



# Failure to replace judges leaves victims at risk

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The disgraceful neglect by governments, on both sides of politics, of the resourcing needs of the family courts is nothing new. The Family Court has been running at a deficit, the Family Court of Western Australia still has the same number of Judges as it had in 1977, and the Federal Circuit Court has never been properly resourced since it first opened its doors.

The social cost of that neglect is compounding every day. The courts deal constantly with families in crisis, children at risk, and the scourges of substance abuse and domestic violence. Cases involving claims of child sexual abuse and family violence are complex, difficult and crucial.

Under-resourcing of courts leads to delay. Delay leads to increased risks for children and victims of domestic violence, and the perpetuation of uncertainty and conflict. Family Court litigants in Sydney, for example, face extensive delays in getting their cases dealt with, with little chance of a final trial — should that be needed — for about three years.

The situation is as bad in many Federal Circuit Court lists in places like Parramatta and Wollongong. Delays elsewhere around the country remain unacceptable.

While none of that is new, recent events highlight looming problems and the relative ease with which they could, at least in part, be addressed if only government had the will.

Judge Robert McClelland, a former federal Attorney-General, has commenced work in the Sydney registry of the Family Court but the judge he replaced retired 20 months ago, on reaching his

mandatory retirement age, a date which for obvious reasons was cast in stone months in advance.

Calls for a replacement to meet the mounting caseload went unanswered. There is absolutely no excuse for a failure by any government to ensure that retiring judges are replaced immediately.

There is no organisational excuse. Judges do not retire on short notice. Many retire at the mandatory age of 70. Even those judges who retire short of the mandatory retirement age inevitably give many months notice of their intention to depart, and stop hearing cases about six months before departure in order to complete their caseload.

There is no economic excuse. Simply replacing a retiring judge does not cost the government extra money. Less obviously perhaps, delaying the replacement of a retiring judge does not even save any money, because of the nature of the appropriations to the courts.

There is no “needs-based” excuse. The courts need more judges, not fewer. If our elected representatives spent even a few hours watching judges in the family courts grappling with the enormity of their overloaded lists, they would very quickly come to that understanding.

Critically, things are about to get even worse. By the end of 2015, 14 of the current 32 judges of the Family Court will be eligible to retire, and a number are approaching compulsory retirement age. The Federal Circuit Court, which is already without much needed replacements for four retired judges, has another four retirements looming this year, and a further four in 2016.

Both courts will likely reach breaking point if the government's failure to quickly replace retiring judges continues.

The impact on an already struggling judiciary will be profound. The courts comprise able, hardworking and conscientious judges, but there comes a point where even the most dedicated judicial officer is worn down, in

the face of an impossible workload and a lack of government support.

The impact on the public is also clear. The courts already face hard decisions about reducing services

where judicial numbers simply don't permit those services to be maintained. For the Federal Circuit Court that could mean cutting services to regional and remote areas — which, as the name of the court suggests, would strike at the very heart of its ethos.

The legal profession has been telling successive governments for many years that the Family Court, Federal Circuit Court and Family Court of WA are under resourced, and that more judges and counselling services are needed. Those pleas have fallen on consistently deaf ears. Children and the victims of domestic violence are placed at risk as a result.

At a time where the evils of child sexual abuse and domestic violence have properly been brought to the forefront of the national conversation that is unacceptable.

It is long past time for government to stop ignoring the need for proper funding of the family law system. The cruel irony of successive decisions to raise revenue by increasing court fees, while investing only a small proportion of those fees in the family law system, hardly bears comment.

In the meantime, the very least government can do is to make a public, firm and unequivocal commitment to immediately replace all retiring judges in the Family and Federal Circuit Courts — and then stick to that commitment.

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