Media Release

Law Council
OF AUSTRALIA

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Protecting the best interests of children must remain the priority of our family law system

Since its establishment 50 years ago, Australia's federal Family Court has been required to regard the interests or welfare of the child as its paramount consideration. This remains its guiding principle.

Today, family law matters are heard in the Federal Circuit and Family Court of Australia (Division 1 and Division 2) ('the Courts').

"Our family law judicial system has evolved since its inception, with a great many innovations and improvements introduced to protect children," Law Council of Australia President, Tania Wolff said.

"The Courts have the difficult task of adjudicating the most complex matters in the family law system in accordance with procedural fairness principles. Around 80 per cent of matters coming before the Courts involve one major risk factor, including family violence.

"The Courts take allegations of child sexual abuse, family violence and other risks to children extremely seriously.

"In every parenting matter, the Courts must, by law, have regard to the best interests of the child. Children's views are an important consideration under the Family Law Act, amongst the many factors and evidence which the Courts must carefully weigh in determining a child's best interests."

In recent years, the Courts have implemented significant measures to strengthen their family violence response. These include the Courts' Family Violence Best Practice Principles; Family Violence Plan; Lighthouse and specialist Evatt List for early identification and management of family safety risk; the Magellan List for serious child abuse matters; and strengthened information sharing with police and child protection agencies.

However, no Court's decision-making processes are infallible. The Courts' family law decisions are subject to appeal where there are errors of law, significant errors or fact or findings are not open on the evidence, miscarriages of discretion where the judge's discretion was outside the range of reasonable outcomes, or procedural fairness errors.

Family lawyers have a fundamental role in ensuring Australia's family law system best serves the community.

Legal practitioners are officers of the court and have stringent professional and ethical obligations. Their duties to the court and to the administration of justice are paramount.

The Courts expect all professionals working in or appearing before them, including legal practitioners, to undertake ongoing training and professional development to ensure that they have a sound and contemporary knowledge of family violence. The Law Council considers that this training is particularly important for any legal practitioner where family

violence considerations may arise in their practice. It strongly encourages Australian legal practitioners generally to undertake this training.

“There is no doubt improvements have been made, and should continue to be made,” Ms Wolff said. “A number of opportunities to reform the family law system, particularly for victim-survivors of family violence, are currently before us.

“The release of the Domestic Family and Sexual Violence Commission’s yearly report highlighted the “profound sense of possibility - and urgency” underpinning reform in this area. Importantly, this report identified priority areas for action that include the adequate funding of Independent Children’s Lawyers, secure ongoing funding for Lighthouse, the Evatt List and Indigenous Family Liaison Officers, greater access to legal assistance, and the establishment of a Federal Judicial Commission.

“The Law Council agrees, and has been consistently advocating for, these priorities.

“It is also important to understand whether information sharing between State and Territory policing, firearms and child protection bodies and the family law courts has improved since changes to the law came into effect in 2024. The upcoming statutory review of these amendments will help determine any gaps and whether further reform is necessary.

“There is also a need to consider how family report writers are supported to achieve and maintain a high standard in the preparation of quality family reports. This includes improved funding for both in-house and the Courts’ external panel of Child Court Experts.

“The current development of the Second Action Plan to the National Plan to End Violence against Women and Children 2022–2032 provides an important broader opportunity to consider further system improvements.

“It is essential that the voices of court users, including children, are clearly heard in any discussion regarding potential reforms, and that any research relied upon to inform public debate is rigorous and transparent.”

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