

15 May 2020

The Hon John Quigley MLC  
Attorney General  
5<sup>th</sup> Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

Dear Attorney General

### **THE FAMILY COURT OF WA REQUIRES A FURTHER JUDGE IMMEDIATELY**

Thank you for your recent letter dated 17 February 2020 regarding the Family Court of Western Australia.

I have written to the Commonwealth Government to again press the case for an urgent appointment of another Judge to the Family Court of Western Australia to address the increasing difficulty with delays in the resolution of Family Court proceedings.

The Law Society of Western Australia remains very grateful for the Government of Western Australia confirming the appointment of two further Registrars to assist the Family Court.

The Law Society repeats while these extra resources have assisted generally there remains a backlog of difficult cases where the expertise of a Judge of the Court is required in order that the hearing is as efficient as possible and that the appropriate expertise is brought to bear on the evidence and the difficult legal principles involved.

The Law Society anticipates that once social restrictions imposed to address the public health circumstances are lifted that there will be a surge in applications to the Family Court, in part to recover from the temporary fall in new applications caused by the greater difficulty in approaching the Family Court to make such applications but also because of the isolation requirements in recent times.

That expected surge will put pressure on the Family Court and will increase the need for another Judge to be appointed to the Family Court.

I have enclosed a copy of my letter to the Attorney General for the Commonwealth and I would appreciate your support in that endeavour by also contacting the Attorney General.

The Law Society records with great appreciation the work of the Family Court managing its own resources more efficiently.

The Law Society is grateful for your Government's assistance in permitting the Family Court to use some of its own revenue to fund the refurbishment of the board room and part of the library to make a mediation suite with break out rooms.

There are a number of other areas where your government could immediately assist.

### **Court rooms**

Firstly, the Family Court needs to complete the further court rooms proposed within the Family and Federal Courts building.

The Law Society has previously raised with you the need to build court rooms and it understands there were discussions to that end although the discussions have not resulted in the building of the court rooms. To the extent that this is a matter for the Attorney General for the Commonwealth, again, the Law Society would be grateful if you would follow this up with the Attorney General for the Commonwealth to ensure that the work is commenced and completed as soon as possible.

In the meantime, the Law Society understands and is grateful that the Family Court has had access to some court rooms otherwise used by the Federal Courts when the demands of the Federal Courts permit that use. The *ad hoc* nature of that arrangement makes it however difficult to manage the court lists in a reliable and satisfactory fashion.

The Law Society also understands that the Family Court has had some access to court rooms 10 and 11 at the Old Supreme Court Building. These Supreme Court rooms are used on a temporary and *ad hoc* basis. They are not sufficient and it is not ideal to operate court rooms away from the central resources in the Federal and Family Court building. It requires for instance the physical transport of files, in any weather, from one to the other building and back and does not allow for the efficient use of the time of both judicial officers and staff.

The Law Society understands that there is a restriction on hearing Family Law matters in the David Malcolm Justice Centre even though there are vacant court rooms in that Centre.

The Law Society asks whether the Government could pursue with the relevant parties a relaxation of that prohibition in the David Malcolm Justice Centre for Family Court hearings if not permanently then at least for the next year.

The Law Society believes your Government should immediately focus on sufficient judicial resources to address existing delays and the delays likely to arise once social restrictions are lifted.

### **Technology upgrades**

Attendant with the restrictions imposed the legal profession and Family Court have embraced technology for video and telephone hearings where that is possible. The Law Society understands that the Family Court is due for an upgrade to some facilities in the next few months.

The Law Society believes it would be useful to improve the technology to accommodate more audio and audio-visual hearings for the Family Court.

The Law Society understands that the currently available facilities are limited both in their number and in their technical capabilities. For instance, compared with its Federal counterpart, the Family Court of Western Australia is unable to engage in electronic hearings using commercially available software (eg. Microsoft Teams, Zoom), placing it at a distinct disadvantage both in terms of delivery of services as well as safety of judicial officers, staff, lawyers and parties.

Also, due to the limited number phone lines available, hearings by telephone have to be conducted via a commercial conference facility in Victoria which is cumbersome and time-consuming to establish for each hearing, leading to a loss of judicial time and delays in dealing with matters.

## Conferral required by enactment

The Law Society is also working with the profession to reduce the need for parties to have their matter heard in a court room before a Court officer. The Law Society is looking to promote a seminar or series of seminars to improve the cooperation among Family Law lawyers through mandatory 'person to person' conferral. The requirement of conferral in other Western Australian superior courts operated to reduce time required for interlocutory hearings. There is already some conferral. The proposed seminars would be directed to fostering and extending that conferral. The Law Society believes if that experience can be cultivated and promoted among Family Law practitioners there will be similar gains for the Family Court as seen in other superior courts.

The Law Society notes the recommendations of the Australian Law Reform Commission (**ALRC**) paper "*Family Law for the Future – An inquiry into the Family Law System*" published in March 2019 numbered 30 to 37. The ALRC's recommendations suggested amendments to the Family Court legislation to enshrine the obligations on parties to cooperate and enhance the power of the Court to control its proceedings through the power to summarily dismiss applications that are abusing the Court process and to award costs against parties and practitioners where their conduct has occasioned cost or delay.

The Law Society is recommending to your Government that it adopt the ALRC recommendations by an appropriate amendment to (possibly Part 8 of) the *Family Court Act 1997* (WA) to assist the Family Court of Western Australia.

The Law Society is also recommending to the Commonwealth Government that it adopt the ALRC recommendations by an equivalent mirroring amendment possibly to (Division 12 Subdivision B of) the *Family Law Act 1975* (Cth) to assist the Family Court of Western Australia.

Again, the Law Society would be assisted by your support expressed to the Commonwealth Attorney General for this amendment to the relevant legislation.

The Law Society is grateful for your consideration of these matters and looks forward to hearing from you as soon as possible.

Yours sincerely



Nicholas van Hattem  
**President**

Copy to: The Hon Gail Sutherland  
Chief Judge of the Family Court of Western Australia  
1 Victoria Ave  
PERTH WA 6000

The Hon Christian Porter MP  
Attorney General for Australia  
Commonwealth Parliamentary Offices  
Exchange Plaza  
2 The Esplanade  
PERTH WA 6000