

6 February, 2009

Federal Courts Branch
Australian Attorney-General's Department
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3-5 National Circuit
BARTON ACT 2600

Email: fedcourtsconsultation@ag.gov.au

Dear Sir/Madam

**Improving Access to Justice –
A Better Framework for Federal Courts**

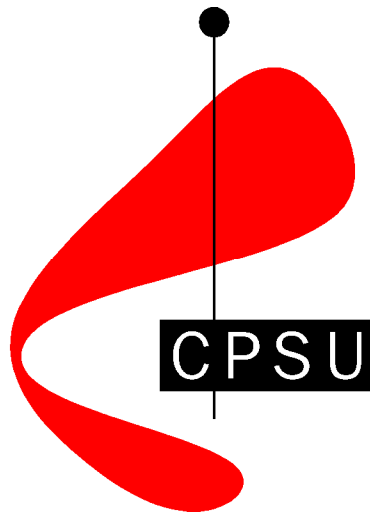
***Consultation on the Review of Future Governance Options for Federal
Family Law Courts in Australia***

Please find attached a submission from the Community and Public Sector Union (PSU Group) to the Review of Future Governance Options for Federal Family Law Courts in Australia.

The contact person for this submission is Dr Kristin van Barneveld, Director of Policy and Research CPSU ph 02 8204 6930.

Yours sincerely

Stephen Jones
CPSU National Secretary



CPSU (PSU Group) submission to the:

**Improving Access to
Justice –
A Better Framework for
Federal Courts**

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CPSU Submission to:

Improving Access to Justice – A Better Framework for Federal Courts

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

The Community and Public Sector Union (CPSU) is an active and progressive union committed to the promotion of a modern efficient and responsive public sector that delivers quality services and quality jobs. We represent around 60,000 members in the Australian Public Service (APS), ACT Public Service, NT Public Service, ABC and the CSIRO. We also have members in Telstra, commercial television and the telecommunications industry.

Introduction

The CPSU welcomes the Review of Future Governance Options for Federal Family Law Courts and the subsequent consultation process, as it gives those who are directly affected by the proposed changes the chance to express their views.

An effective and efficient family law court that is accessible, straightforward and delivers high quality services to the general public is incredibly important to the community as a whole.

Any merger of the existing courts must be done in a way that maintains the strong elements of what is currently in place and constructively builds on them. For any merger to be successful it must be adequately funded and staff must be included in the merger process.

In response to the Consultation Paper, the CPSU posed a range of questions to the Federal Magistrates Court (FMC) and the Family Court of Australia (FCoA), which included the specific questions asked in the consultation paper. Below are the recommendations that the CPSU has developed from the feedback provided by CPSU members and other interested staff.

CPSU Recommendations

- The proposed merger of the FCoA and the FMC should proceed only after extensive consultation with staff and their union
- Any savings from the merger be reinvested into court resources.
- The streamlining of the processes, rules, procedures and case management pathways must be done in full consultation with staff and their union.
- The rights and conditions of staff be maintained and protected.

- The new family law court be adequately funded and resourced in order to ensure that the best quality service can be provided.
- Appropriate education and training be provided to all staff to accompany any changes in the service culture and other areas that may be agreed as part of the merger.
- Communication channels be improved to encourage staff to share resources and knowledge between regions, registries and courts.
- The focus must be on creating a new inclusive service culture for the new court rather than perpetuating the separation of the two existing courts.
- The following characteristics should be included in the key characteristics list:
 - *Fairness, equity, impartiality and justice*
 - *Consistency*
 - *High quality administrative and support staff with appropriate qualifications and skills*
 - *Accountable, transparent and responsible financial management*
 - *Education and Training*
 - *Cohesive culture*
 - *Specialist assistance for clients*
 - *Strong relationships with community organisations*
- The new family court should have a greater emphasis on ensuring accessibility to regional Australia.
- The name ‘*The Family Law Courts of Australia*’ is suggested for the new family law court.
- A further review must be undertaken into the role of Registrars with the aim of expanding their duties and powers.
- Subject to further consultation with staff it is suggested that the distribution of matters between the two new divisions should be in line with the existing separation between the FCoA and the FMC.
- The review must explore education options for the legal profession and consider specific funding to the new court to provide increased non-adversarial resolution options.

