Justice for children

Butterfly by T. Aged 6

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By email: to legcon.sen@aph.gov.au

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Supplementary Submission to Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]

Dear Senators

First, thank you for giving **Justice for Children** (J4C) the opportunity to raise the very urgent and crucial issues of how Family Law decisions may negatively affect (and have already affected) children and how this situation could be improved. I hope you will accept this additional information.

Second, please convey our sincere thanks to Julie, Monika and the Team in LegCon who have fielded our queries with patience and skill.

I hope you're not completely exhausted by the process and that you'll have time to recover.

We are particularly appreciative of the chance to get some of our views out into the public arena because the suppression laws (e.g. S121 of the Family Law Act) are very effective in silencing victims and critics of the system. Added to that, media and the general public seem reluctant to tackle the real issues of child abuse and protection.

This Inquiry has enabled many people to put their views about the Bill and we hope that it will not delay its passage through Parliament beyond the Spring sitting. The Bill is an important first step towards improving Family Law outcomes for children. **We hope also that you can make strong recommendations for the removal of disputes involving children (and urgently, child abuse cases) from the adversarial system.**

Justice for Children is attempting to plead the children's cause because many young Australians have been and continue to be adversely affected by Family Law. They can think and express themselves. They would like to speak out even from a very young age but they rarely get the chance. They object to having their lives ordered by strangers (including judges and ICLs) who may never have met them or canvassed their views. They continually ask "Why can't I tell the Judge what I think?" What's the answer? **Opportunities for children to voice their real wishes and feelings must be greatly increased and listening skills must become integral to the Family Law system.**

Violence and abuse – definitions: There is no definition of 'violence' which is agreed across the Commonwealth, and certainly not across all states and territories. In Family Law, Form 4 is supposed to be used when violence or abuse are alleged but it is very rarely lodged. One report

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showed less than five Form 4's were lodged out of many thousands of cases in a NSW registry. There is obviously a disconnect somewhere because as the Family Relationships Centres representative said at the Senate Inquiry, 2/3 of people using their services say violence is an issue.

If children can't see the parent they love and want to live with – sometimes not at all, sometimes under very restricted and inhumane circumstances - they experience continual sorrow, distress, anxiety and anger. They are grieving for years for the loss of their parent. They feel completely helpless and unable to change anything for the better. **This is a denial of their human rights and constitutes extreme emotional and psychological abuse.** How can it be healthy or in their best interests?

In the shared parenting situation where they may have significant time with each parent, children are shuttled about like toy trains. They are never really 'at home'. Some children left with the parent who was not their accustomed primary attachment/carer are actually living with that parent's mother, friend, au pair, house keeper – any number of people. Although that parent has insisted on their right to time with the child, they don't spend time with the child but merely want to prevent the other parent from doing so! In shared care, rotating between parents (who may live far apart) often prevents children making friends, playing sport for their school and much more**. Parents who have to pay for supervision (over $30,000 in one of our cases) and/or travel long distances for contact visits**

The closest we can come to children's voices today is to refer you to the material showing children's feelings in our submission and (...) here. This material was collected without prompting (or as the Court might say 'coaching' or even 'enmeshment'), is only a very small sample and is submitted as confidential because the children may be subjected to further harm if an abusive parent finds out what they've done.

Children's ability to communicate is severely restricted when their abuser is granted residence and court orders ban contact with their protective parent. They can't phone, email, or use letters or any other form of communication normally available to children in Australia. These children are often prohibited by court order from having any form of supportive counselling and (you may find it hard to believe) seeking treatment from paediatricians and general practitioners in relation to sexual or other abuse.

<u>Unfriendly parent provision must be repealed:</u>

Justice Sinclair commented in the Hearing that each case in Family Law is individual. We would hope so and we advocate for each case to be assessed on its merits. There is, however, a disturbing trend which we think is exemplified in some of the cases that come to our attention.

(...)

Some judicial officers seem to apply a sort of template over these cases and this is borne out for us by some recent official Family Court statistics. Where children were ordered by the Court to spend

less than 30% of time with the father, Abuse and Family Violence accounted for 27% while Mental Health accounted for 3%. For mothers the equivalent reasons were Mental Health 19% and Abuse and Violence 17%. The previous year had an even bigger gap. Father: Abuse/violence 29% Mental 3%. Mother: Abuse/Violence 16%, **mental health 31%.**

Almost all the mothers in our sample of 31 were labelled as variations of 'delusional' or 'enmeshed with children' if they alleged violent or abusive behaviour by their ex-partner or his/her family members or believed their children's disclosure of abuse.

