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INDEPENDENT. ALWAYS.

Legal backlog plays havoc on families

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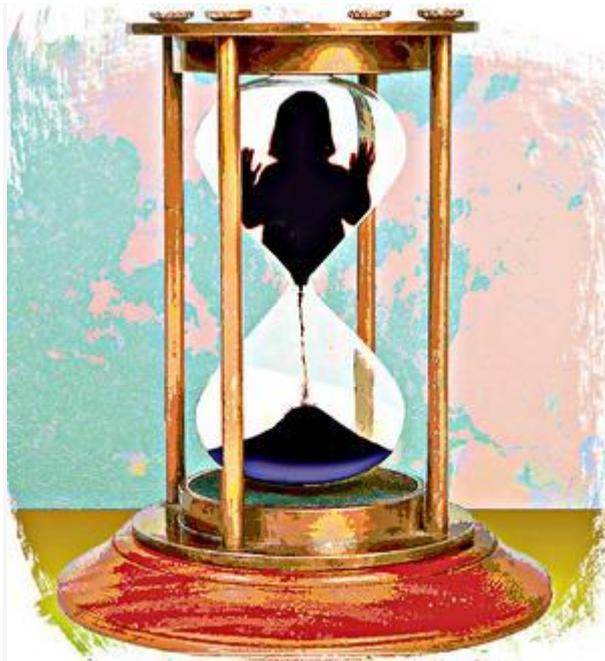


Illustration: Simon Bosch

If you thought our State Government was just a bit cute when it changed the definition of an on-time train from four minutes out of schedule to five, then prepare yourself for more because the previous federal government was in on the act, enlarging targets for the Family Court of Australia, rather than funding it to take better aim.

"Family justice descends into farce" was the front page news headline of the *Herald* back in 2006. Many of us believed the attorney-general at the time, Philip Ruddock, might have been spurred by the report into action. But he wasn't.

Instead, when the *Herald's* story was published, the Family Court's declared aim (published in its annual report) was changed, from having 90 per cent of its cases "finalised within 12 months" to an absolutely electric finalisation rate of "90 per cent within 18 months".

If you've been through a family break up - or you know someone who is - you'll understand what it means to describe this widening of the goalposts as nothing short of human tragedy.

We often use the words "messy" and "ugly" when we talk about divorce, and, of course, no one expects divorce to be clean or pretty. But at the very least, we should try to make it easy and quick.

But we don't. Instead it can be very, very difficult. This happens because - as the legal process drags on - many believe it is easier to simply give up on the legal system and agree to whatever their combative former partner demands. This is the wrong reason to resolve disputes in the best interests of the children, and future financial security.

This has led to instances of people losing their homes to banks which are not prepared to wait until the Family Court has the time to hear the case; parties having to declare themselves bankrupt as they cannot continue to meet their debts until a hearing finally comes on; businesses going bust because a party is frustrated in running it for too long while they wait for a court hearing, and children being taken by one parent, and the other parent not being able to get into court to seek a recovery order until months later. This is simply unacceptable.

Sure, we shrug our shoulders when a government plays funny buggers with a train timetable, but should we really allow battles over the emotional wellbeing of distressed children to go on and on and on?

In 2006 someone filing for orders in the Family Court of Australia could expect to wait about two years to have their matter resolved. This meant that separated couples who had paid for valuations to be used in the case - as much as \$2000 for homes and \$10,000 for companies - had to have them valued all over again, at their expense, along with any family reports made concerning their children.

The waiting time has now increased to as much as 2½ to three years. And it appears to be getting worse. All this when the federal government promised to reduce delays as far back as 1998, and was warned by the Audit Office in 2004 about its "significant concern" at the Family Court's inability to meet its targets, causing delays that increasing the emotional and financial hardship on families.

The Productivity Commission's Report on Government Services released in January this year says the Supreme Courts and District Courts of every state and territory in Australia had a total of 31,201 lodgements for serious legal matters for 2006-07, compared with a high of 122,014 for the Family Court and the Federal Magistrates Court.

Family justice is overwhelmed with four times the number of lodgements as our state courts. The situation is only going to get worse - much worse - because cases involving disputes over the property of de facto couples have finally now been referred to, and accepted by, the federal government from the states. This will undoubtedly lead to a flood of lodgements in the Family Law Courts.

Add to this the string of recent interest rate rises, with hints from the Reserve Bank Governor, Glenn Stevens, that there are more to come. And the greatest factor in family breakdown - financial troubles - will also, with an average of dozens of homes a week being repossessed in western Sydney right now, take its toll.

The previous attorney-general responded to the Herald's 2006 front-page story by announcing he was surprised extra resources allocated to the Federal Magistrates court had not solved the problem. His government's hopes that Family Relationship Centres would mediate the problem away have also proved illusory. When it can take up to 12 weeks just to get an appointment, and perhaps months more for follow-up appointments, people can find themselves forced into the court process.

To properly solve this problem - which the Audit Office estimates as costing between \$3 billion to \$6 billion a year - we have to get more judges into the system. It's as simple as that. With only three federal magistrates in Sydney and three judges in Parramatta it's little wonder it can take 12 months just to get a hearing appointed to your case.

People are losing their homes, their money, their businesses, their livelihoods, their children and their self respect by being denied the opportunity to go to court in a timely manner.

We need many more judges and federal magistrates to clear the backlog so distressed and unhappy Australians can get back to getting on with their lives. The cost of appointing them is far outweighed by the social cost we are now suffering by allowing this to go on.

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