CPSU Questions

Question 1: Is the proposed merger feasible? If not, why not?

The overwhelming response that was received from staff of both the Family Court of Australia (FCoA) and the Federal Magistrates Court (FMC) was that

the proposed merger was feasible, some felt it was both necessary and overdue.

There are several main reasons why the merger of the two courts is essential to ensure that the high quality and essential public services provided by the FCoA and the FMC be maintained.

Firstly there currently exists a substantial amount of duplication between the two courts, especially in administrative processes, Human Resources Management and Information Technology Systems and Management. The amalgamation of administrative and management functions would represent a significant saving which the CPSU strongly recommends be reinvested into court resources in order to assist staff to deliver high quality services.

In addition to this duplication of management functions, the current system of case handling is unnecessarily complicated with each of the courts employing different rules, processes, procedures and case management pathways. This makes the transfer of cases and information between courts difficult and overly complicated. As one staff member explained:

The proposed merger is not only feasible but necessary. The Family Court Registry is also the Registry of the Federal Magistrates Court and staff are required to deal with two sets of applications, two different fee structures, two sets of rules for the same jurisdiction. Staff of both courts are employed under the Public Service Act dealing with one Family Law Act and it would be simpler and cheaper if salaries, human resources, leave and all other functions were managed through a single organisation.

The final reason why the merger is feasible and justified is that it would reduce the confusion faced by staff and by members of the public engaging with the courts. If processes, rules and procedures were streamlined and made consistent across the Courts it would greatly improve the effectiveness of the hearing and resolution of family law matters and result in better outcomes for clients. As one member noted:

There would be less confusion amongst the legal profession, self-represented litigants, staff and the community as a whole if family law matters are dealt with by one distinctive Court.

Despite the support for the merger from staff, there are some concerns and reservations about the practical implementation and management of the proposed merger. The CPSU strongly encourages the Review to consider the following concerns in the final recommendations and report.

1. The streamlining of the processes, rules, procedures and case management pathways must be done carefully and in full consultation with staff. The introduction of consistent and streamlined procedures is important for the effective and efficient running of any future single court. However if the streamlined changes are not developed in

consultation with staff and do not reflect the workflow of the new court then they will not be successful and the goal of a simpler, faster and more accessible family law court will not be realised.

2. Change management is another area that the CPSU and staff have concerns. Change management within the two courts has not been handled well in the past and has resulted in increasing workloads and decreasing staff morale. To avoid this there needs to be a concerted effort to consult with staff to keep them informed and to promote cooperation between the two existing courts, this will counteract the 'us' and 'them' mentality that currently exists in some areas between staff and management. Finally as part of the plan for the merger there needs to be an ongoing review process in order to identify any issues that staff, management or clients have and to rectify any problems in a timely efficient manner.
3. The funding and resource allocation of the new court is another critical issue. Many staff expressed a concern that the merger of the two courts would mean an overall reduction in the level of funding being provided instead of any savings being reinvested in the new court for more staff and resources. The CPSU recommends that the savings be reinvested in the new court to ensure its operational success. In addition, any extra costs created by the proposed merger should not be taken from the existing budgets of the two courts as this would place further stress on already stretched resources.
4. Finally there is one issue that was not covered by the Consultation Paper or Report: Staff pay and conditions. In the event of the merger of the two courts no staff should be worse off in their remuneration and employment conditions. The FCoA and the FMC have different pay scales and entitlements and it is of utmost importance that staff retain these entitlements, particularly in the case of redundancy measures and conditions. The CPSU recommends that the review include a recommendation that the rights and conditions of staff are protected.

