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Family Law Unit Family Law Branch
Access to Justice Division
Australian Government Attorney-General's
Department 3-5 National Circuit | Barton ACT 2600

Dear [Name redacted]

EXPOSURE DRAFT OF PROPOSED AMENDMENTS TO THE FAMILY LAW ACT 1975

I refer to the request through the Secretariat of the Law, Crime and Community Safety Council for comment on proposed changes to the *Family Law Act 1975* regarding the application of Part VII of that Act to state and territory courts as well as other proposals designed to improve the current operation of Part VII.

In developing this response my Department has consulted with legal service providers and with the Chief Judge of the Local Court for the purposes of attempting to provide a Northern Territory overall perspective. However, this response only represents my Departmental views.

Improvements to the operation of Part VII

My Department supports the substantive general amendments provided for in proposed new (or amended) sections 69ZL (short orders), 45A (summary decrees), 68C) offence for breaching injunction under s.68B), 68P(2A)-(2C) (explanation of orders to children), 68T(l)(b) and (c) (removing restrictions about the operation of interim orders of state and territory courts), 114AA (offence for breaching an injunction under s114AA) and the repeal of section 114(2) (removal of inference regarding conjugal/marital rights).

My only suggestion concerning these amendments is that the provision concerning "short orders" does not go far enough given the ways in which the Local Court records its decisions. The amendment should facilitate decisions being recorded and, if necessary, reduced to writing from the transcript.

Extensions of the operation of Part VII to courts that are not courts of summary jurisdiction

I note that since the publication of the Family Law Council's reports on *"Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems"* there have been some legislative changes to the lower courts of the Northern Territory that may, at the least, affect the way in which your Department's discussion paper might have been drafted. They are:

- From 1. May 2016, there is no longer a court that is called "Court of Summary Jurisdiction". On the basis that the Commonwealth definition of court of summary jurisdiction in the *Acts Interpretation Act* appears to operate so as to pick up courts that have judicial officers that have a summary jurisdiction I note that:

- (a) the Local Court now has a summary jurisdiction (as well as a civil jurisdiction);
 - (b) the Youth Justice Court is a court that has a summary jurisdiction.
- From 1 May 2016, there is no longer a Family Matters Court (as formerly referred to in the *Care and Protection of Children Act*). The Local Court in its "Family Matters Division" now has jurisdiction under that Act. The jurisdiction is a civil jurisdiction.

In passing, I also note that:

- Judicial officers for the Local Court are now "Judges of the Local Court" rather than Magistrates; and
- Domestic violence orders remain within the civil jurisdiction of the Local Court.

From the discussion in the public consultation paper it is not clear whether the authors of the paper considered that the NT courts that deal with domestic violence and care and protection of children are current "courts of summary jurisdiction" for the purposes of Part VII. It seems to be arguable that they are not within the definition. This should be clarified noting that the current proposed new section (allowing the prescription of courts) would not assist in clarifying what courts are within the current operation of the Act. The issue is that of whether for the purposes of the definition of "court of summary jurisdiction" a court is such a court in respect of both its summary jurisdiction (ie criminal) and civil jurisdiction.

Those technical issues aside I am not in a current position to support any extension of the operation of Part VII (ie the amendments proposed in new sections 69A and 96 (prescribing of other courts)). There are a number of problems with these proposals. They include

- It is not appropriate that Commonwealth regulations provide for the imposition of jurisdiction on state and territory courts. Changes of jurisdiction should be reflected in a legislative need for an agreement between the Territory Attorney-General and the Commonwealth Attorney-General;
- There is a need for substantially greater level of analysis concerning the impact of the changes on the Local Court (particularly concerning training for judicial officers and registry staff and implementation and the adequacy of physical resources such as buildings and security);
- Significant opposition from the courts (particularly in the absence of any increase in funding) (and noting the old principle in section 41 of the *Family Law Act 1975* relating to the establishment of State Family Courts, namely that the Commonwealth would provide funding for them);
- The view that Part VII of the *Family Law Act 1975* is operationally extremely complex such that it is not practical to expect that Local Court Judges, operating mainly in the criminal sphere, could either have the relevant skills or be seen by the legal profession and the parties to family laws disputes as having those skills.
- The view that increasing the amount for property disputes should be done by way of substantive amendment rather than by regulation;
- Given the absence of certainty about the property dispute amount, potential resourcing issues that may occur if the amount is such as to make it attractive for parties to seek to settle property disputes (of the kind mentioned in section 46) in the Local Court;

Additionally, the Local Court has provided information of the following nature:

- There is in fact little current shuttling of matters between the Commonwealth and Territory courts concerning family law and domestic violence/care and protection of children matters;
- There is a preliminary assessment that the proposed changes could lead to a 10% increase in the number of matters in the Domestic violence lists in Darwin, Alice Springs and Katherine;
- There is no current capacity for the Local Court to take on extra judicial work;
- The introduction of the "one stop shop" principle is not practically possible for a court system that is the size and geographic state of the Northern Territory (that is, of relatively small centres spread over a very large area);
- Practical problems of implementing the compulsory pre-litigation counselling prescribed by the *Family Law Act 1975* in the context of the urgency often associated with domestic violence or care and protection matters;
- Pressures to increase the rate of remuneration for Local Court judges.

If the proposals go ahead, I note that it may be worth engaging in a properly funded trialing the proposals in one or 2 courts before any general launch Australia wide. This is said also noting that the NT would not be a suitable place for such a trial. The Federal Circuit Court is relatively inactive in the NT.

Yours sincerely



Greg Shanahan
Chief Executive Officer

23 February 2017