

Submission to Senate Legal and Constitutional Affairs Committee

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Federal Circuit and Family Court of Australia Bill 2018, Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018

Thank you for accepting my submission outlining my concern regarding the current proposal for the amalgamation of the Federal Circuit Court and Family Court of Australia, and my additional concern about the lack of consultation and analysis that was sought from the industry prior to the proposal being announced by the Attorney General.

The practice of Family Law is significantly different from any other field of law. It operates at the intersection of law and social science and often outside of the rules of evidence applied in non-family law matters. Each matter is emotionally charged and often one or both parties act out their frustrations in the form of family violence. Innovative, efficient and effective case management by specialist judges and experienced family lawyers can assist parties through what is one of the most difficult times of their lives and their children's lives.

The Federal Circuit Court of Australia was established in 1999 by the *Federal Circuit Court of Australia Act 1999* (formerly the Federal Magistrates Act). The Court was established to provide a simple and accessible alternative to litigation in the Federal Court of Australia (Federal Court) and the Family Court of Australia (Family Court) and to relieve the workload of those courts. However, as the Attorney-General has outlined, difficulties have emerged by having two different federal courts sharing family law jurisdiction.

These difficulties have not been assisted by our Family Law Courts having a chronic and sustained lack of resources.

The current proposal will see the Federal Circuit Court and the Family Court of Australia amalgamated into one generalist court – the Federal Circuit and Family Court of Australia (FCFCA), comprising two divisions. In addition, Family Law appeals which are currently heard in the Family Court of Australia will now be heard in a newly created Family Law Appeal Division of a second federal court, the Federal Court of Australia.

The effect of the current proposal is that there will still be two federal courts sharing Family Law jurisdiction; the proposal does nothing to address the issues that are currently faced as a result of

the sharing of Family Law jurisdiction between the Federal Circuit Court and the Family Court of Australia.

In addition, the current proposal will dismantle the 40 year old specialist Family Court of Australia in favour of a general court with non-specialist officers where family law matters have to compete with other matters of federal jurisdiction (including migration and industrial relations matters) for judicial resources and court time. This will increase the pressures and delays already affecting the family law system and produce a significant diminution in the quality of the family law justice system

In July 2018, the NSW Bar Association released its discussion paper "*A Matter of Public Importance: Time for a Family Court of Australia 2.0*". That paper makes a sensible proposal that the work of the current Federal Circuit Court would be more suitably performed under the auspices of the Family Court of Australia (in the case of Family Law matters) and the Federal Court of Australia (for other federal matters).

Such a proposal would see the current Federal Circuit Court abolished, with the two current federal courts, the Family Court of Australia and Federal Court of Australia remaining, and within them the creation of new lower divisions. There would be no need for the creation of an entirely new entity, the FCFA, as is currently proposed.

It is important to note that any proposal for a restructure of the Family Courts will not be successful if the chronic and sustained lack of funding is not addressed.

Family Law is a field which is factually and legally complex and emotionally charged. The Family Courts specialises in complex matters, including those involving family violence and/or child abuse, withholding children overseas, and applications for children to undergo treatment for gender dysphoria (sex-change). The outcomes for children in these matters continue to be felt throughout their lives.