

21 May 2018

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## Review of the Family Law System

Dear Prof Rhoades,

Bravehearts Foundation Ltd wishes to express gratitude to the ALRC for the opportunity to make this submission into the Review of the Family Law System Issues Paper and to thank you for meeting with us in Brisbane on 6<sup>th</sup> November 2017. We also take this opportunity to express our thanks for allowing us the time extension needed to provide this submission.

### Bravehearts Foundation Ltd

Bravehearts was founded in 1997 by Hetty Johnston AM following her then young daughter's disclosure of sexual assault. Finding there was no organisation to turn to for help, Hetty established Bravehearts to provide advice and support to those affected by child sexual assault and to assist them on their 'journey to safety'. Bravehearts work now provides holistic world-class child protection training and education initiatives; specialist child sexual assault counselling, case management, advocacy and support services; as well as research and reform campaigns all aimed to prevent child sexual assault in our society.

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Our Mission is to prevent child sexual assault in our society.

Our Vision is to make Australia the safest place in the world to raise a child.

Our Guiding Principles are to, at all times, tenaciously pursue our Mission without fear, favour or compromise and to continually ensure that the best interests, human rights and protection of the child are placed before all other considerations.

Our Guiding Values are to, at all times, do all things to serve our Mission with uncompromising integrity, respect, energy and empathy ensuring fairness, justice, and hope for all children and those who protect them.

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Bravehearts' work involves working with children and adults who have experienced child sexual assault and their non-offending support base. Whilst Bravehearts specialise in all matters specific to child sexual assault, our work necessarily includes manifestation and causation issues such as substance abuse, mental health disorders, suicide, anti-social behaviours, eating disorders and a myriad of other outcomes. Bravehearts have successfully changed the way the Nation views, recognises and responds to child sexual assault by leading or front line involvement in most if not all, major child sexual assault inquiries, reports, campaigns and legislative reform agenda since 1997.

# Submission

Bravehearts pre-empt this submission by recognising that the Family Law System is made up of State, Territory and Federal bodies who are staffed by men and women and that those professionals, for the most part, are doing their best to ensure the safety of children and families. This submission is critical of the process, the rules, legislation, governance, oversight and transparency of government institutions generally and is not directed at any one person or authority. This submission is provided in the best interests of the child.

The focus of our submission is:

- We advocate for Royal Commission into the Family Law System because it is the only legal instrument capable of overcoming the Constitutional and jurisdictional hurdles to expose the dysfunction, disconnect, impropriety and illegality that we believe dominates its processes.
- We propose a Federal Child Advocacy model as part of the solution - a 'one door' entry to begin a genuine 'journey to safety'.
- We note the many previous reports and recommendations, including those undertaken by the ALRC, over the past 30+ years resulting in not much and note a lack of faith that this Report is likely to illicit a different outcome.
- Our submission will focus on the need for a complete re-engineering of the Family Law System, to move away from the temptation to tinker at the edges and re-think the entire model.
- Legislative, cultural and systemic reform is needed. The fractures in the Family Law System of Australia are destroying children and adults alike. It is totally broken, dysfunctional, unprofessional and dangerous.

We respectfully note that the ALRC, just like the Parliamentary Inquiry before it, does not have the power or jurisdiction to compel States and Territories to comply with its recommendations and findings. This is why we believe that a Royal Commission of Inquiry into Australia's Family Law System is desperately needed and why Bravehearts will continue to lobby for same.

Our children and families need the Parliament to order the most powerful forensic investigation possible - and that is a Royal Commission. Only a Royal Commission can ask the hard questions and demand the hard answers from those who know. Only a Royal Commission can expose the failures of this Family Law System to the Australian community and ensure purposeful implementation of the resulting recommendations. We need our parliament to ensure our children are protected rather than put in further danger by the very Family Law Systems put in place to protect them.

The litany of harm to children as a result of successive Australian Government's failure to act and uphold the Human Rights of Australian children is of grotesque proportions and is a National disgrace. Our children are in crisis. No more reports are needed to understand that.

Our submission firstly appeals to the Federal Government to implement the recommendations already provided in numerous reports over 3 decades or more, many of which have identified repetitive and consistent themes and made repetitive and consistent recommendations. This submission reflects those recommendations and sentiments and so will come as no surprise.

This is just a few of the reports over the past 30 years relevant to the operation of our Family Law System:

*Dec 2017      Royal Commission into Institutional Responses to Child Sexual Abuse*

*Dec 2017      C'wealth Parli Inquiry    A better Family law system to support and protect those  
affected by family violence.*

*Although the focus of these reports differs, many come to similar findings, or make similar recommendations for reform. (Parli Inquiry A better family law system Dec 2017 p4)*

2016	Family Law Council	<i>Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems</i>
2016	Victorian RC into Family Violence, Report and Recommendations to the Victorian Government	
2015	Special Taskforce on Domestic and Family Violence in Qld, Not Now, Not Ever Report	
2015	Vic Coroner	<i>The death of Luke Batty Report</i>
2015	AIFS	<i>Evaluation of Family Law Reforms 2006 &amp; 2012</i>
Oct 2010	ALRC/NSWLRC Family Violence – A National Legal Response	
2009	National Council to Reduce Violence against Women and their Children, Time for Action	
Sept 1997	ALRC	<i>Seen &amp; Heard – Priority for children in the legal process</i>  <i>The repetition of concerns about successive generations of children and the consistency of our findings with those made in many of these reports reflect the persistent problems facing children in the legal process and emphasise the priority that they should now receive. (ALRC 1997, Seen and Heard P 12)</i>
Sept 1992	Family Law Council	<i>Family Law and Child Protection Final Report</i>
1989/1994/1995		<i>The cost to children of the lack of co-ordination between government agencies has been discussed in a number of other reports, such as the 1989 Report of the National Inquiry into Homeless Children, the AIFS report The Commonwealth's Role in Preventing Child Abuse, the 1994 report of the NSW Child Protection Council, and the 1995 Report on Aspects of Youth Homelessness by the House of Representatives Standing Committee on Community Affairs. The last mentioned report noted that the situation for homeless children had not improved since Our Homeless Children in 1989 and, in some respects, had actually deteriorated. (ALRC 1997, Seen and Heard Para 5.7)</i>
1981		<i>The lack of co-ordination between agencies relating to children was noted by the ALRC as long ago as 1981 in a report on child welfare. In that report the ALRC noted that children in many serious situations could languish because no-one had clear responsibility to take decisive action. The ALRC recognised a need for an independent official to ensure ...that a case did not remain poised uncertainly between a number of agencies, the concern of all but the responsibility of none. In the sixteen years since the release of that report, this situation has not been improved, despite various attempts by agencies to establish clear divisions of responsibility, protocols and co-ordination. (ALRC 1997, Seen and Heard Para 5.6)</i>

The time has come to act. Tinkering at the edges of this increasingly broken and dysfunctional system will not bring the reform our children deserve. We need radical and courageous reform.

## The Constitution

The State and Territory Police and child protection authorities have failed to accept that they are all part of the modern Family Law 'System' and not merely an outside contributor to it when requested. State and Territories have been asked to recognise their 'child welfare' Constitutional obligations in this regard and reflect same via legislation and practice, but, despite many reports and recommendations for change, this outcome remains allusive.

