in which the matter is dealt with? If so, how?
- What kinds of matters should be heard by each Division?
- What should judicial officers of the general Division of a single family law court, and of the proposed new Division of the Federal Court, be called?
- What further court services are needed to achieve early, non-adversarial resolution of issues?