Clearly both courts are currently experiencing financial and resourcing pressures that are constraining the ability of staff to deliver high quality public services in a timely and effective manner. These issues identified above must be addressed in order to provide a quality public service in the future.

Question 2: What areas have been affected due to resource constraints? Please provide specific examples of your resource concerns.

The Review found in its initial report both the FCoA and the FMC are facing significant financial pressures. This in turn has significant consequences for resources available to both Courts. The main resource issue is the lack of staff at all levels to cope with the increasing and complex caseloads of both courts.

One of the specific examples identified by several CPSU members was the allocation of Family Reports and Family Consultants. There is an increasing demand for Family Reports to be compiled by Family Consultants in the FCoA. This is a result of the more complex and intensive nature of the cases handled by this court. As a result the FMC has had to outsource its family reports to private providers and use temporary staff to fill Family Consultant roles. This is not an appropriate outsourcing arrangement as essential services must not be provided by the private sector.

This lack of available Family Consultants has had more significant consequences than the expense incurred to outsource the reports and bring in temporary workers. As one CPSU member explained:

As a Family Consultant employed on a non-ongoing (fixed term contract) basis with the FCoA and then accepting a longer contract with FMC, cases in which I was involved in the FCoA have had to be allocated to other consultant's and thus the family/children have been required to retell their story.

This duplication causes unnecessary stress for clients who have to retell their stories to each new consultant who is given their case. Streamlining processes and adequately resourcing both courts to ensure that there are enough Family Consultants to follow cases through the full case management pathway would be beneficial not only to staff but also provide a more efficient and coherent service to clients. The CPSU recommends that any new family law court must be adequately funded and resourced in order to ensure that the best quality service can be provided.

Staffing constraints due to the lack of resources have also been felt in other areas of the courts. The Registrars are facing a similar problem of being overworked as they deal with the more resource intensive FCoA cases. As well as having the less complex but greater number of FMC cases. These stresses are also being felt in the areas of registry services and client services as staff in these sections have faced an overall reduction in staff numbers that has not been accompanied by a reduction in cases. The ultimate consequence of this is that client service and access will suffer. As one Registrar outlined:

The role of Registrars and the work we are expected to cover two courts inclusive of circuits has put a strain on us due to the lack of numbers and some are working extra hours to cover all the work.

These are strong grounds to ensure that any savings that are made in the merger of the administrative functions of the two courts be reinvested in staff and resources. As the CPSU has recommended, they are also strong grounds for the funding to be increased in the interim period to ensure that during the merger process both courts are still able to maintain service levels.

Question 3: How can the existing culture of the FMC be maintained in the restructure?

- a. What are the key features of the service culture of the FMC?**
- b. What needs to be done to ensure that the service culture does not break down?**
- c. What would be the impact of a breakdown in the service culture of the FMC?**

In making its recommendations, the Review outlined the view that the existing service culture of the Federal Magistrates Court should be maintained at the . If indeed a structural change would damage the highly effective culture of the Court and destroy morale, these would be powerful reasons against change. However it is the view of the CPSU that the merger can be achieved without the wholesale destruction of the FMC service culture.

For the staff who responded to the CPSU consultation, the issue of maintaining the FMC service culture was a controversial one. There was disagreement with the Review assessment that there was a unique service culture in the FMC that needed to be maintained at the expense of the culture at the FCoA. There was the view that the focus on he FMC culture was divisive and would harm any chances at a successful merger.

There was also confusion at what constituted a service culture with the explanation provided by the Review not considered clear and adequate enough. Other staff questioned the assumption that the FMC service culture was a wholly positive one that warranted preservation.

For many staff, the view was that the focus should not be on maintaining the separate culture of the FMC and the distinction between the two courts. Rather the focus should be directed towards creating a new culture for the new court that encompassed the good points of both courts and was grounded on:

The same principles of APS Code of Conduct and showing client friendly assistance... To provide an efficient and cost effective service to clients, particularly those without legal representation.

