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Children’s voices at risk as family law safety net frays

The Law Council of Australia has issued an urgent warning that the legal safeguard designed to protect the most vulnerable members of our community – children at risk of family violence – has reached breaking point.

“Independent Children’s Lawyers (ICLs) are appointed by the Court during family law disputes when there are allegations of family violence, abuse or neglect or where serious mental health issues may exist,” Law Council of Australia President Tania Wolff said.

“In many cases, the ICL is the one person in the room whose only job is to speak on behalf of the child.

“To do this work, ICLs meet with the child – often multiple times and for many hours – review case files, brief experts, attend multiple court hearings, manage drug testing, prepare submissions and wade through volumes of subpoena material.

“Just to meet with a child may require travelling to regional and remote communities, coordinating with schools, health practitioners, family violence services and court consultants.

“And the children they meet with have likely experienced trauma, have difficulty communicating or expressing their views, or feel highly vulnerable due to the uncertainty their family is experiencing.

“This means that a key part of the role is to build trust with a child in crisis. This cannot be rushed.

“ICLs do all this to understand the child’s own views about decisions that will shape their future, and to fully represent the child’s best interests during family law proceedings.

“Two years ago this week, amendments were made to the Family Law Act to bring more children into personal contact with their ICL. We supported the intent of these reforms — giving children a genuine voice in decisions about their own lives and safety.

“But the increased demand this has created, without any additional government funding to match it, has pushed the ICL workforce to the brink.

“And the private practitioners who are vital to the provision of ICL services across Australia were already doing this work for little payment.

“The current legal aid grants for ICL work are well below private practice rates. Based on the complexity of the work and the time required, some ICLs receive an effective hourly rate below the minimum wage — and that is before tax, rent, travel, staffing, superannuation and the many other costs of running a small practice.

“In Western Australia, there are now only 15 private practitioners available to deliver ICL services across the entire state. In NSW, demand for ICLs in the six months following the introduction of these changes increased by an estimated 50 per cent. Nationally, the pool of lawyers able to take on this work is shrinking — because the economics make it impossible to sustain.

“This creates delays in matters being heard and long wait times for children and families who cannot afford to wait.

“An independent review, commissioned by the Commonwealth, of our national legal assistance funding system found that recent changes ‘have created a circumstance where demand for ICLs is in excess of supply’ and concluded that ‘it is in the interests of children, their parents and efficiency of the courts that this situation is urgently addressed.’

“The review’s author, Dr Warren Mundy, identified a shortfall in annual funding of more than \$80 million.

“The Government has the evidence. The Budget is next week. There is no excuse left for inaction.”

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