

Media Statement



Thursday, 19 September 2019

Law Council of Australia President, Arthur Moses SC, statement regarding the family law system inquiry

Family breakdown is tragic and it is difficult. Family violence is horrific and inexcusable.

But it is an awful reality.

Family law is one of the issues raised most often in parliamentarians' offices around the country. One of the parliament's most important roles is to ensure protections are in place for children, women and men who experience this.

The family law system is one of our most important pieces of social infrastructure. Australia created a world leading family law system.

But it has been broken for some time.

Underfunding and under-resourcing by successive governments has resulted in case backlogs and long delays for families.

Systemic failures plague the system. Children and victims of family violence are slipping through the cracks.

This cannot continue.

Countless reports have set out technical recommendations for parts of the system. Yet nothing has changed. Why? Because policy-makers have not stepped back to see the forest, not the trees.

We all know too well the problems. We need to get agreement among our politicians on the solutions.

Band-aid solutions and tinkering around the edges is no longer enough.

There must be holistic change.

The Australian Law Reform Commission has recently undertaken invaluable work on the family law system. But there were ideas raised late in the course of its inquiry – important ideas around structural change – that have not had the benefit of full public consultation. These ideas – and others such as that proposed this week by the Women's Legal Service of Queensland – have merit and must be discussed to build public support for any changes.

Change cannot come until our parliament leads a national discussion to address these issues.

That is why this week the Law Council welcomed the announcement of a joint parliamentary inquiry.

We are all on the side of protecting children, families and victims of family violence. The question is – how.

The Law Council of Australia is the national voice of the legal profession, promoting justice and the rule of law.

There is an understandable weariness and wariness from those who work tirelessly in this space about the utility of another inquiry. I acknowledge the tremendous courage of victims of family violence in sharing their experience and giving evidence, and I appreciate this takes a significant toll.

We owe it to them to listen to their experiences. Not to let this become just another report.

And we owe it to them to ensure this inquiry provides the solution.

No more excuses, no more finger pointing. A real discussion followed by a real commitment by our parliament to progress, not just talk about, meaningful change.

I believe this joint parliamentary inquiry can be the catalyst to drive the holistic change we all agree is so desperately needed.

A parliamentary inquiry has a greater capacity than a royal commission to focus on driving solutions, not just air problems.

This inquiry must involve the whole community – not just politicians, lawyers, accountants and bureaucrats.

Those who witness the impact of the broken system daily, including families, judges and family violence service providers, must be included.

It must be honest. If there are concerns of bias in the system, these should be put to proof. Myths and misconceptions that plague the system should be dispelled and legitimate concerns resolved. If there is any concern of inappropriate conduct or charging by the legal profession, we will answer it.

And it must above all be respectful. Words used in these critical discussions must be carefully chosen to ensure victims of family violence are empowered and safe, not discouraged or intimidated from speaking out.

The people who have experienced the system need to have their voices heard. It is the only way things can improve.

As lawyers, we owe duties to the courts and the administration of justice. We cannot in good conscience pass up any opportunity for a national conversation about policies that directly impact families and children. We are called to inform it and participate.

We are not saying change need wait until October 2020. The Law Council has said consistently steps could be taken today to provide immediate relief.

The Attorney-General indicated he would not provide funding for court resourcing until parliament passes the merger bill. Desperately needed resources should not be held hostage.

The government could today increase legal assistance funding to help the most vulnerable members of our community access adequate representation in family law proceedings.

Family violence services need an urgent funding injection so those in need – generally women escaping violence – can be safe.

There are basic, necessary changes that can be made to improve court infrastructure and resources.

The harmonisation of rules and forms project underway by the courts' is another example of important work that is long overdue and shows change can be achieved without legislation.

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The Law Council looks forward to working with the parliament, courts and stakeholders to ensure the best outcome for Australian families.

The Law Council reiterates a merger of the Family Court into the Federal Circuit Court is not the answer. It's just shifting the problem. We call upon the government not to proceed with its plan to reintroduce the merger proposal to parliament while this inquiry is underway. This proposed merger must be part of a holistic examination of the family law system.

The inquiry will provide an opportunity for a considered approach to any reforms necessary, rather than seeking to adopt what has been described as a 'short term fix'.

Contact

Anne-Louise Brown

P 0406 987 050

E Anne-Louise.Brown@lawcouncil.asn.au

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