



TOP END WOMEN'S LEGAL SERVICE INC.

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23 November 2018

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

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

Dear Madam or Sir,

Submission of the Top End Women's Legal Service Inc. – Federal Circuit and Family Court of Australia Bill 2018, Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018

The Top End Women's Legal Service (**TEWLS**) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee's inquiry into the Federal Circuit and Family Court of Australia Bill 2018, Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 (together, **the Bills**).

Our submission will be focused on our experience of assisting women in the Northern Territory (**NT**), including Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds. In this context, we emphasise the existing specialisation within the Family Court of Australia (**FCA**) jurisdiction and structure to address complex family law issues, whilst also addressing related salient issues with respect to clients with multifaceted legal needs and trauma, and in particular domestic and family violence indicators. In addition, we note and advocate for change in respect of existing deficiencies in the family law system, including significant wait times related to resource levels at the FCA and the Federal Circuit Court (**FCC**).

In essence, our submission highlights the potential loss of systemic, litigant and cost benefits currently inherent within the specialist FCA. We endorse the submission of Women's Legal Services Australia (**WLSA**) to the Bills,¹ and noting the capacity of our service, make this submission on only salient issues contained in the Bills.

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. Founded in 1996, we are funded by the Commonwealth Departments of the Attorney-General and Prime Minister and Cabinet. TEWLS' small team of six provide high quality, responsive, and culturally appropriate free legal advice, casework, community legal education and advocacy in civil and family law to women living in the Greater Darwin region. Our service area includes the provision of services and outreach services to women in Darwin, Palmerston, at the Royal Darwin

¹ Women's Legal Services Australia, Submission No 18 to Senate Legal and Constitutional Affairs Committee, *Federal Circuit and Family Court of Australia Bill 2018, Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018*, 27 October 2018.

Hospital, at the Dawn House Women's Shelter, on six Indigenous communities in the Greater Darwin region, at the Top End's Adult Migrant English Programs, and to women incarcerated at the Darwin Correctional Centre.

TEWLS provides advice and assistance across a number of areas of civil and family law, where the most frequently requested areas of assistance are family law (including parenting, property and divorce matters), domestic and family violence, housing and tenancy, consumer law, credit and debt, fines, sexual assault, discrimination, compensation for victims of crime, and complaints.

By way of context, in the 2017/2018 financial year, TEWLS:

- Assisted more than 2,500 women;
- Provided more than 1,250 women with information and/or referral services;
- Provided legal advice to over 650 women on more than 1,000 legal matter types;
- Represented over 500 women in a wide range of civil and family law ongoing matters; and
- Contributed to and delivered over 25 law reform and policy submissions, as well as community legal education sessions.

Over the past 12 months, TEWLS' clients presented as follows:

- Over 60% of clients had domestic and family violence and financial disadvantage indicators;
- Almost all clients presented with a complex matrix of interrelated legal matters and vulnerabilities that required, and received, a dedicated holistic linked-up focus; and
- Over 20% of all clients were homeless, without income, with a disability or mental health condition, and/or with English as a second language.

Our submission

A Deferral of the Bills

On 31 March 2019, the Australian Law Reform Commission (**ALRC**), having conducted the most comprehensive review of the family law system since the commencement of the *Family Law Act 1975* (Cth), will report to the Commonwealth Attorney-General on matters relating to potential reforms to ensure the family law system meets the contemporary needs of families and effectively addresses family violence and child abuse (**the ALRC Report**). Given that the ALRC is due to provide this comprehensive review, the Bills, in our submission, appear to be ill-conceived and rushed. In addition, it is concerning that the Bills have already progressed this far in the context of little to no consultation with domestic and family violence experts, services and persons who have experienced domestic and family violence.

TEWLS submits that final consideration of the Bills, including the proposed merger of the FCA and FCCA courts, be deferred pending receipt and consideration of the ALRC Report. This would avoid any pre-emptive actions in the absence of the benefits of evidence-based decision making to prioritise achieving the best outcomes for families. Alternatively, we endorse the

submission of WLSA to “scrap” the Bills until the tabling of the ALRC Report, given that the ALRC Report may recommend for alternate reforms.

