

Saturday , 27 Oct. 2018

The Secretariat

Senate and Legal and Constitutional Affairs

Canberra

Dear Senators

Amalgamating our way to justice?

This Bill, in trying to get at least some efficiency in the process of the family courts, is a very smart idea. Mr Porter has achieved more in 10 months than his predecessor did in 4 years. But is it the best idea ? Wouldn't it just be smarter to admit that:

1. **Marriage is no longer much of an indicator of anything**, except for a dance party a decade or so beforehand? It would be better to target the causes of breakdown, not intervene based on legal form. Intervention by lawyers exacerbates issues such as financial stress and mental health triage. Delay retailers don't sell solutions, they sell time, hence the war against delay is unwinnable.
2. **Top ups are best made to disadvantaged Australians via the targeted tax transfer system, not via the haphazard legal system.** The Act delivers a 56.62 % nominal transfer to rich white women, pre-fees and then re transfers 3-25% of that gain to lawyers anyway. Assuming even a modest 3.3 % uplift, that gain for 29 months of delay is an atrocious social dividend, especially as battlers often get zero and many get an outcome based on coercion. To make matters worse judges delay paying rational sums to shrink disputes , while prioritising the payment oflegal fees. Over clients interests, over mental health , over rehabilitation, over financial sanity. No wonder the best and brightest Attorney Generals all see this for what it is: Ellicott, Kerr, McClelland, Porter, Murphy all wondered whether family courts even made sense.
3. **Clear rules and targeted interventions** by welfare workers and domestic violence experts make innate sense. In a civilised society how can determining children's interests in a room of aggressive adults, result in any foreseeable outcome other than the shambles we have? Ask any private school head why most children drop out- mummy is paying a \$10,000 a day barrister to argue about what "the child's best interests" is. Well, maybe try continuing their education for a change. Litigation is simply a form of financial paedophilia.
4. **No one obeys family court orders anyway?** What is the point of bits of paper from an institution that has lost public confidence? Maybe that's what Mr Porter worked out way before everyone else and that's why this Bill is but a rebranding exercise.

Parliament won't debate the big issues. You guys are only good at regicide and dealing with a contrived "French au pair crisis". Yawn. The Law Commission can't think through big social issues, only small legal issues, and mostly suggest ideas that can't be funded. Yawn. The time has long passed for Royal Commissions or more Sir Humphrey solutions of committees of the poorly educated. And meanwhile Parliamentarians ignore the 89 % of Australians too poor, or unsubsidized, to go to court. Who get angry with more pathetic excuses and replace you with independents.

So let us decide- the public- in May. Just like we did with the gays. Maybe Henry the 6th was right about all the lawyers, and maybe not. Democracy is failing , the cross bench couldn't govern their way out of a nursery, and people want action. The only real way to clean up the family courts is to abolish them, not to amalgamate them. As the late Senator Murphy would say, if he could see the mess that was made in his name, it's time.

Regards

Alan Morgan

Average delays for a final hearing date, Wollongong, 2016	23 months
Average delays outside courts , solicitors negotiating,	22 months
Longest reported case (<i>Strachan</i> , Adelaide)	12 years
Longest unreported case (Melbourne) (3 filings)	19 years
Average time for a judgment to be written , Vic	4 months
Longest time for a judgment to be written (Townsville)	26 months
Average time for “urgent “interim payments (WA)	7 months
Average delays NSW and Qld law society investigations	14 months

Average outcome for women (nominal, pre fees)	56.7%
Real ECONOMIC outcome for AVERAGE women (NFV, post fees)	43.6%
Property cases that make it to a hearing 2 years after filing	13%
Average interim payouts / undisputed amounts by FCF	2.6%

Number of law reform reports since 1975 , in 43 years	28
Number implemented by Parliament	6
Number that have worked as promised	2

Main interim ALRC recommendations 2018	More funding , more community lawyers
Main Productivity Cmsn recommendations 2014	50/50 wealth split , competitive legal fees