The original primary carer parent is often told by the court that if allegations of abuse are not withdrawn, they may not see their children for a very long time... usually when they are 18 years old and no longer restricted by the court. It must be said however, that if a child has spent years away from the original loving primary carer, the possibility re-establishing a good relationship being is extremely low (e.g UK stats.)

In one case on our files, the judge ruled that (...) The mother was guilty of nothing except trying to protect the child from abuse.

In situations where abused children are living mainly with their preferred parent (some under interim orders), they and their protective parent may be subjected to continual inappropriate 'counselling' or 'treatment' to make them believe and say that abuse did not occur (when it did) i.e. brainwashing them to accept the unacceptable.

Justice for Children's main aim is to make a real change in the way decisions are made in Family Law by placing the child at the front and centre of all proceedings involving the child. This would mean removing from the adversarial system any assessment of what is really best for the child's welfare, wellbeing, safety, protection and happiness.

It would also mean taking into account previous parenting history, and where there are problems with parents, ensuring that they can get support to address those problems. What seems to happen now is that **the abusive parent gets the chance to reform and is given the benefit of the doubt in future behaviour such that they are granted unsupervised access or even sole responsibility for the children.**

The protective parent who is trying to warn the Court that the children are at risk is condemned as an 'unfriendly' messenger of unwelcome tidings, delusional or mentally ill and the very children who should be protected by Family Law are therefore victimised by it.

The fact that so many children are separated from mothers who have done no wrong except to allege abuse seems to go totally against the ***Family Law Act*** itself where the *primary consideration is the benefit to the child of having a meaningful relationship with both of the child's parents. The second primary consideration is the need to protect the child from physical or psychological harm from being subjected or exposed to abuse, neglect or family violence. These are the 'twin pillars'[1] of the balancing exercise, which a court will complete.*

(...)

<u>Judicial officers must be trained and accountable for their decisions affecting children</u>: The unlimited and unaccountable exercise of judges' discretion results in unreasonable, inhumane and impracticable decisions which are destroying children's lives. This can only be addressed by changes to law and procedure **<u>obliging</u> them to do something** (other than 'consider') i.e. to look at issues from the child's focus and act to protect them.

Family Courts and related systems are acting in violation of human rights and the UN Convention on the Rights of the Child which Australia signed in 1990. It is outrageous that any judicial body – or decent parent – would countenance such repression and coercion. That they do, suggests that children are bearing the brunt of ignorance, prejudice and abuse of power.

Where can these children get help? State authorities distance themselves when there is a Family Law order or a case is in the Family Court. In NSW, organisations such as (...)

will not intervene nor will most NGOs. (...) and similar plus (...) can't help much and certainly not if the child has no access to 'phone or internet.

<u>Evidence issues:</u> Judicial officers especially judges and magistrates should be mandatory reporters when child abuse is alleged and they should never be able to dismiss evidence of abuse without investigation. Since child protection is a state issue there must be complete co-ordination and co-operation between these services and the commonwealth. Lack of these factors undermines the integrity of decisions.

Judicial officers are apparently not equipped to recognise how children are affected by child abuse and how it can occur although this information has been around for years.

Not only do many judicial officers appear to have limited knowledge of child development and protection, they are equally disadvantaged when it comes to knowledge of human nature – and manipulative psychopaths/sociopaths in particular.

It is astonishing how many so-called 'psych' reports make comments such as: Father 1: He seemed like a very nice man. Father 2: Lovely and articulate. Both of these were proven abusers and 'house devils' but very good at showing their 'street angel' side to gullible and unskilled 'experts'.

As Dr McInnes mentioned, *Working with Children checks* are not required on parents who have never previously had the primary carer role – or unsupervised access - and against whom violence/abuse are alleged. These checks *should* be done on these parents and on all judicial officers. The latter should also have training in child protection, as a minimum.

<u>Costs:</u> Please remove the mandatory costs orders and don't bring Bankruptcy into the Family Law system! There isn't space to repeat how crippling the costs of litigation are and the ruinous effect on the lives and health of many adults involved in the process but something has to be done to rein in the apparent open slather of this alleged $6bn industry. The strongest and wealthiest should not triumph under the Rule of Law. Laws should protect the weak as Ovid said: children, above all.

