



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.

12 November 2018

Prof Helen Rhoades

Commissioner Australian Law Reform Commission

By email: familylaw@alrc.gov.au

Review of the Family Law System – DP 86

Dear Prof Rhoades,

Bravehearts Foundation Ltd wishes to submit this feedback to the ALRC. We reiterate that we concern ourselves with the safety of children however we recognise the value of many domestic violence proposals contained in this Discussion Paper that likewise impact on the safety of children generally. While the work of Bravehearts includes working with families where domestic violence is prevalent this submission is focussed on the issues around the protection of children against sexual assault and serious physical harm.

Suffice to say we are incredibly disappointed by the obvious lack of attention to this critical topic within your Discussion Paper. We are confounded and deeply disturbed by the apparent inattention and lack of awareness around these prevalent and disturbing issues facing our families, our children and our courts. We do understand however that the limited time, power and budget associated with this Review was never going to be sufficient to bring about the necessary forensic investigation required, nor deliver the enduring solutions required. Only a thorough Royal Commission can do that.

The community need a legal system in which they can have confidence. Currently, the family law system is a dangerous, broken basket-case.

As Chief Justice John Pascoe said... *"In my view, if legislation and the ALRC do not assuage public concern, it must be time to consider a royal commission into family law," Justice Pascoe.*

We believe that time is now.

Hetty Johnston AM

Founder and Executive Chair

Bravehearts Foundation Limited bravehearts.org.au

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Bravehearts Foundation Ltd

Bravehearts' work provides holistic world-class child protection training and education initiatives; specialist child sexual assault counselling, case management, child advocacy and support services; as well as research and reform campaigns all aimed to prevent child sexual assault in our society.

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.

Bravehearts submit that the ALRC need to recommend the following actions if we are to resolve the ongoing catastrophes that are clearly obvious in Australia's Family Law Systems.

A Four Step Plan for a Safer Family Law System for children.

1. **A new Royal Commission into Australia's family law system**
A Royal Commission into Australia's family law system must be established, with terms of reference aimed at preventing violence and sexual abuse across the breadth of the family law system, including Australia's family courts and associated personnel, state police and child protection departments. If conducted in line with each of the others Steps in this proposal, the Royal Commission could be confined to consideration of only 100 cases and will then unearth the crux of the issues facing this system. Then and only then can family law system be truly safe for children and protective parents.

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2. **Apply the findings of the past Royal Commission into Institutional Responses to Child Sexual Abuse to the family law system**

The new National Office for Child Safety, with assistance from the National Centre of Excellence and COAG, must extract and apply the Child Safe Standards and all other relevant recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse directly to the state and federal systems that are responsible for the majority of child protection roles in the family law system, including Australia's family courts, state police and child protection departments.

3. **Establishment of the National Child Advocacy Centre**

The establishment and trial of a National Child Advocacy Centre approach would focus on professionally establishing, on the balance of probabilities, the veracity of notifications of child harm. This centre would capture the voice of the child using a professional multi-disciplinary team. It would assign a Child Advocate to the child, compile a forensic family report, conduct a forensic interview of the child and provide a report to the Court for its consideration. We expect that adopting this model will allow for an expedient response or better yet, in many matters, will result in the matter not presenting before the court in the first place. We expect it will deliver greater time and economic efficiencies and safer outcomes.

4. **Review of Cases by the National Child Advocacy Centre**

The National Child Advocacy Centre in collaboration with the Family Court must provide for a review of family court cases in which serious flaws are discovered involving family violence, sexual abuse or neglect that had been alleged and where the child is now subject to orders enforcing their contact with the alleged abuser. The National Child Advocacy Centre will hear the voice of the child, assess the integrity of the evidence and provide a "Balance of Probabilities" risk assessment report to the family court. It will work with a large pool of multi-disciplinary team experts. To expedite the safety of the children most at risk, the review must prioritise the cases posing the greatest risk of harm.

Overview of DP 86

Bravehearts refer back to our previous submission, which appears to have been entirely overlooked or ignored - along with the crime of child sexual assault generally by the ALRC review team. This review has not assuaged the concerns of Bravehearts or the wider community who are left to suffer at the hands of the dysfunction of the current Family Law System. Clearly the tinkering at the edges continues and at great cost, not only to the taxpayer but to our children's lives.