*The States and Territories have primary responsibility for the investigation of suspected cases of child abuse and neglect and are responsible for taking appropriate action in these cases. There are significant differences in legislation, terminology, procedures and processes among the States and Territories. (ALRC84 Seen & Heard 2.59 Pg 37)*

Bravehearts believe that States and Territory's currently abrogate their Constitutional 'child welfare' obligations to many children because they default to State imposed statutory thresholds that restrict police and child protection authority involvement.

This policy approach culls thousands of cries for help from children and their non offending family members who then have nowhere else to turn. This in turn results in matters where there are allegations of harm being perpetrated on the child/ren by a parent or other family member, proceeding to the Family Court without any intervention or risk assessment and even more disturbing, it results in child and family harm because intervention and support is not being provided and disclosures (albeit having been determined to be under the regulatory thresholds) are being ignored, dismissed or minimised.

This practice ignores the protective needs of an entire cohort of families who are left to fend for themselves in the Federal Court system and who become hostage to extortionate fees and charges for legal assistance and court ordered reports. The sheer numbers of families caught in this unfamiliar and complex position chokes the Family Courts, creating catastrophic harm and enormous financial costs to both the system and the families involved.

### **ALRC report 84 – Sept 1997**

#### ***Children's participation in the legal process***

*1.30 The Inquiry has received extensive evidence of the problems and failures of legal processes for children. Of particular concern is evidence of*

- discrimination against children, despite Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) to guarantee equal treatment before the law<sup>13</sup>*
- failures, to some degree by each of the institutions of the legal process, to accommodate the changing notions of children's evolving maturity, responsibilities and abilities, and in particular a consistent failure to consult with and listen to children in matters that affect them*
- the marginalisation of children involved in the legal process, whether by teachers, social workers, lawyers or judges, when decisions that are of significant concern to children are being made*
- a lack of co-ordination in the delivery of, and serious deficiencies in, much needed services to children, particularly to those who are already vulnerable*
- the systems abuse of children involved in legal processes, particularly the appalling state of care and protection systems throughout Australia and the manner in which child witnesses are treated*
- the increasingly punitive approach to children in a number of juvenile justice systems*
- the discriminatory impact of certain legal processes resulting in the over-representation of some groups, particularly Indigenous children, in the juvenile justice and care and protection systems*

- *the concentration of specialist services and programs in metropolitan areas, disadvantaging rural and remote children in their access to services, the legal process and advocacy*
- *inconsistencies in legislation dealing with legal capacities and liabilities of children.*

## **C'wealth Parli Inquiry - A better Family law system to support and protect those affected by family violence. Dec 2017**

### ***Executive Summary***

*Many families across Australia access the federal family law system for assistance and support to resolve the legal issues which arise following family breakdown. Many of these families may have had an experience with family violence. It is imperative that adequate support and management is provided to these families to ensure their ongoing safety and wellbeing. However, evidence suggests that the family law system is not adequately supporting or protecting families which have experienced family violence.....The report advocates for an accessible, equitable and responsive family law system which better prioritises the safety of families.....*

*At v. In addition, the Committee makes recommendations for the... the adoption of multi-disciplinary panels in child abuse investigations...*

*Chapter 6 also examines the role of family reports in parenting orders, including the process of preparing reports, the cost of reports and the relative roles of private and court based family consultants. The Committee expresses concern about the quality and cost of family reports and makes recommendations to abolish private family consultants, and establish agreed fees for family reports. Further, the Committee believes that it is critical for children's perspectives to be provided to courts and considers further exploration of this issue by the Australian Law Reform Commission's review of the family law system is necessary.*

## **A new Family Law System**

To largely overcome this failure we support recommendations contained in the Family Law Council, Family law and Child Protection Final Report September 1992; namely,

*Recommendation 1 - The Federal Government should establish a Child Protection Service.*

*Recommendation 2 - The Child Protection Service should be a national service.*

*Recommendation 3 - The objectives of the Child Protection Service should be:*

- 1. To investigate child protection concerns and provide information arising from such investigation to courts exercising jurisdiction under the Family Law Act.*
- 2. To ensure, in the course of its work, that children and families are not subjected to unnecessary investigation, assessment or stress.*
- 3. To avoid unnecessary duplication of resources and effort in the investigation and determination of matters involving both family law and child welfare law issues.*
- 4. To promote the development of a co-operative approach between State and Federal agencies in responding to concerns about child abuse and neglect.*

*Recommendation 4 - The Child Protection Service should be an independent service staffed by people with a background in child protection and social welfare and should embrace a multi-disciplinary approach.*

*Recommendation 13 - In child protection matters, duplication of effort between state and federal systems should be avoided, and a decision should be taken as early as possible whether a matter should proceed under the Family Law Act or under child welfare law with the consequence that there should be only one court dealing with the matter. This is to be known as the 'One Court principle'.*

Further, as we have stated previously, in order to achieve the above in the most comprehensive and economic way, we also propose the adoption of a similar but different model described in the following recommendations; namely,

**ALRC report 84 – Sept 1997**

*Recommendation 92. Specialised interview teams comprising, as appropriate, a police officer and family services department worker or counsellor should deal with all allegations of child maltreatment in which multiple court proceedings are possible. These teams should have as their goal eliciting accurate and reliable information from children in a manner that allows the information to be used in a number of different proceedings (criminal, care and protection, family, civil etc). These teams should be modelled on the US Child Advocacy Centres.*

**ALRC report 114 - Oct 2010**

*Recommendation 19–1 Federal, state and territory governments should, as a matter of priority, make arrangements for child protection agencies to provide investigatory and reporting services to family courts in cases involving children's safety. Where such services are not already provided by agreement, urgent consideration should be given to establishing specialist sections within child protection agencies to provide those services.*

*Recommendation 19–5 Federal, state and territory governments should ensure the immediate and regular review of protocols between family courts, children's courts and child protection agencies for the exchange of information to avoid duplication in the hearing of cases, and that a decision is made as early as possible about the appropriate court.*

## **A National Child Advocacy Centre (CAC)**

Child Advocacy Centers (CAC) in the USA emphasise developing effective cross-agency collaborations between workers involved in serious abuse investigations to foster improvements in agency outcomes, and to minimize distress, confusion and uncertainty for children and families.

In addition, the main objectives for an Australian National Child Advocacy Centre (NCAC) include:

- To focus on matters involving child sexual assault and, for the purposes of the Family Law System, particularly those allegedly perpetrated by a parent, step parent or other family member.
- To facilitate key disclosure opportunities to the child in one place and at one time.
- To ensure a specialist forensic child focused approach is available for every child and that it is delivered in the best interests of the child;
- To expertly capture the disclosure of a child at the earliest possible opportunity, by a Federal child behavioural specialist and professional forensic interviewer, utilising a Multi-disciplinary Team approach;
- To ensure the appointment of a child advocate to walk with the child through their entire journey to safety;
- To ascertain the level of risk to the child and provide input into a risk assessment Court reports;

- To facilitate agreement on appropriate Case Plan and referral pathway including back to State authorities where appropriate;
- To provide the best chance for an expedient and safe 'journey to safety' and judicial outcome;
- To provide the best opportunity to listen to, understand and record data around the child's experience;
- To ensure the child and their non offending parent receive the services and court orders necessary to keep them safe.

