

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

20 November 2018

Dear Committee members

Re: Inquiry into new Federal Circuit and Family Court of Australia

safe steps Family Violence Response Centre welcomes the opportunity to provide feedback on the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018*, *Federal Circuit and Family Court of Australia Bill 2018* (the proposed Bills).

safe steps is Victoria's 24 hour, 7 day per week statewide first response service for women, young people and children experiencing family violence. **safe steps** provides a critical service intervention, including support, accommodation, advocacy and referral throughout Victoria and nationally. We are committed to ensuring all women and children are able to live free from abuse and our ultimate goal is the elimination of family violence.

Many of **safe steps**' clients come into contact with the Family Courts after leaving violent relationships. They have recourse to the family law system to navigate future parenting arrangements with their abuser and to recover financially. Victim survivors seek assistance from the system to resolve these matters in a way that is safe and equitable for themselves and their children. **safe steps** supports women through this process via its Family Advocacy and Support Service (FASS) worker at the Family Court.

safe steps has consulted with the family violence and community legal sector in preparing this response.

safe steps supports reform of the family law system to improve its response to victim survivors of family violence and increase accessibility and reduce delays for court users; however, we do not believe that the proposed Bills, in their current form, will achieve these aims. As such, we do not support the proposed Bills in their current form. We have outlined our key concerns below.

Interaction with Australian Law Reform Commission review of the family law system

We are concerned that the proposed amalgamation of the Family Court and the Federal Circuit Court undermines the role of the family law review currently being undertaken by the Australian Law Reform Commission (ALRC). The Federal Government commissioned this inquiry to ensure that the whole family law system could be carefully considered at once, and we would argue that consideration of the structure of the family law courts falls within the current terms of reference of the ALRC review. We believe any change to the structure of the courts should be informed by the outcome and recommendations of the ALRC inquiry, as such changes will inevitably impact upon other aspects of the system. A decision to go ahead with the restructure proposal ahead of reviewing the ALRC's recommendations seems rushed and inconsistent with the government's apparent commitment to explore meaningful reforms to the family law system.

safe steps urges the Federal Government to withdraw the proposed Bills or delay consideration of the Bills until after the ALRC family law review final report has been tabled in Federal Parliament in 2019.

Loss of specialisation

safe steps is concerned that the Bills will result in a loss of family law specialisation, diminishing the courts' capacity to understand the nature and dynamics of family violence, and respond in a way that is trauma-informed and ensures the safety of victim survivors. In particular, it is not clear whether new judges appointed to the new family law division or the family law appeal division would be required to have specialist family law and family violence expertise.

The potential loss in family law specialisation is at odds with the ALRC's emphasis in its Discussion Paper on ensuring that all legal professionals, including judges, possess specialised knowledge in the complex issues that characterise family law disputes adjudicated in the court system: family violence, child abuse, trauma-informed practice, risk, cultural competency, disability awareness and an understanding of the family violence and child protection systems. **safe steps** is concerned that a lack of judicial expertise in these areas will result in decisions that place victim survivors and their children at increased risk. This is at odds with a family law system whose fundamental objective is advancing the safety and wellbeing of children and their families.¹

Lack of consultation and additional funding

safe steps notes that the rationale for the proposed Bills is based on a report commissioned by government that focuses on identifying cost efficiencies in the court system. There appears to have been little or no consultation with family violence experts or victim survivors in relation to this work, despite the fact that at least 50% of all family court matters involve family violence. We have consulted with Women's Legal Services Australia and support its calls for further consultation on the restructure proposals to allow for exploration of alternative court structures that would better address current delays, inefficiencies and the safety of women and children.

As stated previously, **safe steps** also supports increased funding and resourcing of family law courts, and the community and legal aid sectors to support court users.

Conclusion

safe steps is of the view that the proposed Bills, in the name of cost-savings and efficiencies, will further reduce the ability of the family law courts to address the complexities inherent in family law matters involving family violence and will have a detrimental effect on victim survivors accessing the courts.

We reiterate our position that structural reform of the courts at this juncture seems premature, and the Federal Government should delay consideration of any such Bills until after the tabling of the ALRC's final report into the family law system.

We would be happy to discuss any of these issues in further detail.

Yours sincerely,

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¹ Australian Law Reform Commission, Review of the Family Law System, Discussion Paper No 86 (2018): 6.
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