

# Justice for children

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Butterfly by T. Aged 6

Submission to Social Inclusion Survey 23 July 2010

Our newly formed group **Justice for Children**, is made up of adults and children from different cultures, occupations, locales, and circumstances. We want 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 and considered with care and compassion. We support children's rights to have a voice and choice and to be supported particularly after parents are separated.

I'm sure you are aware of many reports - some quite recent - about what happens to some women and children (and occasionally, men) caught up in family law disputes.

Many of these people become socially excluded because of the psychological, emotional, financial and often physical stress that's put on them. For example, women who once worked and even had good jobs are driven out of the workforce by the pressure to be in court, prepare documents, etc and many other factors.

Our group would like to put in a submission to your survey but because of time and other constraints I've only been able to do the minimum. I believe that you would have access through a much more comprehensive analysis of why and how social exclusion happens to people caught up in family law disputes.

Among other evidence, papers presented at the AIFS Conference in July 2010 identify and detail some of these issues. For example:

<http://www.aifs.gov.au/conferences/aifs11/docs/devaus.pdf>

The Social Inclusion website states (*italics below*) that the following groups are more likely to be socially excluded. This submission seeks to enlarge somewhat on these categories by giving **examples and comments from our group's experiences**:

*Disadvantage and social exclusion tends to be higher amongst certain groups of people and the Australian Government has identified priorities in which to start the work of addressing social exclusion and increasing social inclusion:*

- *Supporting children at greatest risk of long term disadvantage by providing health, education and family relationships services*  
**First, there should be Minister for Children. Not just for children's services but for the children themselves. This Minister should speak up and intervene for children who are caught up in processes like the Family Court**

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In order to address this, it might be useful to look at the provisions of *Protecting Children is everyone's business National Framework for Protecting Australia's Children*\*\*

**Although this document mentions the Supporting Children After Separation Program, to assist children from separating families to deal with issues arising from the breakdown of their parents' relationship and to participate in decisions that affect them, none of the people in our group know about this or have felt any good effects from it.**

**\*\*Extracts From** *Protecting Children is everyone's business*

### **Supporting outcomes, strategies and indicators of change**

The six supporting outcomes are:

1. Children live in safe and supportive families and communities

**Child aged 6 taken from mother and grandparents who had brought him up to be a happy, secure child and given to father who had previously abused both child and mother. This happened at the court so mother and child had no time to prepare or say goodbye.**

**Mother had received Victims Compensation for assault and rape but this was not made known to the court – she had no charges or allegations against her. Contact between mother and son now reduced to 2 hrs per fortnight at relationships centre = 2 days a year. How is that making child feel safe when primary caregiver and attachment figure has been removed from the child's life for 363 days of the year? The child has been excluded from his accustomed loving family, school, friends, and robbed of his mother's presence.**

**In 4 years time the child will have had less than 1 week in TOTAL with the mother.**

**We can give you (too) many more examples like this.**

2. Children and families access adequate support to promote safety and intervene early  
**Two girls aged 4 and 5 were sexually abused by step brothers. When this was raised with DoCs nothing was done for kids but the mother was attacked as being mad. Family Court did put supervision orders on so that the children would not be alone with the perpetrators (2 older boys) but the father was the supervisor and did not prevent further abuse. The school was aware of problems but did nothing.**

3. Risk factors for child abuse and neglect are addressed

**Police, Docs and school do not want to intervene where there is any suggestion of Family Court involvement.**

**If, for example, a father is able to exert influence in a small town (or even a large one), professionals such as doctors and teachers may not be willing to make waves.**

**Life can be made extremely difficult for the ex-partner whether she stays in the same area or moves away.**

**Private agencies employed by the abuser can make sure that her life is discredited and destroyed.**

**The result of all this is that if she raises allegations, they will be ignored or disregarded and she will be further discredited.**

**This further discrediting is overkill since if she has tried to raise concerns about violence and abuse in the Court, she will often be accused of being an 'unfriendly parent' who is (vengefully) trying to prevent the child seeing their father. She will be demeaned, discredited and sometimes told that if she doesn't withdraw her allegations, she will lose the small amount of access to her child she might now have. Because of this lawyers often advise the client**

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not to say anything adverse to the other party, even when there is strong evidence available.

The Family Court (as a number of recent studies show) does not have meaningful investigative powers which would enable it to subpoena any relevant reports and the pretence of a non-adversarial family court system is a sham.

Whatever the legend may be the fact is the Court is supremely adversarial. This means that whoever can pay and get good advice will be able to score off the other side. Meanwhile the interests of the child go under the radar completely.

4. Children who have been abused or neglected receive the support and care they need for their safety and wellbeing

The Court can and does order that children should NOT receive counselling after separation. In any case, the child is usually unable to get help unless the custodial parent agrees. If the child does not want to live with that parent, is being abused by them and wants to get help – how can they until they're old enough to leave home alone, pay for a phone call, etc.