It is the view of the CPSU that there is significant scope for the key successful features of the FMC service culture to be maintained and transferred across into the processes and procedures of the new court. However this must be handled in a way that is inclusive of all staff from both courts in order to create a single cohesive service culture for the new court.

a. What are the key features of the service culture of the FMC?

The key successful features of the FMC service culture were identified as the prompt response to matters and clients, effective communication with clients, tailored intervention and case management, a more simplistic approach to handling matters and a more flexible relaxed set of rules.

b. What needs to be done to ensure that the service culture does not break down?

The key point for the majority of staff was that for the new court to be effective and the current successful features of both the FCoA and the FMS service culture to be carried over standard training for all staff on integrated client service and other matters is essential. The CPSU strongly recommends that the Review considers the role of education and training in the merger process.

The basis of maintaining and creating an efficient and effective service culture is communication both to staff and between staff. In order for staff to implement any changes they must be consulted and be involved in the process. Equally as important as communication and education is the sharing of resources. The CPSU recommends that the channels of communication be improved to encourage staff to share resources and knowledge between regions, registries and courts.

c. What would be the impact of a breakdown in the service culture of the FMC?

The impact of a breakdown in the service culture of the existing or the new courts would be a drop in productivity, efficiency, effectiveness and loss of staff morale from confusion, lack of resources or job losses.

While staff would feel the effect of the breakdown of the service culture, clients would also suffer the consequences with diminished access to support services, longer waiting times and a decrease in tailored services.

It is clear from all responses that there are some successful processes and approaches currently in use in both courts that should be incorporated into the running of a new court. The CPSU recommendation is that the focus needs to be on creating a new inclusive service culture for the new court rather than perpetuating the separation of the two existing courts and the negative 'us' and 'them' mentality.

Question 4: Are there any other characteristics you see a well functioning family court needs beyond those listed below? If so, why?

- *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.*

The characteristics outlined by the Review are a strong basis for the new court to be formed from, however there are some areas that staff felt needed more attention and should be included as a key characteristic to ensure an effective and well rounded organisation is developed and maintained.

- ❖ **Fairness, equity, impartiality and justice** –this should be at the core of any court to ensure client confidence.
- ❖ **Consistency** – across the organisation in all areas especially client service procedures to decrease the ability for confusion for staff and clients.
- ❖ **High quality administrative and support staff with appropriate qualifications and skills** – in order to facilitate the effective running of the court.
- ❖ **Accountable, transparent and responsible financial management** – to ensure the fiscal stability of the court.
- ❖ **Education and Training** – to be provided for all staff to help them provide quality services.
- ❖ **Cohesive culture** – that promotes unity, resource and knowledge sharing and cooperation.
- ❖ **Specialist assistance for clients** – providing greater assistance to clients through Family Consultants and counsellors.
- ❖ **Strong relationships with community organisations** – building relationships with the community to promote early intervention and tailored case management.

One of the existing characteristics that should be singled out for specific focus is ***accessibility for regional Australia***. This was identified as one of the most important areas and one that requires more resources and focus to ensure that clients had equality of access. The CPSU recommends that the new family court should have a greater emphasis on ensuring that all services are accessible to clients in regional Australia. This would require proper funding.

Consultation Paper Questions

Question 5: If there is to be a single family law court, what should it be called?

There were a number of suggestions, however the majority of CPSU members felt that *'The Family Law Courts of Australia'* was the most clear and appropriate name.

Several members noted that clients and members of the community already refer to the two courts by this one name. The CPSU recommends that this name is adopted for the new family law court.

Question 6: 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?

There are three main areas that were identified by staff where a range of changes could be implemented to improve the timely and efficient resolution of matters.

First, standardisation of all rules, processes, procedures and forms needs to be undertaken in order to create cohesion in the new court and remove client confusion and frustration by making the entire process more streamlined and straight-forward.