Bravehearts propose the implementation of a new model based on a mix of these recommendations which we believe presents the most sensible, financially feasible, impactful and manageable solution to a majority of the problems faced by children, families and Courts themselves in the current siloed, cross jurisdictional Family Law System.

Structured radical change is needed because despite best intentions and many decades of reports and tinkering at the edges, what is clear is that State, Territory and Federal governments, agencies and professionals stubbornly refuse, or are incapable of, working together in a seamless Family Law System that puts kids first and breaks down silos.

What is also clear is that it is the innocent children and protective parents as well as Australian taxpayers who are paying the price of this preventable dysfunction.

#### **ALRC report 84 – Sept 1997**

*4.66 This chapter has shown that Australia has not secured real participation for children in many of its legal processes. These problems affect children in each jurisdiction and in each legal process examined in the Inquiry. Notwithstanding the Commonwealth's co-ordination initiatives described in Chapter 3, children who are dealt with by the Family Court, who are in care or who ought to be in care, who are drifting from the care and protection system to the juvenile justice system, or who are left to their own devices by government service delivery agencies also face problems caused by the jurisdictional division between governments and agencies.*

*4.67 Submissions to the Inquiry argued that the welfare of children is a national issue that requires Commonwealth oversight and assistance in developing best practice models for dealing with children. They argued that Commonwealth co-ordination is necessary to ensure better delivery of services to children by all levels of government. As Chapter 3 has detailed, the Commonwealth already funds research, provides services to children, and develops and promotes a co-ordinated approach to policy on some children's issues. The following chapters recommend that the Commonwealth should undertake a better focused, more effective role in this regard.*

A National Australian model of a Child Advocacy Centre (CAC) provides a solution that closes the gap between the two jurisdictions and their different engagement thresholds, differing legislation, differing processes, definitions and competing resources. A solution that puts the kids first.

We need to sidestep the roadblocks and create a National 'One Door' 'journey to safety' for all those families for whom the State and Territory systems of child protection have not successfully engaged or protected. And there are thousands of them. We need to bring about a network of National Child Advocacy Centres (CAC) where there is no threshold to access other than an expressed need for the protection of a child, where children can be supported and interviewed by fully qualified Federal Forensic Interviewers (registered therapists with specialist Forensic interview training - as already implemented in SA) who would be approved to carry out such interviews (under proposed changes to the Australian Federal Police legislation) and who are remotely observed by a Multi-disciplinary Team of expert legal, child protection and child therapeutic specialist professionals.

In this way the child's story is assessed by a professional expert Multi-disciplinary team, it is captured in line with the Evidence Act(s), it is recorded on audio and video for use by any other jurisdiction should the child make a criminal disclosure or present information that may be required in another jurisdictional court process and, it is a critical resource in the assessment of risk for the Family Court in relation to custody arrangements.

This process is collaborative, transparent and guards against cookie cutter or personal bias influences that currently occur in reports provided to the Courts.

In this way, the Court will have timely access to critical and valuable information and recommendations on which to base any Court Orders or Referrals. This would also negate the need for individual Family Report Writers who would be replaced by co-located Multi-disciplinary interview and assessment teams (MDT) in collaboration with Child Advocates.

The child will finally be heard by a team of experts in line with their Human Rights under UNCROC and their feelings and truth duly considered by a new responsive Family Law System.

## The Forensic Interviewer

At the crux of the issue is that children's voices are currently not being effectively heard despite their Human Rights under the UNCROC, despite State and Territory child protection and criminal legislation and processes and despite the Family law legislation and systems.

We know that adults are far more likely, and far more capable, of lying or exaggerating and yet is it their competing testimony's that routinely guide outcomes.

Children are the most likely participants in a matter to tell the truth and yet our State and Federal legal systems fail to genuinely hear them or believe them and therefore fail to protect them.

If the Family Law System (FLS) is to improve then children need to be heard and the system must be re-engineered so that it provides the right environment for this to occur as early as possible along the trajectory of the matter.

Research tells us that approx one in five children are sexually assaulted in some way before the age of 18. We know most sexual offenders live in the home with the child (approx. 30%) and are male. We know the difficulty in evidence gathering for these crimes which are reflected in the low conviction rates of child sexual assault. There should be no surprise then that the Family Courts are being inundated with unresolved allegations of child sexual assault – allegations the Family Court is left to unravel.

We know it is rare for children to lie about having been sexually assaulted or witnessing crimes including DV. If the Objects of Part VII are to ensure the best interests of the child are met then surely the system must put children at the centre of everything it does and that it is geared to seriously listen to, respect and honour their feelings and testimonies in a child friendly and child competent manner.

A National CAC with forensic interview capacity would provide the opportunity for children to provide their best evidence at the earliest opportunity, utilising world's best interview practices and, importantly, providing an opportunity to provide children the appropriate protection thus avoiding further harm and repetition of dialog for the child.

The forensic interview capacity was designed to provide best practice response to children who have been the victim of, or who have witnessed serious crime. Voluminous research exposes the benefits of such an approach which may explain why this approach is being adopted right across the USA, Europe, Canada and the UK and Japan. In fact, forensic interviewers are now legislated in South Australia as the only authority permitted to undertake official interviews with children under 14 years old.

Legislation would need to be amended to facilitate the introduction, recognition and practice of Forensic Interviewers and Child Advocates.

## A Child Advocate

The idea of Child Advocates is not new, in fact the ALRC84 Seen and Heard Report of Sept 1987 devotes two entire chapters (5&7) to the proposal. The Introduction at Chapter 7 states:

*7.2 The Inquiry recommends an approach that can work effectively in a federal system. As both the National Children's and Youth Law Centre and the NSW Legislative Council Standing Committee on Social Issues have recognised, an integrated system spanning federal and State and Territory levels of government is required. It should provide both individual advocacy and broad systemic advocacy and different levels and types of intervention. Advocacy mechanisms should work with existing structures. In particular, OFC would develop close links with these advocacy bodies.*

In the Bravehearts proposal a Child Advocate would be assigned to the child at the time the child presents at the CAC. The advocate would stay with the child throughout the entire process and do a final check 12 months post final orders - or other outcomes.

The Advocate helps the child and protective parent to navigate their 'journey to safety' through the legal System, ensures the child and family receive the help they need and that the child does not have to repeat their story to a multitude of other agencies.

The Advocate would complete a risk assessment in collaboration with the MDT immediately following the forensic interview and would prepare an immediate risk assessment report and following that, a family eco-system report, both to assist the Family Court in making informed decisions in the best interests of the child.

The Advocate would also record, collate and monitor the entire process, refer matters to other jurisdictions where necessary and document final outcomes.

