

15 May 2020

The Hon Christian Porter MP
Attorney General for Australia
Commonwealth Parliamentary Offices
Exchange Plaza
2 The Esplanade
PERTH WA 6000

Dear Attorney General

THE FAMILY COURT OF WA REQUIRES A FURTHER JUDGE IMMEDIATELY

Thank you for your recent letter dated 5 March 2020 regarding the Family Court of Western Australia.

The Law Society of Western Australia is grateful for that part of the Women's Security Package that funded lawyer assisted mediations to address property disputes and is particularly grateful for the introduction by your government of the *Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019*.

I am writing to again press the case for an urgent appointment of another Judge to the Family Court of Western Australia to address the increasing difficulty with delays in the resolution of Family Court proceedings.

The Law Society repeats, while extra Magisterial and Registrar resources have assisted generally, there remains a backlog of difficult cases where the expertise of a Judge of the Court is required in order that the hearing is as efficient as possible and that the appropriate expertise is brought to bear on the evidence and the difficult legal principles involved.

The Law Society anticipates that once social restrictions imposed to address the public health circumstances are lifted that there will be a surge in applications to the Family Court, in part to recover from the temporary fall in new applications caused by the greater difficulty in approaching the Family Court to make such applications but also because of the isolation requirements in recent times.

That expected surge will put pressure on the Family Court and will increase the need for another Judge to be appointed to the Family Court.

Please urgently consider such an appointment.

There are a number of other areas where your government could immediately assist.

Court rooms

Firstly, the Family Court needs to complete the further court rooms proposed within the Family and Federal Courts building.

The Law Society has previously raised with you the need to build court rooms and it understands there were discussions to that end although the discussions have not resulted in the building of the court rooms. The Law Society would be grateful if you would ensure that the work is commenced and completed as soon as possible.

In the meantime, the Law Society understands and is grateful that the Family Court has had access to some court rooms otherwise used by the Federal Courts when the demands of the Federal Courts permit that use. The *ad hoc* nature of that arrangement makes it however difficult to manage the court lists in a reliable and satisfactory fashion.

The Law Society also understands that the Family Court has had some access to court rooms 10 and 11 at the Old Supreme Court of Western Australia Building. These Supreme Court rooms are used on a temporary and ad hoc basis. They are not sufficient and it is not ideal to operate court rooms away from the central resources in the Federal and Family Court building. It requires for instance the physical transport of files, in any weather, from one to the other building and back and does not allow for the efficient use of the time of both judicial officers and staff.

The Law Society notes that there are some unused court rooms in the relatively recently completed David Malcolm Justice Centre. Unfortunately, the Law Society also understands that there is a restriction on hearing Family Law matters in the David Malcolm Justice Centre. The Law Society has asked the Attorney General of Western Australia to pursue with the relevant parties a relaxation of that prohibition if not permanently then at least for the next year.

The Law Society believes the above solutions to be temporary at best and consequently believes that your Government should immediately focus on sufficient judicial court room resources in the Federal and Family Court building to address existing delays and the delays likely to arise once social restrictions are lifted.

I would appreciate your update on the progress of works to commence and complete the extra court rooms.

Technology upgrades

Attendant with the restrictions imposed the legal profession and Family Court have embraced technology for video and telephone hearings where that is possible. The Law Society understands that the Family Court is due for an upgrade to some facilities in the next few months.

The Law Society believes it would be useful to improve the technology to accommodate more audio and audio-visual hearings for the Family Court.

The Law Society understands that the currently available facilities are limited both in their number and in their technical capabilities. For instance, compared with its Federal counterpart, the Family Court of Western Australia is unable to engage in electronic hearings using commercially available software (eg. Microsoft Teams, Zoom), placing it at a distinct disadvantage both in terms of delivery of services as well as safety of judicial officers, staff, lawyers and parties.

Also, due to the limited number phone lines available, hearings by telephone have to be conducted via a commercial conference facility in Victoria which is cumbersome and time-consuming to establish for each hearing, leading to a loss of judicial time and delays in dealing with matters.

Conferral required by enactment

The Law Society is also working with the profession to reduce the need for parties to have their matter heard in a court room before a Court officer. The Law Society is looking to

promote a seminar or series of seminars to improve the cooperation among Family Law lawyers through mandatory 'person to person' conferral. The requirement of conferral in other Western Australian superior courts operated to reduce time required for interlocutory hearings. There is already some conferral. The proposed seminars would be directed to fostering and extending that conferral. The Law Society believes if that experience can be cultivated and promoted among Family Law practitioners there will be similar gains for the Family Court as seen in other superior courts.

The Law Society notes the recommendations of the Australian Law Reform Commission (**ALRC**) paper "*Family Law for the Future – An inquiry into the Family Law System*" published in March 2019 numbered 30 to 37. The ALRC's recommendations suggested amendments to the Family Court legislation to enshrine the obligations on parties to cooperate and enhance the power of the Court to control its proceedings through the power to summarily dismiss applications that are abusing the Court process and to award costs against parties and practitioners where their conduct has occasioned cost or delay.

The Law Society recommends the Commonwealth Government adopt the ALRC recommendations by an amendment to (possibly Division 12 Subdivision B of) the *Family Law Act 1975* (Cth) to assist the Family Court of Western Australia.

The Law Society has also recommended to the Government of Western Australia that it adopt the ALRC recommendations by an appropriate mirroring amendment to (possibly Part 8 of) the *Family Court Act 1997* (WA) to assist the Family Court of Western Australia.

I have enclosed a copy of my letter to the Attorney General of Western Australia and I would appreciate you conferring with him on these matters.

The Law Society is grateful for your consideration of these matters and looks forward to hearing from you as soon as possible.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'N. Van Hattem', with a long horizontal line extending to the right.

Nicholas Van Hattem
President

Copy to: The Hon Gail Sutherland
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