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We note that DP86 does not specifically deal with the enormously prevalent issue of child sexual assault. Instead it allows it to hide under the heading of child abuse and domestic violence. It does not even attempt to recognise it or discuss it in any meaningful way. This is just incredible! Outcome 6 of the National Framework for the Protection of Australia's Children, a COAG document, agreed to specifically deal with child sexual assault as a specific harm to children. Article 34 of UNCROC specifically calls on Australia to respond to child sexual assault. The ALRC ignores both.

The fact is that 1 in 5 Australian children will experience child sexual assault with the offenders almost always known to and trusted by the children and often a parent or step parent. It is no surprise then that so many allegations of child sexual assault find their way into the Family Court system. It is our position that the majority of these matters are being mismanaged and children across the nation remain at serious risk as a direct result. Child sexual assault is not a crime the ALRC can get away with ignoring any longer - and yet it is!

Suffice it to say, Bravehearts is unconvinced that the ALRC have grasped the nettle in relation to the catastrophic outcomes being experienced by families in the current system due to child sexual assault. Instead of investigating the clearly obvious failures of the Family Law systems, it appears to have collated and represented preceding report recommendations relating to domestic violence to produce an acceptable preordained list of Proposals.

Our concern is that children are literally dying waiting for Government agencies to deliver on their duty of care obligations and to ensure children are provided their rights under the UNCROC.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 19

1. 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.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment, which fosters the health, self-respect and dignity of the child.

An example of clear breaches of these Articles by the family law system is the fact that Orders are often placed on parents, whose children continue to disclose sexual assault, forbidding them to seek medical assistance, or to go to Police or attend therapy and even, to forbid the parent from listening to and supporting their child. They are told to distract their child and not engage in the conversation – to ignore their own children’s pleas for help! To send them back, kicking and screaming, for more of the same. If they don’t, they lose custody altogether. If they run away they are jailed and their children are sent to live with their perpetrators. This scenario is rife in the current system, yet is totally ignored?

At no point in this report do you specifically address and discuss responses to the long list of serious, potentially corrupt and certainly crippling issues Bravehearts presented to you for consideration.

We attach this edited list again for the purposes of further consideration, discussion and proposed solutions.

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 illegally 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 and placing custody of children with the perpetrators;
- 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 (Abbey's Project, Bravehearts 2016);
- Despite the nationally accepted research available, a prolific court appointed Psychiatrist believes that 90% of reports of child harm were untrue. He is not alone in that view;
- 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 Court 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 overrides 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 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 or bleeding vaginas.
- 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.

The National Apology held in Canberra on October 22 recognised the pain that children suffer from having been the victims of child sexual assault and serious harm. The Parliament and nation recognised the enduring lifelong trauma attached to it and yet the ALRC Review appears to remain oblivious and clueless.

Bravehearts stand by our original submission and our push for the trial of a National Child Advocacy Centre (as per Reco 92 ALRC **1997** Report 84 Seen and Heard) and for the rollout of same across the nation. We believe this is the only model that can effectively and professionally hear the uncorrupted voice of the child by intersecting these allegations early in order to enable the best possible evidence, and by responding effectively and efficiently with professional specialist education, therapy and advocacy assistance - all in the best interests of the child. Not only will this approach help to bridge the gap between State and Federal jurisdictions, it would save the Courts millions in time and resources, it will deliver a professional, unbiased risk assessment and background information to the Court where there is currently none, and it will allow for an expedient response or better yet, in many cases, will result in the matter not presenting before the court in the first place.

A recent (June 2018) study by the Australian Institute of Family Studies validates the need for such a response – in particular the need to be heard and need for a specialist Child Advocate. <https://aifs.gov.au/publications/children-and-young-people-separated-families-family-law-system-experiences>

'Children and young people in separated families: Family law system experiences and needs.'
Key messages from talking to young people include:

- Most wanted to be heard better by family law people, especially when they talk about their safety.
- Most of them did not feel the family law person they spoke to was listening to them or taking their views seriously.

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- The young people we spoke to said that they weren't given enough information about what was going on in the legal process. They wanted to know:
 - how the process worked
 - who was representing their parents
 - who was representing them
 - what the possible outcomes were
 - who was deciding on the arrangements
 - when they would be able to express their opinion.

Many young people participating in our study (62%) said they had talked to psychologists and counsellors. Most said it had helped them through the process.

