



16 February 2021

## Family Court merger opposed by 155 stakeholders, including 13 retired judges

More than 155 stakeholders in Australia's family law system have now signed an Open Letter to the Attorney-General opposing the Government's flawed bill to abolish the specialist, stand-alone Family Court.

These signatories represent a range of professions and community organisations who work with Australian families and include 11 retired Family Court and Federal Circuit Court (FCC) judges, in addition to former Chief Justices the Hon Elizabeth Evatt AC and the Hon Alastair Nicholson AO RFD QC.

The merger bill would collapse the Family Court into the generalist, chronically under-resourced and overburdened FCC. The bill was listed without warning overnight as the first item of Government business on Tuesday, despite not being included on the Government's draft legislative program for the Senate this week.

Stakeholders have called for three years for the merger not to be passed out of concern it would have devastating impacts on families, result in a loss of structural, systemic specialisation and dismantle the appeal division.

The Attorney-General's Department gave evidence to the Inquiry into family, domestic and sexual violence in December 2020 that "there hasn't been a specific study of what impact the merger would have with respect to family and domestic violence issues", no consultation was undertaken with children's services, children's groups or children's advocates in relation to the merger, and no working group was formed with the Office of Women.

In November 2020, eminent jurist and former Chief Justice, the Hon Elizabeth Evatt AC, warned that "The increasing number of cases in which issues of family violence and child abuse are raised has led to an even greater need today for family law jurisdiction to be vested exclusively in specialised judges who can give their full attention to the needs of family law clients without being diverted to exercise other unrelated jurisdictions. The current bill undermines this principle, is not in the public interest and should not be enacted."

Law Council President Dr Jacoba Brasch QC said today, "As the impacts of the devastating shadow pandemic of family violence experienced during the COVID-19 pandemic continue, now is not the time to proceed with an unnecessary, risky bill that has been opposed by all non-Government members of the House of Representatives."

CEO of Community Legal Centres Australia, Nassim Arrage, said "the merger would move away from a specialist family court model, exposing survivors of family violence to unnecessary risk".

Women's Legal Services Australia spokesperson, Angela Lynch AM, said "Our opposition to the proposed merger of the family courts is centred on ensuring the safety and best interests of the child and the safety of adult victim-survivors of family violence in family law proceedings. Safety must come first in family law."

Stakeholders continue to oppose the bill out of concern the merger will increase cost, delay and stress for families. Even before the COVID-19 pandemic, the Family Court and FCC were facing delays of more than a year's worth of cases each. Two in three FCC judges already have more than 300 matters in their dockets, some more than 600. The Chief Judge of the FCC has previously indicated that the ideal number should be around 100 each. Despite these pressures, the Government increased the FCC's non-family law jurisdiction in December 2020.

This coalition of stakeholders calls on the Senate to vote against the merger and protect Australian families from a flawed proposal that lacks any evidential basis and is based on a discredited six-week consultancy report.

### Contacts

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## **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.<sup>1</sup> 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".<sup>2</sup> The Federal Circuit Court of Australia has

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<sup>1</sup> 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 and NSWLRC, *Family Violence – A National Legal Response*, 2010, Recommendations 16.9, 21.3, 22.5, 26.3, 31.1-31.5, 32.4.

<sup>2</sup> 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”.<sup>3</sup>

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.<sup>4</sup> 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.

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<sup>3</sup> 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

<sup>4</sup> 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](https://nswbar.asn.au/docs/mediareleasedocs/Family_Court_MR2.pdf)