Consultation: **Justice for Children** – and many others! - would have liked to be consulted in any revision of the ***Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is alleged*** and in other important material. We do appreciate *this* chance to comment!

Law reform: For the sake of the children suffering under these harsh laws, reforms are essential but the proposals do not go far enough. The current and past Chief Justice said that the Court is not equipped to deal with allegations of child abuse so it goes on, unimpeded. An alternative system is needed – preferably a system that involves a panel of child abuse/development experts assisted by a lawyer. Judges and Independent Children's Lawyers (ICLs) who are only qualified in law have showed themselves to be woefully inadequate in protecting abused children from further abuse.

We doubt whether the new Bill will produce better results than its predecessor given that the current *Principles* which, as Dr. McInnes pointed out, are not constraining. They do not impose any real "**obligation** to take prompt action" (as the Preamble has it) but only ask the Court to "give consideration". Apparently this has not changed in the new version.

To quote Dr McInnes writing today: *There is considerable evidence in family law judgements that child sexual abuse is routinely denied and thus tacitly supported. These guidelines give no hope that this will change.*

Justice for Children is extremely disappointed that yet another opportunity to improve child protection and wellbeing has been lost. In fact these guidelines seem to lack a comprehensive understanding of the effect of violence on children.

As far as children are concerned there must be an urgent revision of Family Law generally and, as a priority, **first principles must be established**. For example: the results of any Family Law process must be measured against the effect on the child and that child's safety, welfare, wellbeing.

Senator Humphries' question about J4C submission:

Thank you, Senator Humphries, for giving us the chance to clarify this point. We wanted to say that when children have lived (usually from birth) with their primary carer (usually the mother) who has not harmed them and has not been convicted or even accused of any wrongdoing, these children should not be removed and sent to live with the other parent or in some other unaccustomed home. Children who are deprived of attachment and security in their early years often have a very difficult life thereafter and the long separation can be extremely traumatic. As are the circumstances of the child's removal e.g. taking young children at the court without even the chance to say goodbye to their mother and forcing a very young breast-fed baby to leave the mother and spend time alone with the father. It is well established that trauma, such as sudden separation from a primary caregiver, adversely affects the brain development of young children (see the works of Dr. Bruce Perry – available on the Internet)

The situation where children have been removed from their original primary carer and placed with someone else (usually the other parent who they may have accused of abuse) and left there while court proceedings drag on for months is a completely different circumstance and must be treated as such. As Niki Norris pointed out during our J4C time before the inquiry, time is of the essence because it enables the second parent/party to claim that *they* are now the primary carer. Therein lies a gross injustice for children who only want to go back to the first loving parent but find they are

banned from doing so. (see (...) for some of the effects of separation on children).

Finally, when children are forced to live with a parent they accused of abuse, there should obviously be random visits by child development experts to check on their safety and well-being. Forcing children to live with their accused abusers and not providing any follow-up constitutes another form of extreme child neglect and abuse.

As former Magistrate Barbara Holborrow said (on Ch7 breakfast program and elsewhere), children are being treated as items of property to be divided up and the judiciary is totally out of touch with what is happening to them.

From J4C previous submission: No child should be removed from the home where they have lived with their primary carer and sent to live with a parent who they have not previously lived with (and who they often don't want to live with). Where this has happened there must be follow up and review of the child's welfare;

In regard to children: a specific definition of abuse must be included as being "deprivation of meaningful contact with primary carer (usually the mother) who has not been accused or convicted of any wrongdoing";

Definition of 'preventing harm' and 'safe' must include not being separated from the parent that they want to live with who has done them no harm. It is very damaging to children to be prevented from seeing or communicating with their loving and protective parent. When this is explained (often by the other parent and/family) as being unwillingness on the part of that parent to see the child, the damage is even more severe.

Justice for Children wants children to be treated fairly and kept safe and all participants in the family law process to be treated with respect, given correct and relevant information and allowed a voice which is listened to with care and compassion.

Please help children by passing the Family Violence Bill 2011 as a first step and please make strong recommendations for the removal of disputes involving children (and urgently, child abuse cases) from the adversarial Family Court system.

(...)

Yours sincerely

Ariel Marguin
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(...)