

11 February 2020

Joint Select Committee on Australia's Family Law System  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
By email: [familylaw.sen@aph.gov.au](mailto:familylaw.sen@aph.gov.au)

Dear Panel,

## **Community Legal Centres NSW submission to the Joint Select Committee on Australia's Family Law System**

Thank you for the opportunity to provide comment to this Parliamentary Inquiry. Community Legal Centres NSW endorses the comprehensive submission made by our member centre, Women's Legal Service NSW.

In this brief response, we set out our strong support for the full implementation of Women's Legal Services Australia (WLSA)'s Safety First in Family Law Plan. We also outline our ongoing concerns about the Government's proposed family court merger.

### **ABOUT COMMUNITY LEGAL CENTRES NSW**

Community Legal Centres NSW is the peak representative body for about 40 community legal centres in NSW. Our team supports, represents and advocates for our members, and the legal assistance sector more broadly, with the aim of increasing access to justice for people in NSW.

Community legal centres are independent non-government organisations that provide free legal help to people and communities at times when that help is needed most, particularly to people facing economic hardship, disadvantage or discrimination.

Community Legal Centres NSW is advised on matters relating to family law by our Care and Protection Network, Aboriginal and Torres Strait Islander Rights Working Group, Domestic Violence and Victims Compensation network and Regional, Rural and Remote Network. Many of our members, including Women's Legal Service NSW and Wurringa Baiya Aboriginal Women's Legal Centre, work daily to support people affected by family violence to navigate the family law system.

### **Women's Legal Services Australia (WLSA)'s Safety First in Family Law Plan**

Of matters that come to the family courts, 70% involve family violence, and yet the system is not set up to adequately protect the safety of women and children. Community Legal Centres NSW strongly endorses the five steps proposed in [WLSA's Safety First in Family Law Plan](#). The Plan calls on the government and family courts to:

- Strengthen family violence responses in the family law system
- Provide effective legal help for the most disadvantaged people accessing the system
- Ensure family law professionals have a real understanding of family violence

- Increase access to safe dispute resolution models
- Overcome the gaps between the family law, family violence and child protection systems

The Plan is based on the findings of numerous comprehensive inquiries into the family law system over the past decade.

In the past three years alone, there have been several major inquiries into Australia's family law system: the Standing Committee on Social Policy and Legal Affairs inquiry into how to better support and protect people affected by family violence in the family law system; the Australian Law Reform Commission 'first comprehensive review of the family law system since the commencement of the Family Law in 1976'; and the current joint select committee 'wide-ranging inquiry into the family law system'.

While some important reforms have been introduced as a result, many more recommendations that would improve safety for women and children have not yet been implemented.

### **Concerns with the Government's proposed family court merger**

Community Legal Centres NSW remains deeply concerned about the Government's proposal to merge the Family Court of Australia and the Federal Circuit Court of Australia into a single generalised court. Any reform should serve to strengthen the system and improve the safety it can provide. Inquiry after inquiry has recommended increased specialisation in the family court in the interests of safety – which must be the first priority. This proposed merger would instead result in a loss of family law and family violence specialisation, through the loss of a stand-alone specialist superior family court.

We understand and support having a single-entry point to the family courts and common rules so that the family law system is easier to navigate, and that this is a key reason why the government is proposing this merger. However, there are different ways this can be achieved, that do not involve abandoning the benefits of a stand-alone specialist family court system.

In a June 2018 NSW Bar Association discussion paper, they suggest the following model:

- The Federal Circuit Court cease to operate as a separate, third federal court
- The Federal Circuit Court's current family law jurisdiction and workload, which reportedly represents 90% of the Federal Circuit Court's work, be transferred into a new lower level division to be created in the Family Court
- The Federal Circuit Court's remaining 10% work be transferred to a lower level division to be created in the Federal Court of Australia
- The Federal Circuit Court's resources be divided and allocated between the new divisions of the Family Court and the Federal Court of Australia in a 90:10 ratio consistent with the proportion of work undertaken
- the Family Court retain its appellate jurisdiction.<sup>1</sup>

In our view, this a preferable model to the government's proposed merger because it would retain or increase specialisation, while improving efficiency. We support the call for further

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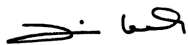
<sup>1</sup> NSW Bar Association, *A Matter of Public Importance: Time for a Family Court of Australia 2.0*, July 2018, [https://nswbar.asn.au/docs/mediareleasedocs/Family\\_Court\\_MR2.pdf](https://nswbar.asn.au/docs/mediareleasedocs/Family_Court_MR2.pdf)

consultation of the different options for reforming the federal court structure to ensure that women and children affected by family violence can access the family law system safely.

## **MORE INFORMATION**

Thank you for taking the time to consider our submission. If you have any questions or require further input, please contact Emily Hamilton via [emily.hamilton@clcnsw.org.au](mailto:emily.hamilton@clcnsw.org.au) or (02) 9212 7333.

Yours sincerely,



Tim Leach

**Executive Director**

Community Legal Centres NSW