1 Dr Merrindahl Andrew, Program Manager, Australian Women Against Violence Alliance  
2 Nassim Arrage, Chief Executive Officer, Community Legal Centres Australia  
3 Nerita Waight, Co-Chair, National Aboriginal and Torres Strait Islander Legal Services  
4 Members of the National Family Violence Prevention Legal Services Forum  
5 Law Council of Australia  
6 Sophie Quinn & Amber Russell, Co-convenors, Women’s Legal Services Australia  
7 The Hon Elizabeth Evatt AC  
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  
14 The Hon Ian Loughnan  
15 The Hon Peter Murphy  
16 The Hon Nahum Mushin AM  
17 The Hon Stephen O’Ryan QC  
18 The Hon Peter Rose AM QC  
19 Giles Coakes  
20 ACT Bar Association  
21 Brodie Lewis, Business Manager & Michael Montague, Principal Solicitor, Albany Community Legal  
Centre  
22 Tara Ward, Executive Director, Animal Defenders Office  
23 Julie Oberin, CEO, Annie North Inc Women’s Refuge and Domestic Violence Service  
24 Dr Manjula O’Connor, Executive Director, AustralAsian Centre for Human Rights and Health  
25 Mark Patrick, Managing Principal Solicitor, Australian Centre for Disability Law  
26 Dr Cassandra Goldie, Chief Executive Officer, Australian Council of Social Service (ACOSS)  
27 Professor Jaya Dantas, President, Australian Graduate Women  
28 Kerry Weste, President, Australian Lawyers for Human Rights  
29 Bonney Corbin, Chair, Australian Women’s Health Network  
30 Dr Sage Leslie, Barrister, Blackburn Chambers  
31 Sarala Porter, Manager, Blue Mountains Women’s Health and Resource Centre  
32 Rachael Field, Professor of Law, Bond Law Faculty  
33 Tracy Phillips, Executive Officer, Bonnie Support Services  
34 Eugene H White, Principal Solicitor, Brisbane North Community Legal Service  
35 Genevieve Bolton, Executive Director/ Principal Solicitor, Canberra Community Law  
36 Committee of the Canberra Region Family Law Professionals Association  
37 Tracy MacDonald, Chief Executive Officer, Care Goondiwindi Ltd  
38 Tully McIntyre, Facilitator, Central Australian Family Violence and Sexual Assault Network  
39 Janet Taylor, Managing Principal Solicitor, Central Australian Women’s Legal Service  
40 Diverse Women in Law  
41 Antoinette Braybrook, Chief Executive Officer, Djirra  
42 Gabrielle Borggaard, Chief Executive Officer, Domestic Violence Action Centre  
43 Susie Smith, Co-chair, Coalition of Women’s Domestic Violence Services of South Australia  
44 Tim Leach, Executive Director, Community Legal Centres NSW  
45 Rosslyn Monro, Director, Community Legal Centres Queensland  
46 Ben Bartl, Policy Officer, Community Legal Centres Tasmania  
47 Jenny Davidson, Chief Executive Officer, Council of Single Mothers and their Children  
48 Linda Weatherhead, Executive Director, Darwin Community Legal Service  
49 Susan Crane, Executive Officer, Dawn House Inc  
50 Mirjana Wilson, Chief Executive Officer, Domestic Violence Crisis Service