### **ALRC report 84 – Sept 1997**

*5.1 The Inquiry heard repeated expressions of concern about the issues facing Australia's children and about their ability to develop to a well-adjusted and successful maturity. These concerns focused on children as a substantial proportion of victims of crime, child abuse, high rates of youth unemployment, homelessness, mental illness and suicide. Many children facing these difficulties are drawn into contact with legal processes. All this, it was said, reflected a failure of government policy to provide a co-ordinated response to the needs of children and demanded effective advocacy of the interests of all children.*

*5.2 Submissions called for an integrated national policy for children, allowing co-ordinated policy development and service delivery for children and the provision of advocacy for children.*

## Other benefits with a NCAC 'One Door' approach

Access to Federal Forensic interviewers will be of use to the AFP in interviewing children across a range of situations including abducted children, trafficked children, online offences against children and in others crime types currently led by Federal authorities.

An NCAC could provide further collaboration opportunities with State based support and referral services.

An NCAC could provide an opportunity for national consistency in data collection and research.

An NCAC could incorporate a comprehensive opportunity to provide best proactive through ongoing Research, training and education not only for the professionals working with children but also for the children who are relying on the professionals.

An NCAC could provide specialist wrap around therapeutic and support services for children who are witnesses or victims of crime.

An NCAC could provide specialist supervised visitation opportunities.

# Royal Commission into the Family Law System

Only a Federal Royal Commission can straddle the complex jurisdictional and constitutional issues through which thousands of Australian children are being harmed and at worst dying.

Catastrophic failures in the current system are devastating families and causing trauma-related dysfunction in children. It is Bravehearts as well as other child-protection agencies and advocates opinion that a Royal Commission will not only bring about safer outcomes for children and parents, but brighter outcomes for society as a whole.

The 'Family Law Systems' refers to all Commonwealth Courts and other courts vested with the power to hear and decide on Family Law matters including all personnel employed, contracted, those recommended as service providers by those courts PLUS all State & Territory departments and bodies including Police, child protection, prosecutions, education, health with whom child protection responsibilities lie and also the NGO sector.

Bravehearts believes that collectively, the Family Law Systems, as they operate, are Australia's most dangerous institutions for children and due to a complete lack of transparency, congruency and accountability, its operations continue to evade public-benefit scrutiny and regulation.

Many child and adult victims of child sexual assault who have been left unprotected and unheard by the current Family Law System are turning to drugs and alcohol to kill their pain, lying in gutters with syringes in their arms, addicted to ice, self-harming, attempting and committing suicide, filling our jails, mental health facilities, our courts and our morgues.

And this is not a new revelation.

In 1997 Dr Bill Glaser spoke at the Australian Institute of Criminology conference and described child sexual assault as the public health problem of the decade and noted that tackling this crime was, "a task which both professionals and the community have been reluctant to undertake despite the glaringly obvious evidence in front of us".

Sadly over 20 years later, this is still the case.

Our kids are losing hope.

Perhaps our judicial systems are too?

Or are we just becoming increasingly 'indifferent'?

The definition of 'Indifference' is: lack of interest, concern or sympathy. We think this is the perfect word for what is happening.

So much of this child harm ends up in matters before the Family Law Courts – and yet these systems too are broken institutions driven largely by mythical and outdated philosophies and beliefs.

We need a Royal Commission into this Family Law System - inclusive of the courts, police, child safety departments, Independent Children's Lawyers, Report writers, lawyers, mental health professionals, the health & education providers and family relationship services – the NGO sector.

Together these bureaucracies, and others, collaborate in a systemic chorus of discoordination, dysfunction and indifference - unwittingly embedding and defending the gaps through which the safety of our children is forsaken.

Let us paint a picture of how the gaps trap children.

These are real situations extracted from our two-year investigation called *Abbey's Project, A Family Law Paper* – named in honour of a young girl who took her own life at just 17 years old. [https://bravehearts.org.au/wp-content/uploads/2018/03/Abbeys-Project\\_Family-Law-discussion-paper-CURRENT.pdf](https://bravehearts.org.au/wp-content/uploads/2018/03/Abbeys-Project_Family-Law-discussion-paper-CURRENT.pdf)

A child discloses sexual assault against her by her Dad to her Mum – mum leaves dad. Both mother and child are distraught, the family is fractured and emotions are high. Mum goes to

police but, in line with known research, child does not provide enough evidence to proceed to a criminal charge. Police are aware the family have a matter before the Family Court. At this point the Police are no longer interested or involved. Department of Child protection has no interest because there is a parent 'willing and able' to look after the child. Mum wants to tell the Family Court and lodge a Notice of Harm but her lawyer warns her against it, advising the Courts take a harsh line on those who make allegations of child harm in custody proceedings and that to pursue the matter will almost surely lead to losing custody to the perpetrator.

RESULT: The child's truth is denied and regular contact with the perpetrator continues.

Or this one: Boy meets girl. They fall in love and marry. They have 2 beautiful daughters. They buy a house. The wife tells the husband that when she was a child her father sexually assaulted her. As a result Dad insists they have nothing to do with the Grandfather. But in time the marriage fails, the house is sold and the mother takes the children to live at the grandfather's. The Dad is incapacitated. The kids tell him concerning things but tell him they are too frightened to talk to anyone. Dad is not in a position to arrange professional intervention because his lawyers have advised him that to do so would attract harsh responses from the Court and will almost surely lead to losing the weekend contact he has with the children.

RESULT: the children are living with a perpetrator and the Dad is helpless to do anything except educate his kids and try and empower them to speak up.

Bravehearts is under pressure on a daily basis, offering support to these brave families.

Only a Royal Commission of Inquiry has the power needed to interrogate the intersection between Federal and State legislative child protection practices and interventions as well as their respective, overlapping and systemic failures to protect Australia's children.

Only a Royal Commission can bridge the significant barriers to a full and proper Inquiry including 'Separation of Powers' obstacles, issues of 'delegations of authority' as well as 'duty of care' and 'cross jurisdictional' responsibilities across State and Commonwealth entities.

The United Nations Rights of a Child Act Article 19.1.requires that, "*States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*"

Only a thorough and exhaustive inquiry with full investigative capacity can deliver proper transparency and accountability, and restore effective interventions for children in danger across our national child protection systems.

We call for a Royal Commission because our children deserve a system that protects them from harm.

Because the Federal Family Court has no mandate to investigate child protection or criminal matters.

Because, without question, the current systems' failings are resulting in catastrophic consequences, not only for the child and the protective parent, but for society as a whole.

Many child protection specialists, social commentators, academics, former judges, the legal profession, the medical sector, those working within both the Commonwealth and State Child protection bureaucracy's, mothers, fathers, grandparents and children agree the system is broken, dangerously dysfunctional, covert and potentially corrupt. It is harming children on a daily basis.

There are JURISDICTIONAL issues including but not limited to:

- Information sharing and cross-border jurisdictional blackspots leave children exposed to dangerous situations and to 'known' sex offenders;
- The responsibility of child protection, child sexual assault and serious harm lies with the State Authorities and Courts not the Family courts;

- States are abrogating their responsibilities to the Commonwealth;
- It is common practice for state Police and Child Protection authorities to refuse to act on matters which are before the Federal Family Court, leaving the decisions around child safety to Federal court personnel who have no experience or expertise to respond effectively and responsibly in the best interests of the child.

