

MEDIA RELEASE

PREMATURE PARLIAMENTARY VOTE REINFORCES NEED FOR CAREFUL SCRUTINY OF FAMILY COURT'S FUTURE



NEW SOUTH WALES
BAR ASSOCIATION

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The President of the New South Wales Bar Association Tim Game SC today called on the Australian Senate to carefully scrutinise and put to proof two bills to restructure the Federal Courts and in effect abolish the specialist Family Court of Australia, after the Federal Circuit and Family Court of Australia Bill 2018 and the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 were passed by the House of Representatives on Tuesday. The proposals in the Bills have been pursued without consultation with the legal profession, the community and court users.

This legislation has proceeded through the House despite the fact that the Senate Legal and Constitutional Affairs Committee is currently inquiring into the Bills and is due to report to the Parliament on 15 April 2019. The Bills were brought on for debate five months before the Committee's reporting date in the absence of consultation and informed consideration of the proposed legislation. Submissions to the Inquiry only closed last Friday and many submissions (including a detailed submission from this Association) had not even been uploaded to the Committee's website before the Government brought on debate and a vote in the House.

Furthermore, the Australian Law Reform Commission is currently conducting a broad review of the family law system, a review instituted by the current Government in 2017, with a reporting date of 31 March next year.

“It is premature for the Government to bring on a debate on these Bills without the benefit of the Committee's consideration and most importantly before consideration has been given to the views of members of the public, community groups and the legal profession. This is unfortunate as these submissions would have made a valuable contribution to informing debate. The Bills should not be debated let alone passed in the Senate before the Australian Law Reform Commission hands down the report arising out of its current comprehensive Review of the Family Law System” said Mr Game.

The Association acknowledges that reform of Australia's family law system is required. However, it is critical that there be informed consideration of viable alternatives. Many of the Bills' purported goals, such as the reduction of delays and achieving efficiencies within the family law system could be achieved without legislation through the creation of consistent court rules using existing rule-making powers, and through a significant funding and resource commitment from government into the family law system and legal aid.

“We have consistently argued that a specialist Family Court should not be abolished without careful consideration of alternative proposals. In submissions to the Senate Committee, stakeholders including

the Law Council of Australia and the Women's Legal Services Australia have also called on the Government to consider as an alternate model of reform the Family Court of Australia 2.0 model put forward by the Association in a discussion paper in July this year" Mr Game said.

"The passing of these Bills in the House of Representatives without the benefit of the submissions reinforces the need for each Senator to carefully consider their own position on the Bills in light of their experiences and the best interests of Australian families and children in their constituencies. The Association encourages the Committee, the Government and the Parliament to take the opportunity presented by the Senate and Australian Law Reform Commission inquiries for an open and informed discussion about the future of Australia's family law system and to listen to and carefully consider evidence from all stakeholders involved in the system.

"These inquiries provide an opportunity for proper consideration to be given and consultation to take place on the future of our family law system. We remain willing to work with the Government, the Courts and the community to promote meaningful reform in this important area, without compromising the quality of justice experienced by families in their time of need" Mr Game said.

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