51 Delia Donovan, Chief Executive Officer, Domestic Violence NSW (DVNSW)

52 Tania Farha, Chief Executive Officer, Domestic Violence Victoria and and Domestic Violence Resource Centre Victoria

53 John Gordon, Drug and Alcohol Counsellor, Drug and Alcohol Clinical Services Northern

54 Belinda Lo, Director- Legal Services/Principal Lawyer, Eastern Community Legal Centre

55 Arlia Fleming, Managing Principal Solicitor, Elizabeth Evatt Community Legal Centre

56 Alina Thomas, Chief Executive Officer, Engender Equality

57 Janet Wright, Chief Executive Officer, Family Violence Legal Service Aboriginal Corporation (SA)

58 Shorna Moore, Director of Policy and Engagement, Federation of Community Legal Centres VIC

59 Claudia Fatone, Chief Executive Officer, Fitzroy Legal Service Inc

60 Judy McLean, Principal Solicitor and Coordinator, Fremantle Community Legal Centre

61 Brenda Beauchamp, Coordinator, Glen Innes & District Community Centre Inc

62 Di Macleod, Director, Gold Coast Centre Against Sexual Violence Inc.

63 Zoe Rathus AM, Senior Lecturer, Griffith Law School

64 Samantha Jeffries, Senior Lecturer, School of Criminology & Criminal Justice, Griffith University

65 Dr John Hewson, Professor, Crawford School ANU and former Liberal Opposition Leader

66 Jane Hutchison, Director, Hobart Community Legal Service

67 Janet Saunders, Chief Executive Officer, Hobart Women's Shelter

68 Katherine McKernan, Chief Executive Officer, Homelessness NSW

69 Jonathan Ward, Director, HUB Community Legal

70 Sarah Rodgers, Manager & Principal Lawyer, Hume Riverina Community Legal Service

71 Bronwyn Ambrogetti, Managing Solicitor, Hunter Community Legal Centre

72 Sally Stevenson AM, General Manager, Illawarra Women's Health Centre

73 Jane Brock, Executive Officer, Immigrant Women's Speakout Association Inc

74 Ali Mojtahedi, Principal Solicitor, Immigration Advice and Rights Centre

75 Jessica de Vries, Acting Co-CEO, Inner Melbourne Community Legal

76 Mary Wignell, Department Manager, Ironbark Aboriginal Corporation

77 Janene Cootes, Executive Officer, Intellectual Disability Rights Service

78 Caroline de Costa AM, Professor, Obstetrics and Gynaecology, James Cook University College of Medicine

79 Biljana Milosevic, Director, Jannawi Family Centre

80 Tim Graham, Executive Director, JusticeNet SA

81 Mary-Anne Philip, Principal Legal Officer, Katherine Women's Legal Service

82 Emma Golledge, Director, Kingsford Legal Centre

83 Nicky Snare, Chief Executive Officer, Launceston Community Legal Centre

84 Rachael Natoli, CEO/Founder, Lokahi Foundation

85 Nicole Yade, General Manager, Lou's Place

86 Robert Pelletier, Executive Officer, Macarthur Legal Centre

87 Jamal Hakim, Managing Director, Marie Stopes Australia

88 Belinda Fehlberg, Professor of Law, Melbourne Law School

89 Jane Titterington, Principal Solicitor, Mid North Coast Community Legal Centre

90 Rachel Spencer, Associate Professor & Director, Monash Law Clinics - Clayton & Melbourne

91 Marie Segrave, Associate Professor Monash University/Deputy Director, Monash Migration and Inclusion Centre/Researcher, Monash Gender and Family Violence Prevention Centre

92 Kris Newton, Manager, Mountains Community Resource Network

93 Maha Abdo OAM, Chief Executive Officer, Muslim Women Australia

94 Narrandera Domestic Violence Committee

95 Christine Ross, Acting CEO (2019) and Sandra Creamer, CEO (2021), National Aboriginal and Torres Strait Islander Women's Alliance

96 Aloma Fennell, President, National Older Women's Network Inc

97 New South Wales Bar Association

98 Joanna Quilty, Chief Executive Officer, NSW Council of Social Service (NCOSS)

99 Lizette Twisleton, Interim Director Practice and Programs, No to Violence

100 Mandy Thompson, Chief Executive Officer, North Queensland Domestic Violence Resource Service

101 Ken Beilby, Principal Solicitor, Northern Rivers Community Legal Centre

102 Anne Lewis, Director, North Queensland Women's Legal Service

103 Tessa Snowdon, Policy Officer, Northern Territory Council of Social Service (NTCOSS)

104 Marianne Ibrahim, Domestic and Family Violence Manager, Open Support

105 Michael Taljaard, Principal Solicitor, Peel Community Legal Service Inc.

106 Jackie Galloway, Chief Executive Officer, Peninsula Community Legal Centre

107 Jane Gold, Manager, Penrith Women's Health Centre

108 Jeff Smith, Chief Executive Officer, People with Disability Australia

109 Rachel Reilly, Executive Director, Project Respect

110 Terry Slevin, Chief Executive Officer, Public Health Association of Australia

111 Karen Willis, Executive Officer, Rape & Domestic Violence Services Australia

112 Sarah Dale, Centre Director & Principal Solicitor, Refugee Advice & Casework Service

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114 Carol Musgrave, Family Support Co-ordinator, Richmond Community Services Inc

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126 Vicki Johnston, Manager, The Deli Women & Children's Centre

127 Carol Child, Executive Manager, The Humanitarian Group

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133 Kirstin, Co-ordinator, Warrabee Women's Shelter

134 Charlotte Young, CEO, Warrina Domestic & Family Violence Specialist Services Co-operative Ltd

135 Catherine White, Acting Executive Officer, WASH House Inc

136 Katherine Boyle, Executive Director, Welfare Rights Centre

137 Julie Oberin, National Chairperson, WESNET

138 Patrick O'Callaghan, Principal Solicitor, Western NSW Community Legal Centre

139 Louise Coady, Principal Solicitor, Western Sydney Community Legal Centre Limited

140 Alex Haynes, Chief Executive Officer, Whittlesea Community Connections

141 Christine Robinson, Coordinator, Wirringa Baiya Aboriginal Women's Legal Centre

142 Annabelle Daniel OAM, Chief Executive Office, Women's Community Shelters

143 Kedy Kristal, Policy Officer, Women's Council for Domestic and Family Violence Services WA

144 Emma Davidson, Convenor, Women's Electoral Lobby Australia

145 Denele Crozier AM, Chief Executive Officer, Women's Health NSW

146 Jo Flanagan, Chief Executive Officer, Women's Health Tasmania

- 147 Larissa Andelman, President, Women Lawyers Association of NSW
- 148 Claudia Maclean, Principal Solicitor, Women's Legal Centre (ACT & Region)
- 149 Janet Loughman, Principal Solicitor (2019), Philippa Davis, Principal Solicitor (2021), Women's Legal Service NSW
- 150 Angela Lynch AM, Chief Executive Officer, Women's Legal Service Qld
- 151 Zita Ngor, Chief Executive Officer, Women's Legal Service SA
- 152 Yvette Cehtel, Chief Executive Officer, Women's Legal Service Tasmania
- 153 Helen Matthews, Director – Legal & Policy, Women's Legal Service Victoria
- 154 Carrie Hannington, Senior Executive Officer, Women's Legal Service Western Australia
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- 156 Bobbie Trower, Senior Manager of Advocacy, YWCA Australia
- 157 Tulika Saxena, Gender and Domestic Violence Specialist, YWCA Canberra