

Submission on behalf of Justice for Children Australia to the amendments to the *Family Law Act 1975* to respond to family violence December 2016

Thank you for giving us the opportunity to put some of our views on this incredibly important and urgent issue.

In this submission, we may not have time or expertise to put all the points which need to be made – and often reiterated – but here are a few:

1. **The adversarial Family law system is not suitable for children.** Studies including the 2014 AIFS* have shown that ICLs rarely represent their child clients adequately, let alone robustly.

<https://aifs.gov.au/publications/independent-childrens-lawyers-study>

2. The legal system around the mythical ‘best interests of the child’ is not pursuing outcomes that achieve these interests – if they are taken to mean: the welfare, wellbeing, happiness and safety of the child.
3. **A better way of assessing the child’s best interests must be found urgently.** We suggest a process along the lines of the Family Group Conferencing Model currently in use in NSW and we understand there are even better models which really look at the child’s situation from the child’s perspective. Not – as happens in the present system – a top-down approach from the perspective of judicial officers who have never spent time with the child or attempted to seek or understand their point of view.
4. **Protection of the child from real and imminent harm must be the priority.** NOT protecting them from alleged ‘coaching’ by the protective parent or interested party (usually in our experience the mother, but possibly some other adult close to the child).
5. The Family Law reforms of 2012 which purported to place the child’s interests and rights above those of the parents failed miserably. This current effort seeks to educate the judicial officers about how to deal with family/domestic violence and we assume therefore child sexual (and other) abuse.

6. The Bench Book may be useful but only if (a) it uses the experience of professionals like Robyn Cotterell-Jones from VOCAL and (b) is obligatory for judicial officers to read and mandatory for them to practice.
7. The UN Convention on the Rights of the Child was mentioned in the 2012 changes but we doubt that many judicial officers are aware of what it means and if anyone at all has actually considered and used it in practical application to support the child's right to a voice and choice.
8. It seems obvious that this apparent effort to make children and their protective more front and centre of the Family Law proceedings will fail unless there is a radical change in the biases and prejudices of many judicial officers .
9. We cannot understand how case after case of children being abused, women being attacked can somehow fail to convince a judge to listen to what they – rather than the perpetrator – have to say or what evidence is shown to them regarding the violence and abuse the victims have endured. Too often, the Judge or judicial officer will not even allow the evidence (eg of damage caused by the sexual abuse of a child). Instead the mother will be labelled 'over protective, paranoid, enmeshed etc etc ". Why does this system insist on shooting the messenger instead of saving the child from further harm?
10. Children **can identify** who has harmed them either by telling a trusted person or by drawing or acting out what happened to them. Signs of physical and sexual abuse are often – and we mean OFTEN – ignored and dismissed by judicial officers.

Why are judicial officers not mandatory reporters? Any teacher, doctor, police person would be obliged to report abuse? But judicial officers are not obliged to even listen, Let alone report.

11. Yes, **Justice for Children Australia** along with many others have complained for years about the disconnect between state/territory, and federal jurisdictions and the way that abused children (in particular) fall through the cracks. **But if there is to be**

better co-operation it must be geared to the best practice in the child or victims interest not the most expedient for the system to save time and money.

12. It is NOT lack of resources which compromises these children. It is the lack of will to weed out incompetent and biased practitioners – including ‘single experts’ such as Rikard-Bell (who freely admitted on the ABC’s Background Briefing in June 2015 that he thinks 90% of abuse claims are fabricated!) – and total lack of accountability on the part of judicial officers and consecutive governments to take responsibility for what happens to children sent to live with – or endure unsupervised access by – those who have harmed them.

<http://www.abc.net.au/radionational/programs/backgroundbriefing/in-the-childs-best-interests-v2/6533660>

13. Extract from Consultation paper: The Family Law Act would be amended to be more flexible about the manner in which a judge must explain orders and injunctions to a child. The Act would be amended to confer discretion on the family law courts to dispense with the requirement, or adjust their explanation of an order or injunction to a child, if that is in the best interests of the child. This amendment is designed to enable the court to communicate effectively with a child and in a manner that does not re-traumatise them. For example, young children covered by the order or injunction, such as infants and toddlers, are unlikely to be able to grasp the concepts to be conveyed in a detailed explanation.

14.

The amendments seem to think children are much less intelligent and perceptive than (in our experience) they actually are. Not surprising in view of the court system approach as outlined about where (in the words on HREOC report from 1999 children are not seen and not heard.

And ALRC Report from 1984 and many many other reports asking for better representation of children’s views – including by the children themselves – have also gone apparently unseen and certainly unheard i.e. not acted upon.

We also suspect that using the theory of systems abuse to prevent children from knowing what’s really happening to them is a devious cop-out. Aren’t children who’ve been summarily removed from their loving protective parent who has never harmed them ‘traumatised’?? How is any Judge going to explain that? No wonder more than 80% of them have never had any contact with the children about who they are making such damaging and dreadful decisions.

15. Perhaps there is something in these proposed changes about stopping perpetrators cross-examining and/or being in the same room with their alleged victims – whether they be adults or children. How can this horrible travesty of justice and abrogation of human rights be allowed to continue? And yet it does. Every day at all levels of the legal system and in so-called psychological/psychiatric/single expert evaluations.