There are POTENTIAL CORRUPTION AND MISCONDUCT issues including but not limited to:

- Children are being sent for weekend stays, or sent to live with convicted or alleged child sex offenders and domestic violence perpetrators, many with criminal records;
- Court transcripts are allegedly being improperly altered by Judges and/or court staff;
- Lawyers are routinely advising their clients to conceal criminal acts by advising them to not raise issues of alleged abuse or sexual assault of their children by their partner (or by other family members) in the Family Courts...
- Court appointed psychiatrists and psychologists are routinely, inaccurately and recklessly labelling protective parents as suffering major mental health issues;
- Children are being sent to spend time with dangerous parents under Supervised Contact Orders but where meaningful supervision is at best dubious and at worst, corrupt.

There are issues around EXPERTISE including but not limited to:

- There is no proper mechanism or mandate to investigate child protection concerns in the Family Court;
- The lack of child specific expertise and dangerously poor advice provided to judges by court staff and contractors is well documented and widespread (Abbeys Project, Bravehearts 2016);
- Despite the nationally accepted research available, a prolific court appointed Psychiatrist believes that 90% of reports of child harm were untrue;
- There is a lack of ongoing training in the area of child psychology, child developmental health, offender characteristics and predator indicators for all those in the Family Law Systems charged with making life and death decisions for innocent children.

There are constant DANGEROUS PRACTICES such as:

- The Courts' focus on maintaining a child's relationship with both parents systemically over-rides the best interests (safety) of the child;
- Judges and other court staff are not listening to, believing or responding to children's disclosures or wishes but instead routinely dismissing them preferring to accept that they have been 'coached' to make allegations by protective parents and/or others, including child protection experts like the late Prof Freda Briggs and recognised service providers like Bravehearts. This has been true even in the face of glaring medical evidence such as torn anuses, sexually transmitted diseases and worse.
- The voices of children who are disclosing to parents, teachers, health professionals, etc. are being ignored. Kids of all ages are being forced, against their will, to spend time with offending parents. They are being raped and abused with the inexplicable enablement of the courts.

It is appropriate to comment also on the truth around the commonly persistent resistance by authorities to believe the disclosures of children.

The research is becoming increasingly clear:

*9% of children interviewed denied their abuse in the first interview and 73% were hesitant to disclose at all. One third of younger children and those close to their abuser, withdrew their allegation (Malloy, Lyon & Quas, 2007).*

*“It should be noted that one such factor is the fear of ‘malicious allegations’, a fear that should be dispelled by evidence showing that concerns about false allegations are not founded, with less than 2 per cent of self-reports being ‘unwarranted’ and even fewer being malicious: see Heenan, M. & Murray, S. (2007). Study of Reported Rapes in Victoria 2000–2003: Summary Research Report, Statewide Steering Committee to Reduce Sexual Assault, Melbourne; see also Oates, R., Jones, D., Denson, D., Sirotnak, A., Gary, N. & Krugman, R. (2000). ‘Erroneous concerns about child sexual abuse.’ Child Abuse & Neglect, vol 24(1), pp 149–157.”*

And yet these are the same children whose matters are dismissed – whose disclosures are disbelieved and ignored in our Family Law System.

The truth is that children are more likely to under-report, or not disclose at all, than lie.

Expert witnesses/child protection specialists have been labelled bias by the Family Courts, their professional testimony and specialist expertise dismissed and ridiculed.

We have found that judicial decisions are routinely not reflective of law, contemporary research or best practice but rather on their own personal discretion and bias's and that of the Courts'.

Another issue that is often raised is ‘Consent Orders’. We prefer to call them Concede Orders.

‘Consent Orders’ are supposedly where parents’ consent to certain conditions or actions like visitation or residency of children. In reality Consent Orders are being forced on protective parents, not because they ‘consent’ but because they don’t have the money to fight them, because they don’t have the money to defend their children against the harm being perpetrated by the other parent.

It can cost tens or even hundreds of thousands of dollars to fight the Courts. Their choice is ultimately to either ‘consent’ or lose custody altogether. To see their children some of the time or none of the time.

In total defiance of Australia’s obligations under UNCROC, protective parents are routinely being ordered not to talk to their children about their children’s disclosures, ordered not to take them to doctors or mental health professionals or police and to ignore their children’s disclosures and concerns and to continue to deliver them every other weekend to the offending parent or risk losing custody.

Children who have disclosed harm by an offending parent are being interviewed by court officers together with that offending parent, in the same room at the same time, causing enormous emotional and psychological harm to those children. Alleged offenders of DV and child sexual assault are allowed to act for themselves in Court, questioning, intimidating and harassing their child victims on the stand. There is no accountability for the harm being perpetrated on these kids and protective parents by these damaging practices.

A very logical question to ask is where is the oversight and accountability?

Section 121 of the Family Law Act ensures a total lack of transparency and accountability. While it is defended as being used to protect the privacy of children, its real impact is to protect the Family Law Systems including the Judges, contractors and court staff along with their appalling decisions, behaviours and practices.

We need an independent and transparent complaints body.

Court-appointed psychologists, psychiatrists and others lack transparency and accountability in their family consulting and report writing practices and in the court ordered exorbitant fees they charge.

Unlike other public servants who are governed under Acts such as the Public Governance, Performance and Accountability Act 2013, court personnel including contractors remain accountable to no one.

Court reports, ordered by the courts to be provided by specific providers, are costing parents tens of thousands of dollars, without any choice of provider or oversight from the Competition and Consumer Authority.

Costs of transcripts by the current sole provider Auscript are exorbitant and again, with no Competition and Consumer Authority oversight.

The system is broken.

The State only takes responsibility for child protection when both parents can't or won't.

The child who has been sexually assaulted by one parent, and who is relying on the other to protect them, has very little avenue for State provided statutory protection.

And herein lies the chasm through which thousands of children are betrayed - the children on whose behalf I am calling for a Federal Royal Commission.

These children are in limbo, caught between the cracks of jurisdictional dysfunction and confusion.

Surely the time has come to finally ensure our child protection systems deliver on our responsibility and our obligations to defend the human rights of all of our nation's children. To save our nation the tens of billions of dollars annually that it spends on mopping up the carnage.

We restate that we believe that our children are being held victim to a culture of indifference, to a lack of priority, to an uncoordinated, secret and fractured system - to a comfortable ignorance.

The manifestation of this collective indifference shows itself most commonly, most often and most alarmingly in the faces of protective parents and their children who are trapped in its web. We see them every day.

Frustratingly, in every report written, words and recommendations resembling understanding and change are soon replaced with inaction. These promising words in these multitudes of reports have provided welcome but short term relief and hope. Sadly, as can be seen clearly, with even a cursory look at these 30+ years of recommendations, hope soon dissipates to despair and nothing too much changes.

Our ignorance, indifference and lack of respect for children is paralysing us from prioritising their safety. We haven't even learnt to 'listen' to our children let alone 'hear and respond' to them.