- *Helping jobless families with children by helping the unemployed into sustainable employment and their children into a good start in life*

Mothers who had reasonable jobs and income are often forced to give up because they have to spend so much time preparing for and attending court, finding somewhere to live, trying to get help for their children and themselves, and simply surviving under the horrendous stress that many experience in the separation process and after. They are labelled 'mad' because...? sometimes it's a mystery and only based on 15 minute interview with a psych of some sort. See ATTACHMENT B  
*Focusing on the locations of greatest disadvantage by tailoring place-based approaches in partnership with the community*

Women and children living in some regional and remote areas are especially vulnerable to intimidation and communications (mobile, internet) are unreliable or non-existent. The 'community' is a myth – if what is meant is a supportive community, not just 'out there' but in towns and cities.

- *Assisting in the employment of people with disability or mental illness by creating employment opportunities and building community support*
- *Addressing the incidence of homelessness by providing more housing and support services* Many women going through family law process lose everything. If they had any property or other assets they are forced to sell it to maintain their legal counsel. They have to move from their home, if they weren't already in public housing, they will probably end up there – if they're 'lucky'. If not, they will be couch surfing from one acquaintance to another, living with relatives (often on sufferance) – or they will be homeless.

To sum up (and this is not by any means a complete picture or even a corner of it) with a bit of a typical story:

- Supposing you once had children, a home and a partner
- Something went seriously wrong – you had to leave home and find somewhere to live with your children
- You ended up in the family court – you had evidence of abuse by your partner
- You had to find money for a lawyer – you couldn't get legal aid
- You sold your car and everything else you could in order to pay the lawyer who refused to present the evidence of abuse in court anyway

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- Your ex got the kids because of a 15 minute interview with you and a 30 minute interview with the kids, neither of which showed anything conclusive but the court gave him the benefit of the doubt
- You are allowed to see the kids for a few days here and there. You have to get hold of a car and drive 100 ks at least there and back because your ex has lost his licence (3 times) for drink driving
- You are still being told by the kids that things are not right with their father but if you go back to court and make 'allegations' (1) You have no more money having lost the regular job you once had because of frequent absences to attend court etc and (2) you will be labelled 'unfriendly' parent or possibly 'mad'.
- A few friends and family have stuck by you but most have been intimidated by your ex either threatening them directly or getting one of the known hired to stand over them in one way or another
- You can't go to the kid's schools or even to sport (unless you can hide somehow) because the ex has had a contravention order taken out on you
- You lose the circle of friends who your kids used to play with – maybe because you moved or because you don't have any kids now (except for a few days a year)
- You are suffering tremendous sorrow and stress but you are scared to get professional help in case it goes against you
- Your children are becoming alienated and unable to form any healthy attachments. They seem to still love you and want to be with you but because it's so painful to have to part after 2 or 3 hour visits, they're beginning to draw away. It seems sometimes that they're blaming you.
- Like everyone else.

**RESULT: Do you feel included in society? What society? How would you be able to get back in – if it's worth it!**

### **Attachment A: What rights do children really have in Australia?**

#### **A reminder to all in governments**

... [under the] **UN Convention on the Rights of the Child**, Australia has a responsibility to protect children, provide the services necessary for them to develop and achieve positive outcomes, and enable them to participate in the wider community.

In line with Australia's obligations as a signatory to the UN Convention, the National Framework is underpinned by the following principles:

- All children have a right to grow up in an environment free from neglect and abuse. Their best interests are paramount in all decisions affecting them.
- Children and their families have a right to participate in decisions affecting them.
- Improving the safety and wellbeing of children is a national priority.
- The safety and wellbeing of children is primarily the responsibility of their families, who should be supported by their communities and governments.
- Australian society values, supports and works in partnership with parents, families and others in fulfilling their caring responsibilities for children.
- Children's rights are upheld by systems and institutions.
- Policies and interventions are evidence based.

**Yours sincerely**

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**P O Box 4042 Maroubra South NSW 2035**

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## Attachment A: Extract from Family Court of Australia statistics 2009

### CASES WHERE THE FATHER SPENT NO TIME WITH THE CHILDREN

- In 6% of litigated cases, the father was ordered to spend no time with the children.
- Where the parents came to an early agreement, it was agreed in less than **1% of cases that the father have no contact with the children.**

The **main reasons** for the order include:

Reason	Percentage of cases
Abuse and family violence	38%
Entrenched conflict	10%
Distance/transport/financial barriers	0%
Relocation	2%
<b>Mental health issues</b>	<b>2%</b>
Other	42%

\* Not all categories are shown in this table therefore it does not add to 100%. 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

### CASES WHERE THE **MOTHER** SPENT NO TIME WITH THE CHILDREN

- In 1% of litigated cases, the mother was ordered to have no contact with the children. The **main reasons** for the order include:

Reason	Percentage of cases
Abuse and family violence	15%
Entrenched conflict	0%
Distance/transport/financial barriers	8%
Relocation	8%
<b>Mental health issues</b>	<b>31%</b>
Other	31%

\* Not all categories are shown in this table therefore it does not add to 100%. 'Other' includes where the reason is unknown such as; the parties consenting during the litigation process, the reason is not covered by a category, or there is multiple and complex reasons.

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