FAMILY COURT OF AUSTRALIA

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11 March 2015

Ms Sophie Dunstone
Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Ms Dunstone

SUPPLEMENTARY SUBMISSION TO THE INQUIRY INTO THE TRIBUNALS AMALGAMATION BILL 2014 (CTH)

Thank you for the opportunity to make a supplementary submission to the Senate Legal and Constitutional Affairs Legislation Committee's ("the Committee") Inquiry into the Tribunals Amalgamation Bill 2014 (Cth) ("the Bill"), in response to issues raised by the Attorney-General's Department in its submission, no. 10. I make this submission in my role as a senior member of the Appeal Division of the Family Court and judge with responsibility for advising the Chief Justice on legislation and law reform related issues. I wish to emphasise that the views contained herein are my own and may not necessarily reflect the views of all of the other members of the Court, although they are reflective of those of the Chief Justice.

I note that the author of the submission, Mr Manning, First Assistant Secretary of the Access to Justice Division, has now confirmed that one of the Bill's intended effects is to ensure that appeals from the Federal Circuit Court in child support matters are heard by the Federal Court of Australia, in addition to removing the Family Court of Australia's existing jurisdiction in relation to decisions of the Social Security Appeals Tribunal in child support matters.

The Chief Justice has previously informed the Committee that the Explanatory Memorandum accompanying the Bill is silent as to the rationale for vesting appellate jurisdiction in the Federal Court and removing it from the Family Court. However, I note that Mr Manning's submission makes reference to the Government's wish to "simplify and standardise provisions". Insofar as that is the reason for the significant change to the appellate pathway in

child support matters, I have two observations that I wish to make. First, the Bill does not "simplify" provisions as far as appeals are concerned. All the Bill does is substitute one appellate court for another. Secondly, the Bill does not completely "standardise" provisions. In that regard I note advice provided by the Attorney-General's Department to the Principal Registrar of the Family Court that the appeal pathway for migration matters will differ from that followed in judicial review of other types of decisions, including that proposed for child support reviews. I therefore once again query why it is that the Federal Court is being substituted for the Family Court in child support appeals, particularly given the Family Court's well documented unique experience in hearing and determining appeals of this type; the Family Court is the only court to have had this jurisdiction to date.

My particular concern though is with the section of Mr Manning's submission under the heading 'Jurisdiction in Child Support Matters'. Here, Mr Manning devotes his entire attention to the issue of forum for judicial review of child support decisions made by the amalgamated Administrative Appeals Tribunal. That is simply not the issue the Chief Justice and I have been agitating. I am unconcerned, as is the Chief Justice, with the proposal to remove the Family Court (and certain state and territory courts) as courts in which application for judicial review of child support decisions can be made. Indeed, as the excerpt from the Explanatory Memorandum set out by Mr Manning states, in practice the vast majority of such matters are heard by the Federal Circuit Court. This work has been undertaken with the agreement and support of the Family Court, as it is the type of work suitable to be performed by other than a superior federal court.

That, however, is merely the first step in the process. The second step concerns appeals from Federal Circuit Court decisions following judicial review of child support matters. This was explained in detail in the Chief Justice's submission and it is this 'second step' that the Chief Justice and I have been pressing. Mr Manning's submission contains no discussion whatsoever of that second step. Thus, Mr Manning's submission fails to provide the Committee with the information it has requested about the primary issue raised by the Chief Justice. In her submission made on 3 March 2015, the Chief Justice suggested that the Committee "confirm what the policy behind the change is, whether the ramifications of this part of the Bill have been considered and are necessary, and finally…ensure that the legislation has no unintended consequences". None of these questions have been answered by Mr Manning.

I also wish to comment on that part of Mr Manning's submission which discusses referrals on a question of law. Although it does not say so explicitly, I assume from the general tenor of Mr Manning's submission that the decision to vest jurisdiction in the Federal Court to hear referrals on a question of law, at the expense of the Family Court, is motivated by the desire for simplicity and standardisation, and a reduction in complexity. However, if the provision is rarely used, as Mr Manning's submission states, I fail to understand why it is therefore necessary to disrupt an established jurisdictional pathway in order to standardise process and reduce complexity. I also cannot see the relevance of the qualifications and expertise of Deputy Presidents of the amalgamated Administrative Appeals Tribunal to the issue of whether the Family Court or the Federal Court should be the court to which questions of law are referred. The Family Court is the only court with the relevant experience and ability to answer such questions.

I appreciate Mr Manning clarifying that paragraph 7(2)(e) of the *Acts Interpretation Act 1901* (Cth) will preserve the status of pending appeals and reserved judgments of the Family Court. However, in my view and that of the Chief Justice, for the reasons set out in the Chief Justice's earlier submission, the better and more appropriate course of action is for the Bill to be amended so as to ensure that appeals from the Federal Circuit Court in child support reviews continue to be heard by the Family Court. As the Chief Justice has also stated, the ability of the Family Court to receive referrals on a question of law should be retained.

I await the Committee's report and recommendations with interest.

Yours sincerely

The Hon. Justice Steven Strickland
Judge of the Appeal Division