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16. ENOUGH TALK!! ENOUGH SUBMISSIVE WRITING!!

PLEASE have the guts to give children a real voice and a real choice!

We're counting on you to help them.

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Addendum

Apology needed for children harmed by Family Law (written for Justice for Children Australia in 2012 but unfortunately we're still waiting for an apology or recognition of the wrongs done to these children)

When are the victims of Family Law going to get an apology?

When will the silence be broken and the truth be told?

Children are being abused and damaged by Family Law decisions NOW and every day. They are living without the parent they love and want to be with.

In many cases they are forbidden to see or contact the mother who brought them up since they were born and who they love and want to be with.

The recognition that horrendous damage and wrongs were committed - on mothers and children in particular - because of the practices of forced adoption is well overdue.

But when are Senators and the general public going to recognise and talk about the equally horrendous and cruel effects of decisions being handed down in the name of Family Law in Australia every day?

The women and kids who were affected by the forced adoption processes of times gone by have got some advocates in the Senate and senators are considering a government apology.

Justice for Children Australia wants an apology to all those kids who are being brutalised by being forcibly removed from their mothers by Family Law and so-called child protection processes and to all the protective caring parents who have been labelled and vilified by those same systems.

To quote from Senator Rachel Siewert's speech recorded in Hansard 29/02/12

"I would like to start by quoting Ms Charlotte Smith, who we quote in our report. She said: A mother whose child has been stolen does not only remember in her mind, she remembers with every fibre of her being".

Children also remember and suffer huge and traumatic grief and loss when they are separated from the person who has been their loving primary carer since birth and who has done them no harm.

This abuse of children and mothers is NOT a thing of the past.

All of the issues below are sickeningly relevant to what happens in Family Law and 'child protection' NOW!

In Australia!

EVERY day.

Senator Siewert continued:

"... I would also like to quote from a mother who wanted her name withheld. She said:

I'd lie in bed every night with my arms wrapped around my baby inside of me knowing that I would never hold him after birth. I'd feel his feet and hands through my own stomach as he moved around, knowing that I wasn't ever going to feel them after he was born. ... **I'd pray to God every night for him to send [someone] to get me out of there and show me a way to keep my baby, but no one did. I'd think of running away, but where would I run to, who would I run to.**"

You could be like Melinda Stratton and many other protective Mums. Go overseas. Go bush. But eventually they'll track you down and take your child away.

Because this system is psychopathic. It has no empathy for children but only for those who it understands. Other psychopaths and – if you prefer the polite term – sociopaths.

It exists to feed itself.

Senator Siewert continues:

"That typifies so many of the stories that we heard from women who thought they could do nothing else but not consent. People did not always consent, but nothing else was going to happen than having their baby taken..."

To the adoptees I would like to say: we know that your mothers did not abandon you. You were not thrown away. This is what we have received evidence about as well: the babies who were adopted, who are now adults, felt that they had been abandoned. Mothers have told us that they do not want their now adult children to feel that. I quote from the report:

Overwhelmingly, these women alleged that laws were broken or that there was unethical behaviour on the part of staff in those institutions. The common failings included applying

pressure to women to sign consents, seeking consent earlier than permitted by the legislation, failing to get a consent signature or obtaining it by fraudulent means, and denial of reasonable requests, particularly for a mother to have access to her child. As explained—in our report. Certainly after new laws were enacted in the mid-1960s, actions of these types would in some cases have been illegal. Other experiences that reflected unethical practices included failure to provide information, and failure to take a professional approach to a woman's care. It is time for governments and institutions involved to accept that such actions were wrong not merely by today's values, but by the values and laws of the time. Formal apologies must acknowledge this and not equivocate.

What's changed?

What has society learned about taking kids from their mothers?

Absolutely nothing!

Do kids feel less abandoned because a judge ruled they can't be with their Mum?

So it's not her fault?

Does anyone tell them that?

"Today's values"?

Let's look at how these values are represented in the Family Law system.

Quotes from some well-known and 'reputable' judges and court appointed 'experts' who have pronounced on women who tried to protect their children from abuse and violence:

"delusional obsessive emotionally. Hallucinates, psychotic, paranoid, schizophrenic, enmeshed with children. PAS. No signs of abuse

(the Magistrate in this case was suspended last year and the Chief Magistrate actually issued an apology to the mother. The children stayed with her but only because they were old enough and strong enough to physically resist being forced to leave her. The Magistrate is of course back on the bench because – apart from Pat O'Shane – judicial officers almost never get 'done' although they demonstrate daily their bias, mental health problems, Dementia, ignorance and prejudice. Among other talents.

SO – it's possible for the system to get it wrong.

And it does. EVERY day.

But who judges the judges?

Who quality controls the 'experts'?

Who reviews whether the children are flourishing in their new 'home'?

Who cares if they die of neglect and abuse or are so damaged that their lives are ruined?"

Not the government.

Not the legal system.

Not the Human Rights Commission.

Not the 'child protection'/ agencies.

Not the media.

There is a deathly silence. If we don't speak out, we are all complicit.