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Joint Select Committee on Australia's Family Law System
PO Box 6100
Parliament House
Canberra ACT 2600

I am making this submission to the Joint Select Committee on Australia's Family Law System as a former Chief Judge of the Family Court of Australia, and because I am concerned that recent developments affecting the Court are taking it too far from its original concept and purposes.

My submission covers these issues:

1. The structure and resources of the Family Court
2. The division in jurisdiction between the Family court and child protection systems.

1. The structure and resources of the Family Court

The terms of reference do not ask the Committee to consider the proposed merger of the Family Court and the Federal Circuit Court, but to consider “any other reform that may be needed to the family law and the current structure of the Family Court and the Federal Circuit Court.”

I submit, however, that the proposed merger of the Family Court and the Federal Court is likely to undermine the integrity of the Family Court and lead to undesirable outcomes for the parties. It is inconsistent with the original aims of the Family Court, which was established as a specialist Court. Section 22 (1) (b) of the Family Law Act 1975 provides that persons may be appointed as Judges of the Court if “by reason of training, experience and personality, the person is a suitable person to deal with matters of family law”. This provision recognises that the jurisdiction of the Court, while operating in a legal framework, involves issues of relationships and the welfare of children which require consideration of wider issues than strictly legal ones.

Experience has confirmed that judicial appointments to the Family Court are most successful when made from those with experience and training in family law matters, including issues of family violence. With increasing numbers of cases in which issues of family violence and child abuse are raised, there is an even greater need today for family law jurisdiction to be vested exclusively in specialised judges who do not exercise any unrelated jurisdiction.

The original Family Court concept, which was never implemented as intended, was to have two levels of Judges within the Court, Senior Judges and Judges. The Senior Judge, who would be considered as being Supreme Court level, would undertake the more difficult contested matters, while the more routine work of divorce, maintenance and minor issues would be done by the Judges, who would also cover circuit sittings. This idea was later

reflected in the work of Family Court Registrars. The advantage of having one Court exercising all Family Law jurisdiction is overwhelming.

The division of the jurisdiction between courts has led to totally unnecessary delays and costs. However, the proposal to merge the Family Court with a Court exercising totally different jurisdiction flies in the face of the original intentions. The Family Court should remain as a single jurisdiction Court operating at the levels necessary to carry out its functions effectively and expeditiously.

A recent letter to the Attorney-general from a group of lawyers said:

Any reform should strengthen a system, not lead to the diminution of specialisation. If the Government's proposed reforms proceed, we will lose a stand-alone specialist superior family court.

The idea of a single jurisdiction, two tier court should be affirmed

The delays which are very harmful to children, and the heavy costs which preclude access to the Court for many people, are partly the result of divided jurisdiction, leading to procedural entanglements, but mainly due to lack of resources. Making decisions about the lives of other people is a high responsibility and requires careful consideration. The Court needs to have the resources needed to do the job in the best way possible for the parties and the community.

When the Court first opened, its staff included qualified and trained counsellors, who helped parties to resolve their problems in regard to children, and where required made expert reports to the Court based on appropriate contact with children and their parents. I believe that there are insufficient specialised Court Counsellors, meaning endless delay in getting court reports. The need to seek reports from outside sources adds to cost and delay and puts the quality of the reports at risk.

The Court should have sufficient Judges and counselling staff to avoid harmful delays.

2. The division in jurisdiction between the Family Courts and State child protection system

The terms of reference ask the Committee to consider various issues relating to the interaction and information sharing between the family law system and state and territory child protection systems and family and domestic violence jurisdictions, and any improvements to the interaction between the family law system and the child support system

An increasing number of cases coming to the Family Court involve issues relating to child protection or family violence. These matters are also amenable to state based jurisdiction. This gives rise to overlapping and conflicting jurisdiction between the Family Court and State and Territory child protection jurisdiction. No single court can deal with all the issues that can arise. The division in jurisdiction can prevent effective action being taken to protect children or parties as a case is shuttled between courts, or simply falls through the gaps. There can be serious delays in dealing with cases and taking effective protective action. This is a long-standing problem which has become more acute over the years. The Family Court has attempted in the past to set up protocols for handing these cases.

Many proposals have been put forward to resolve the issue of overlapping and conflicting jurisdiction between the Family Court and State and Territory child protection jurisdiction. In March 2019, the Australian Law Reform Commission made a number of recommendations on this issue. Some of these required setting up new State courts to exercise family law jurisdiction as well as child protection and family violence jurisdiction.

A more practical recommendation by the Commission was that: The Australian government “should work with state and territory governments to develop and implement a national information sharing framework to guide the sharing of information about the safety, welfare, and wellbeing of families and children between the family law, family violence, and child protection systems. The framework should include:

- the legal framework for sharing information;
- relevant federal, state, and territory court documents;
- child protection records;
- police records;
- experts’ reports; and
- other relevant information.

The Commission also recommended that governments, should consider expanding the information sharing platform as part of the National Domestic Violence Order Scheme to include family court orders and orders made under state and territory child protection legislation.

I strongly urge that these recommendations of the Law Reform Commission be implemented as fully as possible to see whether they can provide a practical solution to the problem of overlapping jurisdiction.

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