



**Australian Dispute Resolution Advisory Council  
Inc**

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Senate Legal and Constitutional Affairs  
Legislation Committee.

Inquiry into the Federal Circuit and Family  
Court of Australia Bill 2019 & Federal Circuit  
and Family Court of Australia (Consequential  
Amendments and Transitional Provisions) Bill  
2019

**Response by ADRAC**



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## **Summary**

ADRAC submits that the central problem of the Australian Family Law system is the adversarial nature of the system and the centrality of the Family Law Courts in this system.

ADRAC proposes that no significant change in this court-centric system can occur until courts are taken from the functional or operational centre of the system. The existence of the Federal Circuit Court as well as the Family Court, further complicates the Family Law System, and further entrenches the adversarial approach as the dominant mode of family dispute resolution.

Bringing the Federal Circuit Court of Australia and the Family Court of Australia together into an overarching unified administrative structure to be known as the Federal Circuit and Family Court of Australia, would reduce the level of complexity faced by separating families, and would thereby be of some benefit to family dispute resolution.

## **Context**

ADRAC believes that the unique context of the family law system must always be kept in clear and present focus when considering reform – even reform that is concerned with the structure of the family courts.

Separating families are experiencing a time of extreme stress and distress when they come into contact with the family law system. They are often in a volatile and vulnerable state due to the emotional impact of the breakdown of their intimate relationship. They are faced with imminent multiple losses on the financial, emotional and personal level, and they are often in shock and turmoil. As a consequence, they struggle to make rational decisions on a day to day basis, let alone make informed decisions about their future. Most importantly, many worry desperately for their children and the possibility of losing contact and connection with them.

This vulnerable state is amplified by the all too frequent concurrent presence of multiple risk factors including family violence, mental health issues, and substance abuse, which we know is more prevalent in the separating population and even more common in those who are in conflict—the very population that is in need of assistance.



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It is in this condition that the separating parties seek help from the family law system and the Federal Circuit Court and Family Court.

### **Consequences for families**

In the current court system, separating families who are in disagreement and outright conflict about how to resolve parenting and property disputes, encounter a dispute resolution system that can be outrageously expensive (at a time when they are often facing crippling financial loss); that is bewilderingly complex; that is staggeringly slow even in parenting matters; that is potentially unsafe for those extracting themselves from violent relationships; and insensitive and unresponsive to pre-existing risk factors (family violence, child abuse, mental health issues and substance abuse). But perhaps most problematic, is that in this vulnerable state, they encounter a system that is adversarial at its core, which invites them to compete with their ex-partner, which in turn can and often does exacerbate the pre-existing distress and conflict.

In summary, for many, the family law court system is expensive, unsafe, slow, harmful, undermining, inflammatory and bewilderingly complex.

All of these problems must be considered in the reform of any part of the family law system.

### **The place of the Court within the family dispute resolution system**

This review is not primarily concerned with how the courts sit within the entire family law system, but it is ADRAC's contention that any reform of the structure of the family courts must be considered in the overall context of family dispute resolution.

From this perspective the result, and preferably also the intention, of any reform in this area must be to reduce the adversarial nature of the system and remove as far as possible the centralist position of the court. In a separate publication ADRAC has proposed a model that will enable the Family Courts to be removed the centre of the family law system [here](#).

ADRAC proposes that the family law system must prioritise the need to promote self-determination at all stages of the family law system by:

- Removing the focus on the court and the adversarial system as the centrepiece;
- Introducing a comprehensive triage system at all stages and not only at the court stage;
- Actively promoting and channeling disputes to the appropriate Family Dispute Resolution processes at each stage of the system;



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- Applying a rebuttable presumption that all families should be directed towards Family Dispute Resolution until and unless assessed as inappropriate by a specially trained and supported triage system.

ADRAC would support the proposed shift towards a single Federal Circuit and Family Court (FCFC) under the following conditions:

1. The FCFC is a specialist court with specialist judicial officers who have extensive and ongoing training in family law critical matters, including, but not limited to: Family Violence, Child Development and Mental Health.
2. The Family Law Act compels this single court to prioritise Family Dispute Resolution as the primary mechanism for resolving all family law disputes – both parenting and property.
3. The FCFC is appropriately funded to be able to deal with all matters in a timely and effective manner.