

Committee Secretary
Senate Legal and Constitutional Affairs Committee
By online submission at <https://www.aph.gov.au/>
16 November 2018

Australian Women Against Violence Alliance

Submission to the Inquiry into the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 and Federal Circuit and Family Court of Australia Bill 2018

Thank-you for the opportunity to make a submission in response to the public consultation on the proposed restructure of the Family Courts.

About the Australian Women Against Violence Alliance (AWAVA)

Australian Women Against Violence Alliance (AWAVA) is one of the six National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and contribute to solutions. AWAVA's focus is on responding to and preventing violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, and to amplify the work of its member organisations and Friends and Supporters. AWAVA's members include organisations from every State and Territory in Australia, representing domestic and family violence services, sexual assault services, women's legal services, and services for women in the sex industry, as well as organisations representing or working with Aboriginal and Torres Strait Islander women, young women, women educators and other groups. AWAVA's contract manager is the Women's Services Network (WESNET).

Overview

AWAVA recommends that the Government

1. Scrap (or at least delay) the Bills until after the Australian Law Reform Commission (ALRC) Family Law Review report is tabled.
2. Amend the terms of reference for the ALRC Review to include consideration of alternative court restructure and extend the time for submissions so there can be proper consultation about alternative court structures as well as court practice and procedure.

We endorse the submission of Women's Legal Services Australia to this inquiry.

Key concerns

Safety

The overarching key concern is that the reforms are being pursued without adequate consideration for how they will impact on the safety of victims/survivors of family violence and their children. Each of the following issues outlined below is of concern because of its impact on safety.

For further information on how the family law system can be improved to enhance its safety and accessibility for diverse groups of people, please refer to WLSA's plan for Safety First in Family Law¹, and to AWAVA's joint submission (with the National Aboriginal and Torres Strait Islander Women's Alliance and Harmony Alliance – Migrant and Refugee Women for Change) in response to the Australian Law Reform Commission's Review of the Family Law System Issues Paper.²

Lack of consultation with victims/survivors and experts

We are concerned that there has not been adequate consultation about the proposed restructure with women's services responding to violence against women. Given that at least 50% of matters in the family law courts involve family violence, it is vital that any proposed restructure be developed through proper consultation with victims/survivors and sexual and family violence experts (including specialist women's services dedicated to responding to this violence). The proposed reforms will have impacts on the safety of family violence victims/survivors and their children and it is important that reforms be developed with explicit reference to safety considerations.

Pace of reform and lack of integration with ALRC review

A related concern is that the process is being rushed. It is important that adequate time and resources be devoted to getting reforms right, rather than just getting them through. The Australian Law Reform Commission's current review of the Family Law system is the appropriate avenue through which any restructure should be considered. This would enable an integrated approach to reform and improve the prospect for safety to be given proper consideration throughout.

Under-funding and the need to resource reform appropriately

We agree that the family law court system is under pressure and reform is required so that it responds better to people in difficult situations. However, it needs to be acknowledged that the key reason why the system struggles to meet the needs of families in Australia is chronic under-funding. The proposed reforms do not allow for further resources. Merging the courts will not alleviate the current problems and may make matters worse for family violence victim-survivors.

We question the emphasis on achieving 'efficiencies' in the context of an already-very-under-funded system. Instead, the emphasis should be on achieving the structure that will best deliver safety for victims/survivors and their children.

¹ Women's Legal Services Australia, 'Safety First in Family Law', https://www.womenslegal.org.au/files/file/SAFETY%20FIRST%20POLICY%20PLATFORM.MAY%202016_FINAL.pdf

² AWAVA, National Aboriginal and Torres Strait Islander Women's Alliance and Harmony Alliance – Migrant and Refugee Women for Change (2018) 'Joint submission in response to the Australian Law Reform Commission's Review of the Family Law System Issues Paper', <https://awava.org.au/2018/05/22/submissions/2018/submission-in-response-to-the-australian-law-reform-commissions-review-of-the-family-law-system-issues-paper>

In relation to family law reform overall, there needs to be an acknowledgement that for reform to be fully implemented and effective, better funding and resourcing of the system is required. In 2014, the Productivity Commission recommended an urgent immediate injection of an additional \$200 million in funding for legal assistance services for civil and family law prior to determining the longer term contribution required. We are concerned about the prospect that major reforms are being attempted in a system that is already so overstretched even in terms of fulfilling its basic functions.

Risking the loss of specialisation

Increased specialisation in family law and family violence is essential to improve the safety of victims/survivors and their children. However, the proposed restructure will lead to a more generalist court structure and loss of specialisation from the family courts system. For further details about how specialisation can best be achieved in the family law system, we refer you to WLSA's submission to this inquiry.

Need for caution expressed by other experts

Finally, we note that other legal bodies in Australia and international treaty bodies have expressed concern about the proposed restructure. For example, the Law Council of Australia has stated that it is "unlikely to alleviate the crisis in the family law court system and may place significant extra pressure on already overburdened Federal Circuit Court Judges."³

In its concluding recommendations in July 2018, the CEDAW Committee expressed its concern about the intention to proceed with the merger "without having waited for the results of the first comprehensive review of the family law system and its responsiveness to contemporary needs of families." The Committee recommended that the Australian Government "[p]ostpone the reorganization of the Family Court system to take into account the results of the Australian Law Reform Commission review of the family law system, due in March 2019."⁴

We thank you for the opportunity to participate in this inquiry. If you would like to discuss the contents of the AWAVA submission further, please contact Merrindahl Andrew, AWAVA Program Manager, using the details below.

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³ Law Council of Australia, media release 23 Aug 2018, 'As it stands, merging courts unlikely to alleviate family law crisis', <https://www.lawcouncil.asn.au/media/media-releases/as-it-stands-merging-courts-unlikely-to-alleviate-family-law-crisis>

⁴ United Nations Committee on the Elimination of Discrimination against Women (2018), Concluding observations on the eighth periodic report of Australia, https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAUS%2fCO%2f8&Lang=en