



Law Council
OF AUSTRALIA

*From the Office of
the President*

Catherine Gale

13 April 2012

The Honourable Nicola Roxon MP
Attorney-General
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

ACCESS TO JUSTICE (FAMILY COURT RESTRUCTURE) BILL

The *Access to Justice (Family Court Restructure) Bill* is on the list, issued by the Department of Prime Minister and Cabinet, of legislation proposed for introduction and passage in the Autumn 2012 Sittings. You will be aware that the purpose of this Bill is to restructure the Family Court of Australia so that it becomes the single court dealing with family law matters, and the family law jurisdiction of the Federal Magistrates Court would be removed so that it becomes a court exercising general federal law jurisdiction.

The measures in the Bill reflect the recommendations in the report *Future Governance Options for the Federal Family Law Courts in Australia – Striking the Right Balance*, which was released in August 2008 (the Semple report). However, we note there have been further developments, with a recent review of the federal courts by Stephen Skehill, the findings of which have yet to be made public. In particular, I refer to your remarks at the Australian Institute of Judicial Administration's 'Discovery' Seminar on 23 March 2012, that you expect the Government response to this review to "resolve, once and for all, the future and remit of the Federal Court, Family Court, and Federal Magistrates Court, giving them the certainty and clarity of purpose they need."

While acknowledging that the Family Court and Federal Magistrates Court have been working toward a single 'administration', any gains are strictly limited to the administrative functions of the courts. The existing system, whereby two separate courts exercise what is largely concurrent jurisdiction, does not meet the needs of those using the courts.

We understand that in the seven month period July 2011 to February 2012, more than 700 matters were transferred from the Family Court to the Federal Magistrates Court, and more than 600 were transferred from the Federal Magistrates Court to the Family Court. This means that in a twelve month period more than 2000 files will be transferred between each court, which inevitably adds to delay for litigants. Many families are left languishing in lists because they must await listing for directions in the transferred court, having

already waited some time to get a listing for directions in the transferring court. Court users must also contend with two very different sets of court rules and procedures.

It has always been the strong view of the Law Council that any restructuring of the two federal courts exercising family law jurisdiction, should be based on what will meet the needs of the community most effectively. The Law Council has consistently supported a single, coherent structure with a common pool of resources delivering family law services at the appropriate level and divided into two divisions (each with its own head and under the overall control of the Chief Justice).

The Law Council continues strongly to support a single court dealing with family law matters. The Law Council considers that uncertainty about the future of the Family Court and Federal Magistrates Court has dragged on for long enough and should be resolved as soon as possible. The Law Council also considers it to be vitally important that the general jurisdiction of the Federal Magistrates Court and the integrity of the Federal Court are preserved.

In view of your comments at the recent AIJA Seminar and the apparent intention to further delay introduction of the *Access to Justice (Family Court Restructure) Bill*, the Law Council seeks an urgent update on the Government's intentions regarding the proposed federal courts restructure.

Yours sincerely,

Catherine Gale