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Family Court merger opposed by 155 stakeholders, including 13 retired judges

More than 155 stakeholders in Australia's family law system have now signed an Open Letter to the Attorney-General opposing the Government's flawed bill to abolish the specialist, stand-alone Family Court.

These signatories represent a range of professions and community organisations who work with Australian families and include 11 retired Family Court and Federal Circuit Court (FCC) judges, in addition to former Chief Justices the Hon Elizabeth Evatt AC and the Hon Alastair Nicholson AO RFD QC.

The merger bill would collapse the Family Court into the generalist, chronically under-resourced and overburdened FCC. The bill was listed without warning overnight as the first item of Government business on Tuesday, despite not being included on the Government's draft legislative program for the Senate this week.

Stakeholders have called for three years for the merger not to be passed out of concern it would have devastating impacts on families, result in a loss of structural, systemic specialisation and dismantle the appeal division.

The Attorney-General's Department gave evidence to the Inquiry into family, domestic and sexual violence in December 2020 that "there hasn't been a specific study of what impact the merger would have with respect to family and domestic violence issues", no consultation was undertaken with children's services, children's groups or children's advocates in relation to the merger, and no working group was formed with the Office of Women.

In November 2020, eminent jurist and former Chief Justice, the Hon Elizabeth Evatt AC, warned that "The increasing number of cases in which issues of family violence and child abuse are raised has led to an even greater need today for family law jurisdiction to be vested exclusively in specialised judges who can give their full attention to the needs of family law clients without being diverted to exercise other unrelated jurisdictions. The current bill undermines this principle, is not in the public interest and should not be enacted."

Law Council President Dr Jacoba Brasch QC said today, "As the impacts of the devastating shadow pandemic of family violence experienced during the COVID-19 pandemic continue, now is not the time to proceed with an unnecessary, risky bill that has been opposed by all non-Government members of the House of Representatives."

CEO of Community Legal Centres Australia, Nassim Arrage, said "the merger would move away from a specialist family court model, exposing survivors of family violence to unnecessary risk".

Women's Legal Services Australia spokesperson, Angela Lynch AM, said "Our opposition to the proposed merger of the family courts is centred on ensuring the safety and best interests of the child and the safety of adult victim-survivors of family violence in family law proceedings. Safety must come first in family law."

Stakeholders continue to oppose the bill out of concern the merger will increase cost, delay and stress for families. Even before the COVID-19 pandemic, the Family Court and FCC were facing delays of more than a year's worth of cases each. Two in three FCC judges already have more than 300 matters in their dockets, some more than 600. The Chief Judge of the FCC has previously indicated that the ideal number should be around 100 each. Despite these pressures, the Government increased the FCC's non-family law jurisdiction in December 2020.

This coalition of stakeholders calls on the Senate to vote against the merger and protect Australian families from a flawed proposal that lacks any evidential basis and is based on a discredited six-week consultancy report.

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