

Tuesday, 16 March 2021

## Law Council comments on Family Law Second Interim Report

*All comments to be attributed to Law Council President, Dr Jacoba Brasch QC*

“The Law Council supports a number of the 29 recommendations in the Joint Select Committee on Australia's Family Law System second interim report.

In particular, the Law Council endorses the recommendation that the Australian Government increase funding to Legal Aid Commissions and Community Legal Centres, to enable those services to boost their support for disadvantaged and vulnerable families within the family law system.

The call for a greater focus on mediation and arbitration is commendable and the Law Council welcomes the call for additional Registrars, but there remains a critical need for an increase in the number of family law judges to hear and determine complex family law matters.

This can only occur with significant investment in the family law jurisdiction, for both judicial and non-judicial decision-makers.

The second interim report also makes welcomed and important recommendations designed to address the current misunderstanding of the provision that equal shared parental responsibility equates to equal time with the children.

However, the Law Council would ideally like to see more substantive changes to the Family Law Act as it relates to children in family law matters and would welcome the opportunity to work with the Parliament to achieve this – for example, reforming the current 42 steps to determine a child's best interests.

The Law Council does not agree with the Joint Select Committee's findings in relation to the need to further regulate legal fees in family law proceedings, including a proposed cap save in exceptional cases on fees for property matters of \$50,000 or 10 percent of the combined value of the parties' identified property and superannuation (whichever is higher).

If a cap is invoked, litigants who reach any capped cost limit could become self-represented in the family law courts system and take up more judicial time, only increasing the delays that already exist.

There are already a number of important protections in place for consumers in the legal system, with the profession subject to strong regulation in respect of costs and charges by various professional and regulatory bodies.

Gross overcharging is a matter that is characterised as professional misconduct.

The Law Council will continue to carefully analyse the Joint Select Committee on Australia's Family Law System second interim report.”

ENDS

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