Thanks to the young people we spoke to, we are recommending the following changes to the system:

- Give children and young people the opportunity to participate in the decision-making process if they want to.
- Tell children and young people when important events and decisions are happening.
- Give children and young people a clear and accurate explanation of any parenting arrangements that are decided upon.
- Make sure children have access to counsellors, psychologists and support groups, to help them through the process.
- Make sure that living arrangements are safe, and that they are able to be changed over time, if that flexibility is what the family members want.

ABC NEWS

By [Melinda Howells](#) and political reporter [Matthew Doran](#)

Chief Justice Pascoe said there had been about 50 major inquiries into the Family Law Act, but argued further investigation might be required.

"In my view, if legislation and the ALRC report do not assuage public concerns about the family law system, it must surely be time to consider a royal commission into family law," Justice Pascoe said.

"This will allow comprehensive public discourse by all stakeholders on all elements of the family law system and the protection of children.

"Continual tinkering with the system, which we've seen over the past 40 years, in my opinion adds to complexity, uncertainty and cost, and often we don't tackle the really big issues such as the divide between child protection and the family law system.

"Whatever happens, the focus has to be on the best interests of children, including their safety, and the welfare of families."

Mr Porter also addressed the conference, urging family lawyers to support his proposed reforms.

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"If [Federal] Parliament misses this opportunity and we as lawyers and practitioners and members of the Australian legal community miss this opportunity, then it will necessarily be the case that the Australian people will make demands for even greater or more radical proposals and change," he said. "I am not going to resile from that process of reform."

It is abundantly clear that Chief Justice Pascoe himself understands this situation as does our Attorney General. More money is not going to fix this. It is time to listen to the Chief Justices and leaders. The ALRC needs to listen. The ALRC needs to be fearless and fight the voice of the lawyers and those others with vested and self-interests in order to prioritise outcomes that deliver on the safety and best interests of protective parents and their children.

Bravehearts agree with CJ Pascoe and given the lack of action by some in the legal fraternity, we will continue to fight for a Royal Commission because, as has been shown time and time again, it is the only solution to this complex but critical situation.

The merging of the two courts will assist in terms of governance, cost efficiencies and administration but it will not help these children and it will not stop the flood of families in crisis that are beating at the door. Continuing to focus on waring parents rather than listening to and responding to the voices of children will not deliver outcomes we can have confidence in. It will not deliver safety to those children who have been separated by the Court from their protective parent and sent to live with predators and domestic violence perpetrators. It will not improve outcomes for the people the court should be there to protect.

The push back from the legal fraternity is indicative of the stubbornness to accept change that exists in the legal sector. A selfish, highbrow, self-absorbed stubbornness that will continue to leave children at an unacceptable risk of harm.

A Royal Commission is needed to expose the truth of this renegade Court and some of its judges, ICL's and report writers, lawyers, as well as complicit police and child protection workers in the States and Territories. It simply has to happen.

We will continue to urge our Attorney General, the opposition and cross benches to bring about a Royal Commission into this toxic and dangerous Family Law System that is betraying so many good parents and innocent children.

The past Royal Commission into Institutional Responses to Child Sexual Abuse

We expected a key recommendation from the ALRC would be to apply the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse to the family law system.

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The new National Office for Child Safety, with assistance from the National Centre of Excellence, must extract and apply the Child Safe Standards and all other relevant findings of the Royal Commission into Institutional Responses to Child Sexual Abuse directly to the state and federal systems that are responsible for the majority of child protection roles in the family law system, including Australia's family courts, state police and child protection departments.

The Apology - Royal Commission into Institutional Responses to Child Sexual Abuse

The survivors of Institutional child sexual assault were unanimous in wanting any apology to be accompanied by action. They gave their story and relived their trauma not for them but so that no other child would be ignored, disbelieved, forsaken and forced to endure the same brutal childhood. This universal desire was acknowledged and honoured by the Parliament with a pledge to replace complacency and inaction, deafness and ignorance with responsive and preventative action.

The action required now to honour that promise is to immediately call a Royal Commission into the Family Law System.

22nd Oct 2018 – Canberra: The Prime Minister of Australia said:

Silenced voices; muffled cries in the darkness; unacknowledged tears; the tyranny of invisible suffering; the never heard pleas of tortured souls bewildered by an indifference to the unthinkable theft of their innocence—today Australia confronts a trauma, an abomination, hiding in plain sight for far too long. Today we confront a question too horrible to ask, let alone answer: why weren't the children of our nation loved, nurtured and protected? Why was their trust betrayed? Why did those who knew cover it up? Why were the cries of children and parents ignored? Why was our system of justice blind to injustice? Why has it taken so long to act? Why were others things more important than this, the care of innocent children? Why didn't we believe?