Second, is that there needs to be a sufficient number of staff and judicial officers to hear cases, as well as a sufficient number of court rooms and interview rooms for matters to be heard in a timely and private manner. There also needs to be an increase in the number of Family Consultants on staff to cover the current caseload and any increases in the future. In order for staff and the court to deliver high quality services in a timely and efficient manner there needs to be adequate funding for staff and resources. Streamlining procedures is important however if there are not the staff and the court rooms available to hear matters, they will not be resolved efficiently.

The final area identified for potential change was the role of Registrars. Many staff envisaged an altered and expanded role for Registrars in the new court as well as an increase in the number of Registrars.

The increased use the Registrars would extend to them performing early assessments of cases in order to stream them to the appropriate divisions, performing mediations, releasing subpoenas and releasing Family Reports. This would free up Judges and Magistrates to hear cases and ensure that the new court was effective and efficient.

The CPSU recommends that all processes in the new courts be made consistent and that adequate staffing and resource levels are maintained. The CPSU also recommends that a further review is undertaken into the role of Registrars with the aim of expanding their duties and powers.

Question 7: What kinds of matters should be heard by each Division?

The majority of respondents felt that the split of the responsibilities between the two divisions of the proposed new court should largely remain in line with the current distribution of matters between the FCoA and FMC. This is consistent with what was recommended by the Consultation Paper.

The Appellant or higher Division would maintain the responsibilities and matters currently of the FCoA, hearing more complex matters and appeals. The General Division would retain all the less complex family matters currently heard by the FMC.

There were some suggestions that the General Division should be the first instance of contact for clients, making the process simple. Also several staff members voiced the opinion that certain restrictions could be introduced for the General Division such a value limit for property cases and the two day rule for hearings in order to ensure that the General Division retains the simple, less complex and timely characteristics of the FMC. The CPSU recommends that subject further consultation with staff and review that distribution of matters between the two new divisions should be in line with the existing separation between the FCoA and the FMC.

Question 8: 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?

There was no clear consensus as to what the judicial officers of the new court should be called. However, the majority of members felt that there should be a distinction between the judicial officers of the Appellant Division (FCoA) and the judicial officers of the General Division (FMC)

Below are some of the more common suggestions:

- ❖ Judicial Magistrates
- ❖ Judges with a ranking system 1,2,3
- ❖ Magistrates
- ❖ Federal Magistrates
- ❖ Judge of the General Division
- ❖ Judge and Senior Judge for Higher Court

The CPSU strongly encourages the review to engage in further consultation with the current Magistrates and Judges, to ensure that a widely accepted and appropriate name can be decided on.

Question 9: What further court services are needed to achieve early, non-adversarial resolution of issues?

Currently there are a range of options available in both courts for non-adversarial resolutions such as mediation and counselling, through Family Consultants and Family Relationship Centres. However, due to funding and resource constraints many Registries have had to drastically reduce the services they can offer. Increased funding for Family Consultants and for *qualified, experienced counsellors and psychologists with training in issues of family law, family violence and child abuse* is needed to provide quality service to clients of the family law courts and promote early resolution of matters. In addition to this, greater assistance from registrars and duty solicitors to litigants who choose to self-represent is needed to ensure that they are given a fair equitable hearing. In order for this to occur, funding is needed for more staff in these areas.

Finally there needs to be increased information and education available to the legal profession and other outside services to advise them of the non-adversarial options available to them and their clients. The CPSU recommends the Review explore education options for the legal profession and provide specific funding to the new court to provide increased non-adversarial resolution options.

Conclusion

The proposed merger of the FCoA and the FMC has the potential to create a court that can effectively and efficiently administer all of the Family Law Act and provide a high quality public service.

However, there needs to be a strong commitment to adequately fund the new court and provide the necessary support for staff to ensure that the transition to the new court is a smooth and positive one. The emphasis of the merger should be on promoting consistency across all levels of procedures and ensuring that the court remains accessible for all clients. To achieve this, the CPSU has provided a range of recommendations that focus on further consultation with staff, increasing funding levels and providing the relevant education, training and support to facilitate a successful merger and establish a highly efficient single family law court for Australia.