Their cries for help permeate the walls of the systems we trust to protect them – the Family Law Court, the Criminal Justice System, the Child Protection system, yet it seems no-one with the power to save them - will hear or protect them.

Their tiny voices silenced by adults who should be listening, who should be prioritising their safety and wellbeing.

When it comes to children who are suffering child sexual assault, their plight remains largely silenced, hidden, both by those who are committing the crimes against them and then supported by the policies, practices, processes, historical and cultural norms and self-interests of our dysfunctional bureaucratic family law, criminal law and child protection response systems.

The family and criminal courts, the police, the child protection departments, legal fraternity – made up of genuine caring people working for organisations who operate behind a steel casing of secrecy made possible due to duplicitous cries of 'Privacy' and underpinned by bureaucratic indifference.

In our Family Law System, protective parents fight every day to protect their children -not just from the offenders, but also from the system that fails to support them.

A system that lacks the expertise, the knowledge, the contemporary understanding, the training and seemingly the will, to prioritise the safety of children.

Of course society can't see these children, or hear them. It is forbidden. These children, and their pain, are invisible.

Indifference thrives where ignorance and secrecy reign. In the shadows of 'privacy'.

As Martin Luther King Jr said, "Darkness cannot drive out darkness, only light can do that".

The lack of transparency and accountability by organisations, institutions, government departments and governments themselves in the area of child protection is chilling.

And none more so than the Family Law and child protection systems.

One of the 20th Century's greatest minds Albert Einstein said, "We cannot solve our problems with the same thinking we used when we created them."

The systems of Family law, criminal law and child protection law used today are not working. We need to re-engineer the Family Law System.

The entire system needs to be re-invented to incorporate the knowledge we now have around children and those who perpetrate harm upon them. The only effective way to achieve this is through a Royal Commission.

## Response to ALRC Submission questions.

### Objectives and principles

#### Question 1 What should be the role and objectives of the modern family law system?

**Role:** For State, Territory and Federal authorities work together to ensure the best interests and safety of children are the primary consideration in all matters and at all times.

To listen to, believe and respond effectively to the disclosures of children.

To ensure the Family Law System as a collective, wraps its work around the welfare and best interests of all children, in all matters, at all times and, that State and Territory legislation is amended to reflect this requirement to actively participate in all matters where a child welfare concern is raised.

That comprehensive and informative risk assessments are undertaken and this information is shared with the Courts. Where this is not possible, for the Federal Government to establish a National Child Protection Service {NCAC} as per Recommendation 1-13 Family Law Council 1992 (as listed above).

We see the role and composition of 'the Family Law **System**' as inclusive of the Federal Courts with its various staff and contractors but also State Courts and the State and Territory Statutory systems including police, child protection and relevant non-government organisations.

We also recognise however, the almost impenetrable silo's in which these agencies exist and the failure previous recommendations have encountered in the actually being implemented by the State and Territories. As a result we see a new National Child Protection Service as the most workable, consistent and an imperative to protect the hundreds if not thousands of children who are currently falling between the cracks.

**Objective:** For the Court to deliver evidence/intelligence based outcomes for children that ensure their safety and best interests are the paramount consideration and that their voices are heard and respected in every aspect of the decisions effecting them.

**Overall:** The Family Courts cannot effectively, nor safely, conduct their Constitutional role in relation to the safety and best interests of children unless the State and Territories firstly contribute and exercise their Constitutional role effectively, routinely and efficiently provide

relevant inquisitorial information, opinion, evidence and testimony to the Family Court. This is not happening.

This would be achieved if the National Child Advocacy Centre (NCAC) Model was adopted in line with the US, UK and European models. Both South Australia and Western Australia have already implemented models of practice designed to complement the CAC model.

In this model, no matter the outcome of the interview, all likely lead agencies are participants during the interview process as either interviewers or observers. This collaboration provides the opportunity for the child to provide their best evidence once, at the earliest opportunity, in a child friendly environment and with all potential lead responders present and available to respond as well as jointly provide a MDT risk assessment analysis and case plan.

## Question 2 What principles should guide any redevelopment of the family law system?

- That the best interests of the child shall prevail without compromise.
- That children's voices and wishes are heard and their choices respected and honoured.
- That it be an inquisitorial model and that it be properly informed utilising statutory and expert inquisitorial evidence collated and presented to it as early as possible in the process.
- That it be Nationally consistent, effective, accessible, affordable, child friendly
- That decisions and assessment are based on the Balance of Probabilities' test and not 'Beyond Reasonable Doubt'
- That children and protective parents receive the benefits of meaningful, nationally consistent, respectful and effective investigation, collaboration and outcomes between service providers and jurisdictions.
- That best practice, evidence based, external specialist/experts informed decisions guide outcomes rather than reliance on judicial discretion
- That the system is transparent and accountable.

The principles of the family law system should prioritise and protect children/victims from harm, as well as prosecute sexual offenders. Evidence suggests that the family law system is neither adequately protecting nor supporting families which have experienced family violence (including child sexual assault).

*It is imperative that adequate support and management is provided to these families to ensure their ongoing safety and wellbeing. However, evidence suggests that the family law system is not adequately supporting or protecting families which have experienced family violence..... The report advocates for an accessible, equitable and responsive family law system which better prioritises the safety of families. (House of Representatives Standing Cttee on Social Policy and Legal Affairs – Dec 2017, Exec Summary iii)*

## Access and engagement

### Question 3 In what ways could access to information about family law and family law related services, including family violence services, be improved?

By adopting the recommendations in various reports handed down in the past 30 years or more.

*For State, Territory and Federal authorities work together to ensure the best interests and safety of children are the primary consideration in all matters and at all times. To ensure the Family Law System as a collective, wraps its work around the welfare and best interests of all children in all matters at all times and that State and Territory legislation is amended to reflect the requirement*

*to actively participate in all matters where a child welfare concern is raised. That comprehensive and informative risk assessments are undertaken and this information is shared with the Courts.*

*Where this is not possible, for the Federal Government to establish a National Child Protection Service as per Recommendation 1-13 Family Law Council 1992:*

'One Door' service delivery. We propose the Child Advocacy Centre Model where each child/family is appointed an case manager/advocate who would walk with the child through initial intake, forensic interview, risks assessment, service delivery pathways, information gathering for Family Courts, referral back to State and Territory Statutory involvement (Police, DPP, Child Protection), Court (Civil and Criminal) and general wellbeing up to and including 12 months post final orders.

Currently victims are shifted between multiple support agencies which leads to poor outcomes for the child, agency, and family. Some of the gaps include lack of coordination, low rates of access and completion support, exposure of children to unnecessary repeated interviews, low rates of prosecution for child abuse offenders. A national Child Advocacy Centre, would present a one door solution for children involved in the Family Law environment.

#### Question 4      How might people with family law related needs be assisted to navigate the family law system?

A National 'One Door' service delivery model. We propose the Child Advocacy Centre Model where each child/family where there is a child protection concern is appointed an case manager/advocate who would walk with the child through initial intake, forensic interview, risks assessment, information gathering for Family Courts, links back to state and territory service delivery pathways, referral back to State and Territory Statutory involvement (Police, DPP, Child Protection), monitoring of other Court and administrative processes (Civil and Criminal) and general wellbeing up to and including 12 months post final orders.