Today, as a nation, we confront our failure to listen, to believe and to provide justice. And again today we say sorry—to the children we failed, sorry; to the parents whose trust was betrayed and who have struggled to pick up the pieces, sorry; to the whistle-blowers who we did not listen to, sorry; to the spouses, partners, wives, husbands and children who have dealt with the consequences of the abuse, cover-ups and obstruction, sorry; to generations past and present, sorry.

22nd Oct 2018 – Canberra: Leader of the Opposition Bill Shorten said:

To everyone to whom this day belongs I say on behalf of the Labor opposition and the Commonwealth parliament and the people of Australia we are sorry. We are sorry for every childhood stolen, every life lost. We are sorry for every betrayal of trust, every

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abuse of power. We are sorry for trauma measured in decades for scars that can never heal. We are sorry for every cry for help that fell on deaf ears and hard hearts. We are sorry for every crime that was not investigated every criminal who went unpunished. And we are sorry for every time that you were not heard and not believed. We hear you now. We believe you. Australia believes you. And we are sorry it has taken so long to say these words. We are sorry for wrongs that can never be made right. We are sorry that you and your brothers and sisters have been left to fight for justice, respect and dignity on your own. You should not be alone any longer. Australia is with you. And we are sorry that the abuse and the assault and the rape of children is still going on and being covered up this very day in this very country. We are sorry that we still cannot protect all our children. We are sorry—all of us in this parliament—that we've not yet done enough to guarantee that this cannot happen again. Too many Australian children are still living unsafe lives at risk. It's the true test—isn't it?—of our words. It's whether from this day forward we see some meaningful change for the better in this country. It is why the words of this apology must come with action.

13th June 2018 – Canberra AAP former PM Malcolm Turnbull pledges priority on child safety and said:

“It [Royal Commission into Institutional Responses to Child Sexual Abuse] revealed that for too long the reporting of this abuse was met with indifference and denial by the very adults and institutions who were supposed to protect them. Children’s safety should always be put first and we know, thanks to the royal commission’s work, in far, far too many cases it wasn’t.”

Indeed.

And yet we continue to fail to listen to children, to believe, to act. We continue to turn away from their cries for help, to refuse their protective parents support. We shelter their perpetrators behind the dysfunction of our legal system. We protect those that are aiding and abetting the harming of our children behind a veil of secrecy and a lack of accountability and transparency – Section 121.

When will we learn to hear the voices of today’s children? At the very same time as the Prime Minister lifted our hope with these words, at the very same time as we watched and listened to the Leader of the Opposition, children were being harmed by the decisions, acts and omissions of the most dangerous and destructive Institution Australia has ever endured in our history, the current Family Law System. And this is not 40 and 50 years ago, this is today and it will be every tomorrow until our Parliament intervene to preserve and protect the best interests of all Australian children.

Brief response to ALRC Proposals & Questions.

Proposal 2-3 Bravehearts concur that socially acceptable national education and awareness campaign is necessary. Bravehearts response to child sexual assault is our 3 Piers- Educate, Empower and Protect. We have proven through evaluations and practice that effective age appropriate personal safety education helps to protect children from as young as 3.

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- 1 Educate our children
- 2 Empower our adults with knowledge
- 3 Protect children by ensuring effective legislative and community responses are available.

Proposal 3.1 Simple and clear legislation will help but without re-introducing the rules of evidence into the Family Court it will make little practical difference. In addition, there needs to be an open, accessible, expedient, transparent and independent avenue for Appeal.

Proposal 3.4 Define ‘harmful levels’

Proposal 3.5 The recommendations need to set out **how** the voice of the child can be expressed and **when?** The Proposal needed to expressly set the parameters of who, how and when a child’s voice should be attained, recorded, presented to the Court etc.

QUESTION 3.1 Consultation is no remedy to child protection concerns, only thorough MDT risk-assessment has the ability to find the truth. Consultation in today’s court often takes the shape of Consent (Concede) Orders which parents are bullied into and which are dangerous and totally inappropriate in matters where child harm is alleged. Children have the right to expect authorities and parents to protect them from harm in all circumstances.

