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Mr Tim Watling
Committee Secretary
Legal and Constitutional Affairs and Legislation Committee
(legcon.sen@aph.gov.au)

Dear Mr Watling

Inquiry into the *Family Law Amendment (Family Violence and Other Measures) Bill* and the *Family Law Amendment (Parenting Management Hearings) Bill 2017*

I write in my capacity as the South Australian Commissioner for Children and Young People. As the Commissioner I have a mandate to promote and protect the rights, interests and wellbeing of children and young people (birth to 18 years) in South Australia (SA). I also have a role advising Ministers, State and Local Government agencies and other bodies regarding the rights, development and wellbeing of children and young people.

I support, in principal, the amendments in both of these Bills, especially the provisions in the Family Law Amendment (Parenting Management Hearings) Bill which provides a greater opportunity for the child to be heard, including proposed sections 11JB(4)(a), 11MB(3) and (4), 11LK and 11LL(5). These proposed amendments should allow the Parent Management Hearing Panel to better determine what the "best interests of the child" are and for the child not to be seen as an add-on or third person in a legal proceedings. Further, ensuring the process is not adversarial will refocus the Panel back onto the child, not the adults in conflict.

However, I still am concerned about how "best interests of a child" is being defined and how children are being heard. Reservations include:

- There being no mechanism for a child to be heard in court proceedings, especially when any experts view doesn't reflect the child's view. I note that a child has a choice under the current Family Law Act and the current Parent Management Hearings Bill not to be heard, but there is no mechanism for the child to be heard or for them to ask the court to review a decision. Although I have only been in this position for a short time, I have already heard stories about children feeling disempowered and not being given "a voice" in respect to parenting matters.
- From my preliminary research on ICLs in responding to the Family Law Act review, appears that the judges give greatest weight to ICL views over the opinions of other professional and the child's voice, despite the fact that research shows that almost 60% of ICLs see the child "sometimes, rarely or never".[1] In determining a child's best interests and fulfilling the intent of

[1] Rae Kaspiew, Rachel Carson, Sharnee Moore, John De Maio, Julie Deblaquiere and Briony Horsfall, "*Independent Children's Lawyers Study*, Australian Institute of Family Studies, 2nd Edition 2014

the Conventions of the Rights of the Child best practice would be to ensure that ICLs give the child the opportunity to express their views and desires and be involved in the process to the extent they want. Meeting with children should be the rule rather than the exception.

- I also have reservations in relation to ICLs' lack of requirements to have additional training in working with children, especially those experiencing emotional distress or with a history of trauma and abuse. ICLs are often appointed when the case is acrimonious, there is a concern about the child's safety and wellbeing, or there is evidence of family violence (and other factors), however ICLs are not given the tools they need to understand Trauma Informed Practice and how to engage children in these environments. Without specialised training ICLs will not necessarily understand the context for the child, or be equipped to work sensitively and do no harm. In matters where there are particularly traumatised or vulnerable children, a child should be allowed to have an appropriately trained support person to assist them in the Family Law process and when working with an ICL.
- The provision for judges under the Family Violence and other Measures Bill to "dispense with requirements to explain an order or injunction to a child, where the order is inconsistent with an existing family violence order and where it would be in the best interests of the child to not receive the explanation". The fact is that in most cases the person that is going to be impacted the most from these orders is the child them self, therefore they need to know why there life is being changed, especially if they have not been given a voice. Having judges explain to a child also takes aspects of proceedings away from the two parents disputing and to the child, which is where the judge should be looking at. Generally, when there is a decision where the person most impacted is not the two parties in the proceedings, but a third person, it is important for the decision to explain their decision to that third person. In the UK, some judges are writing letters to the children as judgements so that they are able to explain their decision to the person that it will affect the most.

While these comments are in relation to the proposed Bills, it also applies generally to the current Family Law and should be considered in relation to the Family Law Review. To this end, my office intends to undertake a consultation with children to make recommendation on how the Family Law Act can be improved to protect their interests.

Yours sincerely

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