#### Question 5      How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

A specially trained Advocate would help to navigate the system with a keen eye on the best interests of the child. Technology (language translation and video conferencing) may also assist as may the use of culturally aware specialists and family consultants, court personnel and report writers to effectively inform the Court.

Aboriginal and Torres Strait Islander peoples are more likely than others in the community to experience problems commonly associated with child abuse and neglect (e.g., alcohol abuse and domestic violence) (Scott & Higgins, 2011). Quentin Bryce's 2016 report *Not now not ever; putting an end to family and domestic violence in Queensland* recommends The Aboriginal and Torres Strait Islander Child Protection Service Reform Project explicitly addresses the delivery of services to support differential responses in discrete communities, including services necessary to provide family assessment or family violence responses to investigation of notifications.

Significant barriers that Aboriginal and Torres Straight Islander people face when accessing justice include: a lack of awareness about family and civil issues, communication barriers, socio-economic disadvantage and geographic isolation and differences between traditional law and the Australian legal system.

An advocate may help families to navigate barriers to financial inadequacies, language barriers, and mainstream services being less culturally sensitive or not delivering services to remote parts of Australia (Report on the Access to Justice Arrangements, the Productivity Commission *Committee Hansard*, 23 September 2015, p. 26. *Submission 41*, p. 27.)

<https://www.alrc.gov.au/publications/access-and-engagement-0>

## Question 6 How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?

A specially trained Advocate would help to navigate the system with a keen eye on the best interests of the child. Technology (language translation and video conferencing) may also assist as may the use of culturally aware specialists and family consultants, court personnel and report writers to effectively inform the Court.

Family Law Council 2012 report.. Barriers to access of the family law system include a lack of knowledge about the law and a lack of awareness of available services, language and literacy barriers, cultural and religious barriers that inhibit help-seeking outside the community, negative perceptions of the courts and family relationships services, social isolation, a lack of collaboration between migrant services and the family law system, a fear of government agencies, a lack of culturally responsive services and bicultural personnel, legislative factors and cost and resource issues. Recent research in Australia demonstrates that members of culturally and linguistically diverse communities, particularly those from new and emerging communities, have low levels of understanding of Australian legal norms and processes. This is particularly the case for family law issues, where people may be unaware that what they consider to be a private family matter has a legal dimension. A 2007 report by Women's Legal Service NSW (WLSNSW) noted that, for many migrant and refugee women: [t]heir lack of understanding of their own legal rights, or rights as a concept, and their preconceived ideas about what the legal system does based on their own past experiences, means that they just don't turn up on the radar for many of our services. <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/ImprovingtheFamilyLawSystemforClientsfromCulturallyandLinguisticallyDiverseBackgrounds.PDF>

## Question 7 How can the accessibility of the family law system be improved for people with a disability?

A specially trained Advocate would help to navigate the system with a keen eye on the best interests of the child. Technology (language translation and video conferencing) may also assist as may the use of culturally aware specialists and family consultants, court personnel and report writers to effectively inform the Court.

The Australian Human Rights Commission in 2014 noted that access to justice in the criminal justice system for people with disabilities who need communication supports or who have complex and multiple support needs (people with disabilities) is a significant problem in every jurisdiction in Australia. Human Rights Commission report *Equal Before the Law* recommends increased service capacity and support, effective training, enhanced accountability and monitoring, better policy and frameworks.

[https://www.humanrights.gov.au/sites/default/files/document/publication/2014\\_Equal\\_Before\\_the\\_Law.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf)

## Question 8 How can the accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?

A specially trained Advocate would help to navigate the system with a keen eye on the best interests of the child. Technology (language translation and video conferencing) may also assist as may the use of culturally aware specialists and family consultants, court personnel and report writers to effectively inform the Court.

## Question 9 How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?

A specially trained Advocate would help to navigate the system with a keen eye on the best interests of the child. Technology (video conferencing) may also assist as may the use of culturally & regionally aware local specialists and family consultants, court personnel and report writers to effectively inform the Court.

*Barriers for accessibility to the family law system include geographical barriers, insufficient services, and cultural barriers. Recommendations to break barriers include better availability and utilisation of communication technologies and providing services (eg: court appearances, conferencing), Improving people's digital literacy, increasing availability of family law expertise, increase in local support services (including crisis accomodation, mental health support). (<http://www.familylawincanberra.com.au/family-law-rural-regional-remote-australia-challenges/>)*

## Question 10 What changes could be made to the family law system, including to the provision of legal services and private reports, to reduce the cost to clients of resolving family disputes?

Ban private reports. Use only Court appointed reports or other specialist reports provided to the court as evidence. Adopt the NCAC model which would produce these reports in an MDT environment.

There needs to be a separate National CAC forensic interview option for those children and families where Police and Child Protection do not have an interest and/or are not prepared or able to offer a risk assessment guidance for the Family Court.

Ensure the States and Territories provide thorough 'Child Welfare' risk assessment reports based on the Balance of Probabilities to the Court.

Court appoints a Child Advocacy Centre (Advocate – Family Consultant) to provide a report based on; the case management of the matter, results of the interview of the child/ren and parent/s, progress, feedback and outcomes of the help provided by all child/family services at all levels including courts, the gathering of relevant State and Territory information/intelligence for use by the Family Court and the risk assessment MDT report produced post interview/s of the child and parent/s.

*Only 8 percent of households are likely to meet income and assets tests for legal aid, according to the Productivity Commission's 2014 report on access to justice. This leaves "the majority of low and middle income earners" likely to miss out. Family Law expenses costs the parties between \$20,000 to \$40,000 with complex cases costing more than \$200,000. <http://www.pc.gov.au/inquiries/completed/access-justice/report>*

There is also no consumer watchdog to oversee what practitioners, consultants and services charge. Allowing recordings rather than transcripts will reduce the opportunity for inappropriate deletions of conversations and statements made in the courtroom and improve transparency and accountability. It would also be a cheaper option for parents. Electronic copies of audio or written transcripts should be made freely available to parties.

## Legislate an independent complaints process.

Question 12 What other changes are needed to support people who do not have legal representation to resolve their family law problems?

More legal aid funding and more quality information coming to the courts. Listen to the children. More reliance on the reports from external therapeutic professionals working with the children.

## Legal principles in relation to parenting and property

Question 14 What changes to the provisions in Part VII of the *Family Law Act* could be made to produce the best outcomes for children?

Change the order of the Objects in 60B to reverse the order such that 2(a) drops to 2(d) and all others move up one.

### 60B Objects of Part and principles underlying it

- (1) The objects of this Part are to ensure that the best interests of children are met by
- (2)
  - (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and
  - (b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and
  - (c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and
  - (d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

Amend 60CB 'Note' to include a trained Child Advocate rather than, or in addition to, a lawyer.

### 60CB Proceedings to which Subdivision applies

- (1) This Subdivision applies to any proceedings under this Part in which the best interests of a child are the paramount consideration.

