

2 April 2020

Our ref: NDC-FLC

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Federal Circuit and Family Court of Australia Bill 2019 and Federal Circuit and Family Court of Australia (Consequential Amendment and Transitional Provisions) Bill 2019

Thank you for the opportunity to provide comments on the Federal Circuit and Family Court of Australia Bill 2019 and Federal Circuit and Family Court of Australia (Consequential Amendment and Transitional Provisions) Bill 2019.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide.

QLS assists legal practitioners to continually improve their services, while monitoring their practices to ensure they meet the high standards set for the profession in Queensland. The QLS assists the public by advising government on improvements to laws affecting Queenslanders, and working to improve their access to the law.

This response has been compiled with the assistance of the QLS Family Law Committee and the QLS Domestic and Family Violence Committee who have substantial expertise in this area.

QLS strongly supports and endorses the submission made by the Law Council of Australia in response to the proposed reforms.

QLS does not support the Federal Circuit and Family Court of Australian Bill 2019 and Federal Circuit or the Family Court of Australia (Consequential Amendment and Transitional Provisions) Bill 2019. The proposed reforms are significantly flawed. The Bills will not achieve their intended objective.

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We provide the following specific comments in relation to the Bills:

Court Resourcing

While QLS welcomes improvements to efficiency, we question how this will be achieved without the provision of appropriate resourcing. Years of chronic underfunding has drastically impeded the capacity of the court to hear matters in a timely and effective manner. Current wait times are unsustainable and can lead to detrimental outcomes for children and families. In matters involving family violence, these delays potentially expose a person experiencing family violence to greater risk. QLS strongly recommends that family law courts be immediately provided with appropriate resources to allow matters to be heard and determined in a timely manner.

Single Specialist Court

QLS supports the Law Council of Australia's view that the existence of two separate courts, with different rules, procedures and processes produces unnecessary complexity. QLS has consistently advocated for the creation of a single, specialist court for determining family law matters with one set of rules, procedures and processes. This would facilitate timely and cost-effective resolution of disputes.

The amalgamation of the Family Court and the Federal Circuit Court, as proposed in the Bills, does not achieve this. The structure proposed in the Bills continues to separate the Courts into two divisions, Division 1 and Division 2.

In effect, there is no true amalgamation of the courts. It is therefore unclear how the issues around the complexity of the current system will be resolved through the proposal. While we acknowledge the intention for a common case management approach to be adopted across both divisions, the structure does not appear to assist in reducing complication for those engaged in the system.

Specialisation

QLS supports the retention of family law specialisation in the court. As previously noted, the proper determination of family law matters requires a high level of skill and extensive knowledge of a wide range of issues and areas of substantive law, including property, commercial law, taxation, trusts, family violence, child development, social and psychological issues impacting on litigants and children, post-separation family dynamics, diverse family structures and cultural awareness.

Overwhelmingly, it is the experience of our members that a lack of expertise in family law can result in erroneous decisions and poorer outcomes for families. The skill necessary to understand the complex dynamics relating to family violence and properly identify risk is essential to the practice of family law and the proper determination of family law disputes. Decisions made without this skill and expertise can place victims of family violence, including children, at increased risk.

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Evidence based policy

The Society maintains that the proposed court amalgamation does not represent evidence-based policy. The proposal does not demonstrate an increased capacity to properly hear and determine family law matters, particularly complex matters, without any additional funding.

Any structural reforms should be considered in the context of the recent recommendations made by the Australian Law Reform Commission following the Review of the Family Law System. The Joint Select Committee on the Family Law System review is also currently on foot. The proposed reforms have been considered outside any of these important reviews. We maintain that any significant changes to the court system must be considered in a holistic manner.

In consideration of the issues outlined above, QLS is unable to support the court reforms as proposed. QLS would welcome the opportunity to be consulted further on any proposed reforms.

Yours faithfully

Luke Murphy
President