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Law Council OF AUSTRALIA

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Family Court merger 'undesirable' for families, former Family Court Chief Justices say

The Government's bill to abolish the specialist, stand-alone Family Court would have devastating impacts on families and result in a significant loss of structural, systemic specialisation, a coalition of stakeholders including the first and second Chief Justices of the Family Court has warned.

Eminent jurist and former Chief Justice, the Hon Elizabeth Evatt AC, said "The proposed merger of the Family Court and the Federal Circuit Court (FCC) will lead to undesirable outcomes for children and families".

"The Family Court was designed purposely as a world-leading, specialist, stand-alone Court to deal only with family law matters, with the support of a dedicated multi-disciplinary team of counsellors and mediators. Its stand-alone nature is one its greatest attributes, providing protections for vulnerable people in need of family law assistance," the former Chief Justice said.

"Merging the Family Court into a generalist court will undermine the integrity and the structural specialisation of the Family Court. The impact of losing this institutional specialisation is not properly understood, and has been downplayed.

"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.

"Instead, a lower division should be added within the Family Court, made up of the FCC's family law jurisdiction and some of its judges as suggested by the NSW Bar Association's *Family Court 2.0 model*," said Dr Evatt AC.

The Hon Alastair Nicholson AO RFD QC said "I had the honour of being the second Chief Justice of the Family Court from 1988 to 2004, following the Hon Elizabeth Evatt AC. I fully support and endorse her remarks about the inadvisability of this proposal."

"It is unbelievable that Government would propose the dissolution of a Federal Superior Court in this fashion without the most careful and searching Public Inquiry and without carrying out significant research and without consulting the many experts in this field," Mr Nicholson AO RFD QC said.

"I am firmly of the view that the passage of the *Family Law Act 1975* (Cth) and the setting up of the Family Court was some of the most significant social legislation ever to be passed by the Federal Parliament.

"What those proposing this merger do not seem to understand is that family law is complex and nuanced, and it is not to be judged by the output by numbers of cases as if the Courts are sausage machines. Throughput is important, but so is the quality of the decisions made.

"Cases can be extremely complex and require specialist knowledge of the type that has always been available in the Family Court, which has provided leadership in the proper interpretation and principles to be applied by other courts with family law jurisdiction.

"Many involve the determination of important issues relating to children, including their rights and need for protection, not only from individuals, but also from government in its myriad forms. Many also involve problems of family violence and the effects of it upon the parties and their children. Others involve extremely complicated property disputes either alone or combined with the above issues and requiring other important specialist levels of legal knowledge, whilst understanding the important family issues that may be affected by the decision.

"The Family Court is a Court that has been envied throughout the common law world and its judgments have often been cited with approval by the courts of many countries including New Zealand, UK, Canada, the USA and others. Its significance as the only specialist Family Court set up as a superior Court of Record and particularly that of its Appeal Division cannot be over emphasised," said Mr Nicholson AO RFD QC.

The former Chief Justices have joined more than 110 stakeholders on the front line of the family law system in calling on the Parliament to vote against the merger bill as it will increase cost, delay and stress for families.

Law Council President Pauline Wright said "No amendment to the bill can cure what remains a flawed and dangerous proposal without evidentiary foundation. Claims the merger will allow up to 8,000 cases to be resolved each year cannot be substantiated and are based on PWC's discredited six-week desktop review."

"In putting this proposal to the Parliament, the Attorney-General is asking Members, Senators and Australian families to trust his word alone that the merger will deliver what it claims, despite no credible evidentiary foundation and opposition from experts including highly respected former Chief Justices of the Family Court.

"This is a terrible gamble with the lives of children and families. The merger would collapse the Family Court into the lower level, generalist FCC, which already struggles through chronic under-resourcing and under-funding to manage less complex family matters alongside its growing migration workload," Ms Wright said.

CEO of Community Legal Centres Australia, Nassim Arrage, said "more than three in every ten people seeking help from community legal centres experience family violence. In our experience, moving away from a specialist family court model would be a retrograde step and expose survivors of family violence to unnecessary risk."

"Any reform should strengthen a system, not lead to the diminution of specialisation," Mr Arrage said.

Women's Legal Services Australia spokesperson, Angela Lynch AM, said "Our opposition to the Government's 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."

"Retaining and strengthening specialisation in family law and family violence through a stand-alone specialist family court is essential. Family violence best practice responses world-wide recommend enhancing, not undermining, family violence specialisation in courts. Despite amendments, the Federal Government's proposed model does not achieve this," Ms Lynch AM said.

In October, National Aboriginal and Torres Strait Islander Legal Services Co-Chair, Cheryl Axleby, said the bill "will disproportionately impact the most vulnerable including Aboriginal and Torres Strait Islander children and families who need the most support".

"From our experience, as Aboriginal organisations, we say that mainstreaming does not achieve efficiency or better outcomes for our people and that specialisation in the law is important and it works. Our main call is for more specialisation and more resourcing into the cultural competence of the family court system. The introduction of specialist Aboriginal Courts in the family law system has seen an increase in Aboriginal participation. We implore the Parliament to do the right thing by our communities and reject this bill which does not address the root causes of these problems. We fear, in the middle of this global pandemic, the bill will exacerbate the issues that our communities are facing," Ms Axleby said.

These stakeholders consider that the merger should not be passed at any time because it will put families and children at greater risk. Instead, now is the time to strengthen a stand-alone, specialist family law court and increase family violence specialisation with the *Family Court 2.0 model* proposed by the NSW Bar Association. Unlike the merger, the *Family Court 2.0 model* would lift and shift the FCC's family law jurisdiction and judges hearing family law matters into a lower division of a specialist, stand-alone Family Court at the heart of a bespoke ecosystem of interrelated and co-located support, counselling and assessment services.