

Senate Standing Committee on Legal and Constitutional Affairs (Legislation Committee)

Federal Circuit and Family Court of Australia Bill 2019 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019

Attorney-General's Department

Hearing date: 06 November 2020

Hansard page: 19

Question type: Spoken

Senator Sarah Henderson asked the following question:

Senator HENDERSON: In the case of those matters which are not transferred, what then explains the very significant difference in the cost between the Federal Circuit Court and the Family Court? Are you able to provide more detail, or could you take it on notice?

Mr Gifford: We could potentially take it on notice, but it is actually quite difficult to answer in the broad. A lot of this can come down to the particular type of matter—the facts that are in dispute and the conduct of the parties themselves and also of the practitioners involved. So it is difficult to give that a general answer, I'm afraid to say.

Senator HENDERSON: All right. Well, to the extent that you can take that on notice and provide further detail, I would be most grateful. Chair, thank you very much. I don't have any further questions.

The response to the senator's question is as follows:

The Review of efficiency of the operation of the federal courts conducted by PricewaterhouseCoopers Australia (PwC) included an estimate of party/party costs and court fees for matters heard by the Family Court of Australia (Family Court) and the Federal Circuit Court of Australia (FCC).

The report estimated costs of over \$110,000 for matters before the Family Court, compared costs of around \$30,000 for matters before the FCC. These amounts exclude the costs associated with any appeals.

PwC made a number of findings that informed its assumptions and estimate of average costs, including that:

- The number of court events attended by litigants in the Family Court exceeded that of the FCC. In the FCC, the average number of court attendances per matter (attendance rate) is 4.2, while in the Family Court it is 6.1.

- This difference was comparatively greater for matters that go to trial; in those matters the average attendance rate for the FCC was 6.9, while in the Family Court it was 12.4.
- Trials are, on average, longer in the Family Court than in the FCC (three days compared to two days).

The reasons for these differences are difficult to substantiate. Variation in the legal and factual complexity of cases between the two courts is a potential factor, however the potential complexity of a family law matter is difficult to assess by reference to any readily identifiable characteristics and PwC found no consistent measure of complexity. PwC concluded:

In the absence of detailed data, it has been difficult for PwC to substantiate the extent of variation in complexity of cases between the two courts. However, it is apparent that the vast variation in productivity between the two courts cannot be accounted for merely by the level of complexity.¹

More generally, total legal costs can be impacted by a wide variety of factors, including:

- the behaviour of each of the parties during the the litigation process
- the billing model used by the legal provider
- the location of the legal practice, the seniority of the practitioners and their efficiency in delivery of legal services
- the factual complexity of the matter (e.g. whether the matter involves contested allegations of family violence or child abuse, mental health or substance abuse issues, children with particular needs)
- the number of issues in dispute
- the case management practices and processes of the courts (e.g. number of court events requiring attendance by legal practitioners)
- the effectiveness of interventions by the court and by legal practitioners to settle the matter earlier in proceedings or narrow the issues in dispute
- the average length of hearings, and
- the extent to which the parties comply with court orders.

¹ PwC, *Review of efficiency of the operation of federal courts*, Final Report, April 2018, www.ag.gov.au/sites/default/files/2020-03/pwc-report.pdf, page 3.