

30 March 2020

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

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

Federal Circuit and Family Court of Australia Bill 2019 - submission

Relationships Australia welcomes the opportunity to make a submission to the Committee on the Federal Circuit and Family Court of Australia Bill 2019 ('the Bill'). This submission is made on behalf of the eight State/Territory Relationships Australia organisations.

The work of Relationships Australia

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, living arrangements, cultural background or economic circumstances.

Relationships Australia has, for over 70 years, provided a range of relationship services to Australian families, including individual, couple and family group counselling, dispute resolution, services to older people, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others and develop better health and wellbeing.

Relationships Australia State and Territory organisations, along with our consortium partners, operate around one third of the 66 Family Relationship Centres across the country. In addition, Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service.

The core of our work is relationships – through our programs we work with people to enhance and improve relationships in the family (whether or not the family is together) with friends and colleagues, and within communities. Relationships Australia believes that violence, coercion, control and inequality are unacceptable.

We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships. A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins our work. Relationships Australia is committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.

- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children. We recognise that often a complex suite of supports (for example, family support programs, mental health services, gambling services, drug and alcohol services, and housing) is needed by people affected by family violence and other complexities in relationships.
- Enriching family relationships, and encouraging clear and respectful communication.
- Ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing our practice evidence and skills to research projects, to the development of public policy, and to the provision of effective and compassionate supports to families.

This submission draws upon our experience in delivering, and continually refining, evidence-based programs across diverse family and community settings and to diverse cohorts of users of the family law system, including:

- younger and older people
- people who come from culturally and linguistically diverse backgrounds
- Aboriginal and Torres Strait Islander people
- people who identify as members of the LGBTIQ+ communities
- people affected by intergenerational trauma, and
- people affected by complex grief and trauma, intersecting disadvantage and polyvictimisation.

Previous submission about the Federal Circuit Court and Family Court of Australia Bill 2018

In 2018, we wrote to the Committee to comment on the Federal Circuit Court and Family Court of Australia Bill 2018 and the Federal Circuit Court and Family Court of Australia (Consequential and Transitional Provisions) Bill 2018 ('the 2018 Bills').¹ We rely, in this submission, on the principles and themes canvassed in our submission on the 2018 Bills; in particular:

- that the current family law system is innately and irretrievably unsuited to the needs and legitimate expectations of Australian families
- that it must be replaced by a system that
 - offers therapeutic approaches to establish and support children's developmental needs, and

¹ <https://www.relationships.org.au/national/submissions-and-policy-statements/submission-inquiry-into-bills-relating-to-the-federal-circuit-court-and-the-family-court-of-australia>

- is not centred on win/loss outcomes achieved through institutionalising parental conflict
- that services and institutions engaging with separating families need to be sufficiently resourced
- that, accordingly, the family law system should be replaced by a family wellbeing system, which would include a specialist body for parenting matters, as described in the 2018 submission, and
- that Relationships Australia does not have a particular view on the structure of the federal judiciary. It matters less how the federal family courts are structured and more how they, courts exercising family violence and child protection jurisdictions, and related agencies and systems, work together to give expert support to families affected by separation.

We acknowledge that, since the 2018 submission, the Government has progressed several initiatives consistent with reform proposals made by the Australian Law Reform Commission in its Discussion Paper 86 (and suggested by various submitters to the ALRC's inquiry into the Family Law System). We welcome initiatives that aim to improve accessibility to therapeutic service responses, including support for family dispute resolution in property disputes involving small property pools, more specialised pathways (such as the Small Claims Property Pilot), information sharing and co-locating child protection officials in courts.

We further acknowledge that the 2020 Bill differs from the previous Bill. In particular, the Government seeks to address some of the criticisms made about the 2018 Bill, including by:

- moving away from the creation of a family law appeals division in the Federal Court and preserving the existing Family Court's appellate jurisdiction within Division 1 of the Federal Circuit and Family Court of Australia ('FCFC')
- clarifying the operation of the single point of entry for first instance family law matters²
- strengthening judicial appointment processes, and
- strengthening provisions that will underpin consistent processes and practices across the family law jurisdiction.³

Relationships Australia supports:

- simplified processes for families to navigate, including:

² Noting that the desirability of a single point of entry, for example, and a single first instance court (which the Bill would seem, in practice, to establish, notwithstanding flexibility for first instance matters to be transferred to Division 1 if the head of jurisdiction considers it appropriate)

³ Noting that a single set of rules of court and nationally consistent registry practices have been recommended in, for example, the PwC Report, 2018, 59, pp 73-74, 80; streamlining the court system was also supported in the submission to the ALRC of the Family Law Committee of NSW Young Lawyers pp4-5, submission 108 in response to ALRC Issues Paper 48, 3; see also submission 35 in response to ALRC IP48 by the Hon Diana Bryant AO QC.

