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Delays and lack of resources lets down families

Chronic underfunding of the family law system by successive governments over many years, has left vulnerable families in crisis says the Law Council of Australia.

Appearing before the Joint Select Committee Inquiry into Australia's Family Law System on Friday in Sydney, the Law Council will reiterate its call for holistic reform to the family law system and for solutions to be developed to benefit Australian families.

"There has been understandable frustration not only in the community but also by the profession, with the speed and cost of the justice the system delivers," Law Council President Pauline Wright said.

"The most significant factor leading to increased costs is the delay in reaching a final hearing, if one is required. Underfunding legal assistance has also meant a significant number of parties appear unrepresented in court. This can lead to poor outcomes as well as costly delays."

"There has also been a failure of governments to make timely appointments of judicial officers. This has created backlogs, produced delays and frustrated the proper management of the system," Ms Wright said.

"The family law courts are doing what they can on overstretched resources. Changing the management and streaming of lists, early triage and other administrative adjustments will assist in improving the efficient and effective resolution of family law cases. However, these initiatives must be properly resourced," she said.

Most separating families resolve their parenting and property issues without needing to go through the courts. It is only in the minority of cases and usually the most difficult and contentious matters, that court proceedings need to be pursued.

"That is why the Law Council is calling for an increase – not a decrease – in specialisation within family law and family violence issues," Ms Wright said.

"We need a stand-alone Family Court, incorporating the existing judges of that court and the hard-working family law judges from the Federal Circuit Court. That will strengthen the family law system, ensure the necessary experience and specialisation, and create efficiencies."

"It is a key role of the Federal Government to ensure that the Australian family law system is properly designed and resourced to deliver justice and to provide protection for some of the most vulnerable members of our society, including children and victims of family violence," Ms Wright said.

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Key Statistics

- Up to 70 per cent of separated families establish agreed parenting arrangements independent of the family law system, and up to 40 per cent of parents settle the division of their property through discussion¹.
- The vast majority of matters that enter the family law system will settle:
 - In FY19, of 19,594 applications filed in the Family Court, 13,870 of them were applications for the making of consent orders².
 - In FY18, 70 per cent of finalised matters in 2017/18 resolved through settlement in the Federal Circuit Court³.
- Unrepresented litigants are more likely to take a matter to trial: The proportion of self-represented litigants increased sharply when matters that proceeded to trial were isolated from the proportion of unrepresented litigants in all matters⁴.
 - Of the 13,870 applications for consent orders filed in the FCA in FY2019, 86.37 per cent of them involved cases where lawyers were acting for either both parties or one party.
 - In FY 2019, only 13.5 per cent of consent orders were filed where both parties are unrepresented⁵.
- Family violence and abuse is a sustained and growing issue for the family courts⁶.
 - There has been an increase in the number and proportion of matters in the Family Court where a notice of risk was filed.
 - Almost half (45 per cent) of all final order applications in the Federal Circuit Court were referred to child welfare agencies.
- Since 1997, the Commonwealth has reduced its share of funding to Legal Aid Commissions from around 55 per cent of the contribution, to only 33 per cent in 2017-18⁷.
 - To address critical civil and criminal legal assistance service gaps a minimum of \$390 million per annum is required.
 - Each dollar spent on legal aid returns between \$1.60 and \$2.25 in downstream savings to the justice system.

¹ Australian Law Reform Commission, Family Law for the Future — An Inquiry into the Family Law System, Final Report, March 2019, p.79.

² Family Court of Australia, 2018/19 Annual Report, September, p.17.

³ Australian Law Reform Commission (ALRC), Family Law for the Future — An Inquiry into the Family Law System, Final Report, March 2019, p.80.

⁴ Ibid.

⁵ Information provided by the Family Court of Australia to the Law Council of Australia by correspondence dated 29 January 2020.

⁶ ALRC, op. cit.

⁷ PricewaterhouseCoopers, 2009, PwC Report, Legal Aid Funding: Current Challenges and the Opportunities for Cooperative Federalism, Report prepared for National Legal Aid. See <http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-zdocs/fmsdownload099f.pdf>