

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ATTORNEY-GENERAL'S PORTFOLIO

**Program:** 1.5 Family Relationships

**Question No. AE17/072**

**Senator Pratt asked the following questions at the hearing on 28 February 2017:**

To the Attorney-General -

- 1) On 30 December 2016, ABC reported that WA Attorney-General Michael Mischin said he had asked the federal government for more money to appoint another permanent judge to the Family Court. What was your response to him?
- 2) Are you aware of the average wait time for a trial in the Family Court?
- 3) Are you aware that matters involving serious allegations of physical abuse of a child or serious controlling family violence need to be heard in the Family Court?
- 4) Are you aware of the distressing effect of family law proceedings on people experiencing, or who have experienced, family violence?
- 5) Are you aware of the effect of the average wait time for a trial in the Family Court on people experiencing, or who have experienced family violence?
- 6) Has the Government costed a policy whereby Courts could require a respondent or applicant to family law proceedings to be represented to ensure that that the other party cannot be personally cross-examined?
- 7) Has the Minister consulted with any stakeholders on this issue?
- 8) What was the cost?
- 9) When will you be appointing a new judge of the Federal Court to replace Justice James Edelman?
- 10) Do you have anyone in mind for the position?
- 11) Are you leaving it vacant so that you can take that position for yourself?
- 12) Will you rule out that you would take a position as Federal Court judge?
- 13) Judge Matthew Myers is leaving Newcastle's Family Circuit Court to take up the role of Commissioner for an Australian Law Reform Commission inquiry into the high incarceration rates of Aboriginal and Torres Strait Islander peoples. This position was announced more than three weeks ago now. Can you tell me what steps the government has taken toward finding a replacement and when the Newcastle Registry can expect to have this new appointment in place?
- 14) I am aware there is concern in the Newcastle legal fraternity that Judge Myers may be backfilled by a series of visiting judges from out-of-town. Can you assure me that there will continue to be three full-time judges attached to the Newcastle Registry to ensure the continuity of cases?
- 15) I am also aware that Newcastle's Federal Circuit Court is still catching up on the caseload backlog resulting from the months of delay in replacing Judge Coakes, after his retirement in 2015. Can you advise:
  - a) the number of outstanding cases for the Newcastle Registry?
  - b) the average time it is currently taking from a case being lodged to it being heard?
  - c) How many cases Judge Myers personally had on his docket before he left?

**The answers to the honourable Senator's questions are as follows:**

Q1: On 30 December 2016, ABC reported that WA Attorney-General Michael Mischin said he had asked the federal government for more money to appoint another permanent judge to the Family Court. What was your response to him?

The content of any such correspondence is a matter between Attorneys-General.

Q2: Are you aware of the average wait time for a trial in the Family Court?

The Family Court of Australia has advised that, as at 1 February 2017, the average time from the lodgement of a matter to the first day of trial was 17.2 months; however, interim applications will be heard prior to trial and, as at 31 March 2017, the overall mean time to the first defended hearing for interim applications in the Family Court was 3.71 months.

Q3: Are you aware that matters involving serious allegations of physical abuse of a child or serious controlling family violence need to be heard in the Family Court?

Such matters may be heard by the Federal Circuit Court or the Family Court, although the Family Court deals with more complex matters.

Q4: Are you aware of the distressing effect of family law proceedings on people experiencing, or who have experienced, family violence?

The Government is aware that family law proceedings can be distressing to the parties involved.

Q5: Are you aware of the effect of the average wait time for a trial in the Family Court on people experiencing, or who have experienced family violence?

The Government is aware that delays in any legal proceeding can be distressing to the parties involved.

Q6: Has the Government costed a policy whereby Courts could require a respondent or applicant to family law proceedings to be represented to ensure that that the other party cannot be personally cross-examined?

No, the Government has not costed the specific policy outlined in question 6. The cost of a policy that prevents victims of family violence from being personally cross-examined by alleged perpetrators would depend on the precise details of the policy and its implementation.

On 17 July 2017 the Attorney-General released, for public consultation, an exposure draft of the *Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017* with proposed amendments to the Family Law Act to ensure that victims of family violence are protected from being personally cross-examined by their alleged perpetrators, or required themselves to personally cross-examine their alleged perpetrator.

Q7: Has the Minister consulted with any stakeholders on this issue?

Yes.

Q8: What was the cost?

Not applicable.

Q9: When will you be appointing a new judge of the Federal Court to replace Justice James Edelman?

A replacement for Edelman J was appointed on 24 March 2017.

Q10: Do you have anyone in mind for the position?

Not applicable.

Q11: Are you leaving it vacant so that you can take that position for yourself?

Not applicable.

Q12: Will you rule out that you would take a position as Federal Court judge?

Not applicable.

Q13: Judge Matthew Myers is leaving Newcastle's Family Circuit Court to take up the role of Commissioner for an Australian Law Reform Commission inquiry into the high incarceration rates of Aboriginal and Torres Strait Islander peoples. This position was announced more than three weeks ago now. Can you tell me what steps the government has taken toward finding a replacement and when the Newcastle Registry can expect to have this new appointment in place?

The Government has appointed a new Family Circuit Court judge to Newcastle.

Q14: I am aware there is concern in the Newcastle legal fraternity that Judge Myers may be backfilled by a series of visiting judges from out-of-town. Can you assure me that there will continue to be three full-time judges attached to the Newcastle Registry to ensure the continuity of cases?

See answer to question 13.

Q15: I am also aware that Newcastle's Federal Circuit Court is still catching up on the caseload backlog resulting from the months of delay in replacing Judge Coakes, after his retirement in 2015. Can you advise:

a) the number of outstanding cases for the Newcastle Registry?

As at 31 December 2016 there were 1252 final orders pending in Newcastle Registry of the Federal Circuit Court of Australia.

b) the average time it is currently taking from a case being lodged to it being heard?

From June to December 2016, the average time from the lodgement of a matter to an interim hearing in the Newcastle Registry of the Federal Circuit Court of Australia was 4.09 months.

c) how many cases Judge Myers personally had on his docket before he left?

The Federal Circuit Court of Australia is unable to provide data in respect of an individual judge's docket.