



NEW SOUTH WALES  
BAR ASSOCIATION

## OPENING STATEMENT BY THE NEW SOUTH WALES BAR ASSOCIATION TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE'S INQUIRY INTO ISSUES FACING DIASPORA COMMUNITIES IN AUSTRALIA

6 November 2020

*Delivered by Suzanne Christie SC and Claire Cantrall of the Association's Family Law Committee, appearing  
with the Association's Director of Policy and Public Affairs, Elizabeth Pearson*

\* Check against delivery\*

**Suzanne Christie SC:**

We firstly want to thank the members of this committee for giving us the opportunity to supplement our written submission by appearing before this important inquiry.

Our Association represents more than 2,300 barristers who principally practice in NSW, and practice in our Committee in family law. The Association and its members are committed to promoting access to justice for all people in NSW and that's why it's particularly important that we take up this opportunity to speak to this inquiry.

I've introduced myself as a member of the family law committee. I am a family law practitioner who has been practicing in the area for more than 20 years. My colleague, Ms Cantrall, practices almost exclusively in the jurisdiction, having done so for more than 10 years. We are appearing today with Ms Pearson, who is the Bar Association's Director of Policy and Public Affairs.

It is our view that multiculturalism is one of the great strengths of Australian society. We have a society where one in two Australians were born overseas or had at least one parent born overseas.

Another strength of our society is our belief in the Rule of Law. Our belief that everyone is equal before the law. This means that every person is entitled to the force of the law's protection, regardless of their background.

The unfortunate reality though is that for many people in diaspora communities – whether they be Australian citizens, permanent or temporary residents or visitors – they are not necessarily afforded the full protection of the law in their time of need.

Diaspora communities face significant challenges with access to justice. This makes enforcing their rights in civil, criminal and family law matters complex and difficult.

The Bar Association acknowledges that diaspora communities themselves are extremely diverse, and we cannot hope in the scope of these submissions to address all issues. Equity and access issues don't necessarily arise for all people in diaspora communities. But they do arise for some. Where they arise, these challenges include language barriers, unfamiliarity with or mistrust of Australia's legal system, legal services and conventions, and a continuing lack of properly funded culturally appropriate services.

These barriers and disadvantages can compound the impact of placing culturally and linguistically diverse women and children in a high risk group for family violence.<sup>1</sup>

Legal need experienced by people from diaspora communities includes but is not limited to services around family violence, exploitation at work, assistance with housing matters, assistance with visa cancellations and discrimination.

If culturally appropriate legal information, support and assistance cannot be accessed in a timely manner, these legal needs may go unaddressed, with significant and sometimes life-threatening consequences.

Ensuring that members of culturally and linguistically diverse communities can have timely access to properly resourced courts, specialist and culturally safe legal services, information and assistance is essential to protect their rights and safety. This is a critical responsibility of government.

That's true at any time but it's especially true during times of crisis, which have included recently the COVID-19 pandemic and the way in which this has impacted on the need to access family violence services.

Last month the Family Court and the Federal Circuit Court released their annual reports. Those reports paint a concerning picture of the grave and growing backlogs facing the Family Court and the Federal Circuit Court both in its migration and family law jurisdiction – these areas are highly relevant to diaspora communities.

Each of these courts is facing a backlog of more than a year's worth of cases. The Federal Circuit Court experienced a 58 percent increase in its pending migration caseload in just two years.

Before COVID-19, families were already having to wait three years, sometimes longer, to have their family law matters resolved,<sup>2</sup> and almost 70 percent of matters before the Commonwealth family courts involved allegations of family violence.<sup>3</sup>

Delayed access to the family courts, primarily caused by chronic under-funding and under-resourcing, can be used by perpetrators of family violence as a further tool of abuse. Once accessed, chronic delays in the determination of issues by the courts exacerbate those issues.

Hearings that had been scheduled months in advance to occur in 2020 are now being cancelled by email and rescheduled, with some final hearing dates not being available until 2022 at the earliest in some registries of the Federal Circuit Court.

As my colleague, Ms Cantrall, will outline, in addition to the devastating consequences of delay, equal and fair access to the law is undermined by the fact that, without legal assistance, many people aren't able to afford legal representation in criminal, civil or family law matters so a number will choose not to pursue an otherwise valid claim to uphold their rights.

I'd now like to pass to my colleague to complete our opening statement.

**Ms Cantrall:**

Appearing without representation is extremely stressful and time intensive for any litigant, but this is especially true for diaspora community members.

Unfortunately, this year's Budget is simply not sufficient to address existing unmet need in either the Courts or the legal assistance sector.

Any funding to the justice system is gratefully received. However, one-off injections cannot rectify more than a decade of chronic under-funding and resourcing in the federal courts or family law system.

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<sup>1</sup> inTouch, Multicultural Centre against Family Violence, *Submission*, Senate Standing Committee on Finance and Public Administration Inquiry into Domestic Violence in Australia (2014) 2.

<sup>2</sup> Explanatory Memorandum, Federal Circuit and Family Court of Australia Bill 2019, [59].

<sup>3</sup> Women's Legal Services Australia, [Safety first in family law](#) (2019); see also House of Representatives Standing Committee on Social Policy and Legal Affairs, *A better family law system to support and protect those affected by family violence* (2017) [1.6].

Concerningly, the Budget provided no additional funding for the legal assistance sector to compensate for the overwhelming demand on the sector's resources, despite the significant reliance on specialist assistance from community legal centres or family violence prevention legal services.

Women's Legal Services Australia is having to turn away one in every two vulnerable women seeking their help.<sup>4</sup>

Without access to culturally safe information and support, many culturally and linguistically diverse survivors of family violence will not report that violence.

To address the justice barriers diaspora communities face, there is a need for:

- a. adequate, sustained funding of specialised, culturally safe legal assistance providers; as well as
- b. properly resourced specialised services.

This includes CALD-specific family law support services and family violence service providers, emergency and crisis accommodation. It must also include maintaining a properly funded specialist, stand-alone Family Court at the heart of an ecosystem of co-located legal and non-legal support services.

The Association continues to oppose the Government's proposal to collapse the specialist Family Court into the lower level, generalist Federal Circuit Court this year. Proceeding with the merger at a time when the Federal Circuit Court is already struggling through chronic under-resourcing and under-funding to manage its family law load alongside a crushing migration workload is reckless - and not in the public interest. The merger will only put at further risk those families, children and survivors of family violence already disadvantaged by access and equity barriers, and should not proceed.

We would be happy now to assist the Committee with any questions it may have.

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<sup>4</sup> Ibid.