- by establishing a single point of entry for all families, supplemented by provisions that offer flexibility to transfer matters between the Divisions
- consistency, as between Divisions 1 and 2 of the FCFC, of Rules of Court
- a single set of forms
- a common scale of costs, and
- uniform procedures
- measures to support active case management
- facilitation of specialised and fast track pathways for matters involving family violence or allegations of sexual abuse⁴
- careful stewardship of public resources through measures aimed at restricting appeals to matters of substance, allowing appeals to be heard by a single Division 1 judge, and requiring leave to appeal
- enabling parties to be better informed about likely timelines and likely costs
- encouraging the FCFC, parties and their lawyers to act in partnership to ‘facilitate the just resolution of disputes according to law, and as quickly, inexpensively and efficiently as possible’, and
- the Government’s intention to prescribe a minimum number of 25 judges for Division 1.⁵

In addition, to maximise the accessibility and fitness for purpose of the FCFC, Relationships Australia would support:

- less emphasis on achieving ‘justice as between the [parent] parties’ in ‘parenting matters’, and more emphasis on identifying and meeting children’s developmental needs in children’s matters;⁶ for example, we note that the language of the Explanatory Memorandum does not appear to fully recognise the paramountcy of the best interests of the child (see section 60CA of the Family Law Act), stating merely that ‘principles under the *Family Law Act 1975* ...include acting in the best interests of the child’⁷

⁴ Division 4 of Part 6 of Chapter 3 (Division 1) and Division 4 of Part 6 of Chapter 4 (Division 2) of the 2020 Bill; EM 14.

⁵ See EM, Notes on clauses, paragraphs 23-24.

⁶ Relationships Australia would also call upon the Government, in future initiatives, to give greater scope for children’s participation, as we have advocated in our submissions to the ALRC inquiry and the inquiry being conducted by the Joint Select Committee on Australia’s family law system; see <https://www.relationships.org.au/national/submissions-and-policy-statements/australian-law-reform-commission-review-of-the-family-law-system-issues-paper-released-14-march-2018-submission-from-relationships-australia>; <https://www.relationships.org.au/national/submissions-and-policy-statements/australian-law-reform-commission-review-of-the-family-law-system>; <https://www.relationships.org.au/national/submissions-and-policy-statements/joint-select-committee-on-australia2019s-family-law-system-2013-relationships-australia-national-office-submission>.

⁷ See EM, paragraph 45.

- increased use of existing powers⁸ to function as a less adversarial ‘helping court’, supported by judicial and legal cultures that actively:
 - promote therapeutic court craft, and
 - deter and suppress combative behaviours incentivised by adversarial dispute resolution models that set up parents as ‘winners’ and ‘losers’ in respect of their children
- more robust and specific pre-appointment criteria for aspirants to the Bench; while we welcome the emphasis on expertise and aptitude in dealing with matters involving family violence, the range of complex co-morbidities affecting parties appearing before the court is much broader, and judges should be expressly required to have knowledge, skills, experience and aptitude to effectively recognise and respond to these. For example, judges need to be able to respond to children’s developmental needs, and to complex grief and trauma, and
- misuse of process included in the definition of ‘family violence’ in the *Family Law Act 1975* (Cth), which would usefully complement the vexatious proceedings provisions set out in clauses 239-244 of the Bill.⁹

CONCLUSION

The COVID19 pandemic threatens all of us, and the social, economic and political environments which we populate. As we move, in due course, to recover, re-construct and renew, Australian families – already at breaking point - should no longer be expected to limp along, suffering long-lasting harms through contact with impoverished institutions that cling to unsuitable win/loss outcomes. It is surely past time that Parliament recognise that anything short of true transformation will cost Australia its potential to build healthy, resilient families and communities by nurturing healthy, resilient children, whether their families are separated or intact.

We thank the Committee for the opportunity to comment on the 2020 Bills, and would be happy to discuss further the contents of this submission if this would be of assistance.

Yours sincerely,

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⁸ Such as those included in Division 12A of Part VII of the Family Law Act.

⁹ Relationships Australia advocated for this in its submission to ALRC DP86: see page 100, responding to Proposal 8-3 in the Discussion Paper (<https://www.relationships.org.au/national/submissions-and-policy-statements/australian-law-reform-commission-review-of-the-family-law-system>).