

Open Letter

Concerns about proposed family court merger

This Open Letter was originally issued in November 2019 by concerned stakeholders, representing a range of professions and community organisations working with families within the family law system. In 2021 these issues remain live concerns as the bill to merge the Family Court into the Federal Circuit Court is still before the Senate. In December 2020, the bill was opposed by all non-Government members of the House of Representatives, including all members of the cross-bench. The Open Letter has continued to be signed by stakeholders jointly calling for the bill not to be passed, in favour of the below alternatives. An updated list of signatories was issued in February 2021.

Originally issued on 11 November 2019

Dear Attorney-General,

We, the undersigned, are writing to you about the Government’s proposal to merge the Family Court of Australia and the Federal Circuit Court of Australia into a single generalised court: the Federal Circuit and Family Court of Australia.

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.

In acknowledging the need to prioritise the safety of children and adult victims-survivors of family violence in the family law system, government commissioned inquiry after inquiry has recommended increasing specialisation in both family law and family violence, including the recent Australian Law Reform Commission inquiry into the family law system.¹ We believe this should be a Government priority.

We understand and support having a single entry point to the family courts and common rules so the family law system is easier for families to navigate. We understand this is a key reason why the Government is seeking to reform the family courts.

However, there are different ways this can be achieved. And this can be done without abandoning the benefits otherwise available to children and families from a properly resourced and specialised court system.

The Family Court of Australia has said “common rules, forms and complementary case management systems” ... “can be achieved without legislative amendment”.² The Federal Circuit Court of Australia has

¹ ALRC, *Family Law for the Future: An inquiry into the Family Law System*, 2019, Recommendation 51; Standing Committee on Social and Legal Affairs, *A better family law system to support and protect those affected by family violence*, 2017, Recommendations 27-28; Family Law Council, *Improving the Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, 2016, Recommendations 11-12, 15(1); Queensland Special Taskforce in Domestic and Family Violence, *Not Now, Not Ever*, 2015, Recommendations 104 – 106, 109-110; Family Law Council, *Improving the Family Law System for Aboriginal and Torres Strait Islander Clients*, 2012, Recommendations 2.2, 8,2; Family Law Council, *Improving the Family Law System for Clients from Culturally and Linguistically Diverse Backgrounds*, 2012, Recommendations 2.2, 6.1, 6.3; ALRC ad NSWLRC, *Family Violence – A National Legal Response*, 2010, Recommendations 16.9, 21.3, 22.5, 26.3, 31.1-31.5, 32.4.

² Family Court of Australia, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Federal Circuit and Family Court of Australia Bill 2018 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018*, 14 December 2018, p1.

acknowledged the importance of a single point of entry and common case management system “whether or not the enabling legislative framework is in place”.³

Similarly, there are different models for reforming the family courts other than the model proposed by the Government.

The New South Wales Bar Association has proposed keeping the stand-alone specialist superior family court.⁴ Family Court Judges would be in Division 1 of the Family Court of Australia. Federal Circuit Court judges who are hearing family law matters would move across to Division 2 of the Family Court of Australia. In this way, federal judges hearing only family law matters would be in a single specialist family court offering judicial, social science and other services.

We believe an increase in specialisation in family law and family violence will increase the safety of children and adult victims-survivors of family violence. This is particularly the case for groups that are disproportionately impacted in the family law and family violence systems, including Aboriginal and Torres Strait Islander people. The need for increased specialisation of courts to improve decisions and outcomes for families is supported by the evidence of many inquiries.

We advocate for further discussion of the different options.

We prefer a model that retains a stand-alone specialist superior family court and increases family law and family violence specialisation, such as the proposal by the New South Wales Bar Association. The safety of children and adult victims-survivors of family violence requires increased specialisation. The proposed merger serves only to undermine that important need.

While we support just, quick and cheap access to justice and there is a role for increasing efficiencies within our court systems, this must not come at the cost of the safety of children and adult victims-survivors of family violence. These two important imperatives are not mutually exclusive, and one ought not be abandoned at the expense of the other.

Safety must come first in family law.

We would welcome further consultations on alternative models of structural, holistic reform to benefit children, families and victims-survivors of family violence.

Action can also be taken now to further increase family violence specialisation in the family law system through:

- Introducing effective ongoing court-based family violence risk assessment practices
- Early determination of family violence, and
- Increasing family violence competency of all professionals in the family law system

Yours faithfully,

List of organisations

This letter has been prepared by a number of organisations. For further information contact Amber Russell on ph: 08 8952 4055.

³ Federal Circuit Court of Australia, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Federal Circuit and Family Court of Australia Bill 2018 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018*, 11 December 2018, p3

⁴ New South Wales Bar Association, *A Matter of Public Importance: Time for a Family Court of Australia 2.0*, July 2018 accessed at: https://nswbar.asn.au/docs/mediareleasedocs/Family_Court_MR2.pdf

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8 The Hon Alastair Nicholson AO RFD QC
9 The Hon David Collier AM
10 The Hon Paul Cronin
11 The Hon Colin Forrest SC
12 The Hon William Johnston
13 The Hon Mark Le Poer Trench
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