Note: Division 10 also allows a court to make an order for a child's interests to be independently represented **by a lawyer** in proceedings under this Part in which the best interests of a child are the paramount consideration.
- (2) This Subdivision also applies to proceedings, in relation to a child, to which subsection 60G(2), 63F(2) or 63F(6) or section 68R applies.

Again, amend 60CC (2) as per above.

In relation to 60CC(3) (a), (j), we note that these words exist in legislation but the actual practice in the courtroom too often does not reflect this.

### 60CC How a court determines what is in a child's best interests

- (1) Subject to subsection (5), in determining what is in the child's best interests, the court must consider the matters set out in subsections (2) and (3).

#### *Primary considerations*

- (2) The primary considerations are:

- (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and
- (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

Note: Making these considerations the primary ones is consistent with the objects of this Part set out in paragraphs 60B(1)(a) and (b).

- (2A) In applying the considerations set out in subsection (2), the court is to give greater weight to the consideration set out in paragraph (2)(b).

*Additional considerations*

- (3) Additional considerations are:
  - (a) any views expressed by the child and any factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child's views;
  - (j) any family violence involving the child or a member of the child's family;
  - (m) any other fact or circumstance that the court thinks is relevant.

Section 11D provides the environment where the lack of professional accountability leaves room for practitioners to do or say whatever they like without fear of professional or financial retribution. This has led to unprofessional and, we believe, potentially illegal practices. It has certainly led to children being ordered to live in dangerous situations.

**11D Immunity of family consultants**

A family consultant has, in performing his or her functions as a family consultant, the same protection and immunity as a Judge of the Family Court has in performing the functions of a Judge.

**Question 15** What changes could be made to the definition of family violence, or other provisions regarding family violence, in the *Family Law Act* to better support decision making about the safety of children and their families?

Adopt recommendations as per ALRC114 Part B – 5A,6 & 7

**Question 20** What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?

With the adoption of the NCAC Model as proposed earlier in this submission.

**Question 21** Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?

Not if there are child protection concerns.

**Question 23** How can parties who have experienced family violence or abuse be better supported at court?

With the adoption of a Child Advocacy model as proposed earlier in this submission.

**Question 24** Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?

No. These families need specialist interviewing, intervention and support. The NCAC model proposed earlier in this submission would be better option in our view.

**Question 25** How should the family law system address misuse of process as a form of abuse in family law matters?

Yes. We have heard of and are dealing many protective parents whose former partners use their wealth and/or wile to subvert the system, to maintain control of their former partner and to cause as much disruption, fear and financial loss as is possible and for the longest period possible.

**Question 26** In what ways could non-adjudicative dispute resolution processes, such as family dispute resolution and conciliation, be developed or expanded to better support families to resolve disputes in a timely and cost-effective way?

See Question 24

**Question 28** Should online dispute resolution processes play a greater role in helping people to resolve family law matters in Australia? If so, how can these processes be best supported, and what safeguards should be incorporated into their development?

Only in matters not involving family violence and or child abuse or sexual assault.

**Question 29** Is there scope for problem solving decision-making processes to be developed within the family law system to help manage risk to children in families with complex needs? How could this be done?

See Question 24

## **Integration and collaboration**

**Question 31** How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?

See Question 24

### Question 32 What changes should be made to reduce the need for families to engage with more than one court to address safety concerns for children?

Adopt the NCAC model as per previous comments and rationale. When children arrive at the Family Court system with unresolved, unsubstantiated or unclear allegations this needs to be resolved as a first response and as early as possible in the process. That might generally mean that a Federal Forensic interview and professional risk assessment may precede any allegations of harm presented to the Federal Courts. One door means that if the child discloses in the process, the recording could be made available to the State authorities as evidence. One interview, one report, one audio/visual record available to all courts and statutory processes.

### Question 33 How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?

As per Question 32. In addition, legislation needs to allow the Federal Child Advocate to have access to any other State and Territory held child protection or family violence records in order to complete a thorough Risk Assessment based on the balance of probabilities. **Children's experiences and perspectives**

### Question 34 How can children's experiences of participation in court processes be improved?

NCAC / MDT Forensic Interview & risk assessment / Child Advocate

### Question 35 What changes are needed to ensure children are informed about the outcome of court processes that affect them?

CAC Advocate – 12 month final check in post orders.

### Question 36 What mechanisms are best adapted to ensure children's views are heard in court proceedings?

CAC / MDT Forensic Interview & risk assessment / Advocate

### Question 37 How can children be supported to participate in family dispute resolution processes?

Child Advocate

### Question 38 Are there risks to children from involving them in decision-making or dispute resolution processes? How should these risks be managed?

Yes. Children will be attached to both parents regardless of any abuse that may have occurred. Humans, even small children have an instinctive need to protect, to not want their parent/carer/sibling to get in trouble. Children also understand fear and so do those who use it to control their victims.

There is a definite risk of children who tell their story then feeling responsible for the decisions re access/living arrangements. This must be offset by counselling and messaging as well as

ensuring that there is always a collection of views on which decisions are made to disguise what decisions did or did not emanate from the child. If possible, legislate that the child interview are to be withheld from parents and be for use by the Courts only.

**Question 39** What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?

CAC / MDT Interview / Advocate

**Question 40** How can efforts to improve children's experiences in the family law system best learn from children and young people who have experience of its processes?

Ask them. Confidential Survey, Research.

## Professional skills and wellbeing

**Question 41** What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?

This has been discussed in every report I have read on this subject. There is a clear need for all persons working in this space, necessarily dealing with vulnerable people, be trained accordingly. In particular, any person that interviews a child should be qualified in social sciences and hold professional Forensic interviewing qualifications as is the case in South Australia.

**Question 42** What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?

As above . Regular PD and research awareness, training for core competencies and then regular updates and reviews. An NCAC could provide this training.

## Governance and accountability

**Question 45** Should s 121 of the *Family Law Act* be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of families and children?

The difficulty with this Section 121 is both a protection and hindrance depending on the matter and depending on the motivation to share.

Silence and secrecy is rarely a positive option. There must always be opportunities for aggrieved people to apply for an exemption in certain circumstances such as complaints processes but also in instances where the aggrieved can discuss failures in the system without identifying the family participants. Legislation must not conceal truth. There is a need for the public to disclose misconduct, unprofessional or inappropriate activities in any process. Children too have a right to a view in matters that involve them. Their rights and their opinions matter most.

While media do publish some stories, this is usually after the child has been killed or suicided.

The media are extremely keen to avoid any story that might offend S121. Their reluctance to publish stories about the FLC is understandable but only serves to enhance the lack of public accountability that is now entrenched in this system. The end result is to undermine the public's right to know and our children's right to be protected as the first priority.

Silence & secrecy are the predator's best friends and our children's worst enemy. This is true in every environment, including the legal system and Family Law Systems. The recent Royal Commission left no doubt about that. Our legal systems cannot underpin the very culture that enables child harm to occur.

Laws designed to prohibit parents from discussing their issues on social media are almost impossible to impose without harming the children involved. And what do we do with children who use social media to express their views. The Family Law System needs to be an open and transparent system that maintains a responsible respect for privacy that is intrinsic in these matters. But always, a child's expressed views need to be respected and honoured.