

## **Submission to ALRC on behalf of Justice for Children Australia to Review of the Family Law System IP48**

May 2018

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 supposed to focus on the ‘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 changed 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 parent 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.
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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Late sub **Mothers' Day 13 May 2018**