B Specific comments to the Bills and proposed reforms

I Loss of Specialisation

TEWLS endorses the concerns of WLSA regarding the consequences of the Bills should they be enacted, where there will be a loss of specialisation in the family law system at a time where increased specialisation is required. We particularly note that description of the Former Chief Justice of the FCA, Alastair Nicholson, that the proposed changes constitute a “complete destruction of the family law system,”² which could “strain the emotions of litigants and lead to a heightened security risk”.³

Currently, a judge of the FCA must have specialised knowledge;⁴ in our experience, this specialisation facilitates litigant engagement, litigant disclosure, procedural fairness and efficacy, and, specialist outcomes in often multi-faceted and complex matters which regularly involve high level safety concerns for children and their Mothers. Should the Bills be enacted, it is proposed that judges in the new Federal Family Court of Australia will be able to be appointed without family law expertise, meaning that complex family law matters may be determined by a Judge without family law experience, at both first instance and or at the appellate level, or both. This proposal has been described by former Chief Justice of the Family Court, Diana Bryant, as leading to a Court where family law expertise will “wither on the vine.”⁵

The existing specialisation aims to facilitate access to justice and improved litigant outcomes, which is particularly the case for vulnerable clients, including those with domestic and family violence, mental health, and or drug and alcohol indicators; as well as those from diverse backgrounds including Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse clients, where English is often a second or third language, and where literacy and legal misconceptions may exist. In TEWLS’ analysis, the proposed merger creates a “single entry point” for family law matters that would consequently bypass and seek to dismantle the existing foundational expertise of the FCA, which by nature, advances systemic, litigant and cost benefits inherent in structural, jurisdictional and Judicial specialisation.

II Need for holistic support services

Resource levels for family law courts, family law legal assistance, and in particular specialist women’s legal services with salient expertise, define levels of access to justice and protection for women and their children within the family law system. A significant impact of current under-resourcing is the increased number of self-represented litigants in family law matters, which in turn, reduce systemic, litigant and cost benefits currently inherent in the existing structural specialisation. In TEWLS’ experience, sufficient ongoing funding of family law courts and specialist services, including specialist women’s legal services, are crucial for the effective and efficient administration of justice and for the efficient functioning of the family law system.

We note that inadequate funding of legal assistance services and the courts have previously been the subject of review and recommendations at a national level. In 2014, the Productivity

² Jon Faine, ‘Former Chief Justice Alistair Nicholson slams scrapping of Family Court,’ *ABC Radio Online (Mornings with Jon Faine)*

<<https://www.abc.net.au/radio/melbourne/programs/mornings/alistair-nicholson/9815726>>.

³ *SBS News*, ‘Courts merger expected to cut family case waiting times,’ *SBS News (Online)*, 30 May 2018 <<https://www.sbs.com.au/news/courts-merger-expected-to-cut-family-case-waiting-times>>.

⁴ *Family Law Act 1975 (Cth)* s 22.

⁵ Michael Pelly, ‘No Love left for the Family Court,’ *Australian Financial Review (online)*, 31 May 2018 <<https://www.afr.com/business/legal/no-love-left-for-the-family-court-20180531-h10slo>>.

Commission recommended that the Commonwealth Government made an urgent and immediate funding injection of an additional \$200 million in funding for legal assistance services for civil and family law, including specialist women's legal services.

III Financial efficiency over safety and wellbeing – an incorrect premise

TEWLS expresses concern over the development of and premises behind the Bills, where we understand from Government statements that the Bills are the result of a financial review of the family law system. We endorse the reference made by WLSA of the overarching purpose of the family law system, which should be "to reduce risk and promote safety for all members of the family, and noting the gendered nature of family violence, particularly women and children."⁶

Conclusion

In conclusion, TEWLS does not support the Bills, or progress of the proposed Bills, prior to an informed review and consideration of the ARLC Report. As an alternative to the Bills, we submit that decisions regarding reform of the family courts should strengthen rather than reduce existing specialization and holistic service provision. It is our submission that this would accord with national commitments to addressing domestic family violence, whilst also advancing the specific needs and vulnerabilities of children and their families.

We appreciate the opportunity to make this submission and to support ongoing policy and legal development for women in the Top End of the NT, and nationally. We thank you for your consideration of the above and would be pleased to be contacted by phone on (08) 8982 3000 or email to admin@tewls.org.au should you wish to discuss this submission further.

Yours faithfully,

TOP END WOMEN'S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

⁶ See above n 1, 4.