Proposal 3-11 suggested edit.....In determining the future needs of the parties, take into account the effect of any family violence on the future needs of a party (add) *including children.*

Proposal 4.1 & 4.3 Family Hubs sound like a watered down version of the Child Advocacy Centres (CAC’s) previously recommended (no 92) by the ALRC Seen and Heard 1997.

The failure of the DP86 to differentiate responses to escalating degrees of complexity and conflict in family law matters leaves some recommendations such as 4.2 in a position where it may well be useful for normal cases of separating parents but not where there are allegations of child sexual assault or Domestic Violence.

Assessment of risk is a specialised field and should be conducted in a multi-disciplinary environment of qualified and specifically trained experts to include forensic interviews of the child and parents and other examinations of facts as appropriate to the matter. It should also deliver a risk assessment report to the Court based on that multi-disciplinary team findings which are grounded in ‘balance of probabilities’.

This recommendation also fails to clarify the professional requirements of those tasked with ‘identifying the person’s safety, support and advice needs and those of their children. This cannot continue to be left with people who do not have the skills to be doing this work as happens now nor should it allow individuals to continue to provide life changing reports without peer reviewed cross checks and balances.

Other dot points seem, in part, to be descriptive of the role of an Advocate and referral pathways also recommended over 20 years ago in ALRC Seen and Heard to be conducted in a specialist Child Advocacy Centre.

Proposal 4.4 Need to add child protection and child sexual assault specialists to the list of critical local service providers.

Proposal 4.5 This sounds like what is happening now and is unacceptable. There must be a Multi-Disciplinary Team (MDT) approach with professional, specifically trained experts conducting the assessment as a team.

These families will need more than legal assistance, as will their children. They will need therapeutic support and practical assistance – I am assuming that it is proposed that this is the role of the Family Hub. This seems disjointed and clumsy.

Proposal 5-7 While we understand the frustration that drives this recommendation and would agree for the need to force full disclosure, we remain concerned that giving this Court more power to wield unfairly and still without close and genuine oversight would be unacceptably dangerous in the current circumstances.

QUESTION 5.2 See above 5.7

Proposal 5.9 See 4.4. Specialist family violence services does not address child sexual assault specialist services.

Proposal 5-10 Legally assisted dispute resolution (LADR). Again the proposal for this process to ‘assess and respond to risk’ is dangerous. The risk assessment process is key to most matters coming before the court and should be dealt with specifically not rolled up and attached to other legal processes. It is critical that risk assessments, where allegations of child safety, family violence or mental ill health are present, are conducted in the best interests and safety of the child by specifically qualified experts working in a structured, professional multi-disciplinary team environment and where the best evidence is attained as early as possible in the process.

Proposal 6-1 We agree with this triage approach. Child sexual assault is a specialist pathway and should not be lost or rolled up into ‘family violence’ specialists. They are not the same.

Proposal 6.2 We disagree. This process should not be conducted by court appointed staff. It needs to be Independent of the Court, community based in a Child Advocacy Centre which services the child, not the Federal Court or the State Government authorities. We need to put the child’s needs at the centre and recognise the constitutional limitations of the Federal Courts as well as constitutional responsibilities of the States and Territories in terms of child protection.

Risk assessment affects both jurisdictions so must be carried out independent of both – in the best interests of the child. One process.

A disclosure by a child requires an immediate specialist and expert response to capture the evidence before it becomes corrupted. Only a forensic interviewer has the skills to conduct

this interview to the level of skill required. In this way, the child's safety remains at the centre of the process regardless if the outcome finds its way to the criminal, civil or federal courts. The Advocate also goes with the child throughout the process regardless of the trajectory. This is a truly child-centred approach rather than a service-centred approach.

Proposal 6.4 Disagree. The failure of the Court to apply the rules of evidence lies at the heart of the dysfunction currently being experienced. There are criminal matters being alleged. Evidence of the disclosures of children is being dismissed, ignored and minimised in the current system with no compulsion on the judges to even read the material before them. ICL's are making assessments without any qualifications to do so. Report writers are producing biased cookie cutter reports. The Courts are making decisions despite the evidence before them and based more on personality and bias than facts. The court requires more structure and legal oversight not less.

Proposal 6.5 Again no mention of allegations of child sexual assault. Simplified matters should only occur where there are no allegations of family violence or child sexual assault.

Proposal 6.7 We agree that matters involving allegations of high risk family violence and child sexual assault should be dealt with separately and distinctly on a specialist list but in collaboration with the child protection experts (or Child Advocacy Centre) working with those families to conduct risk assessments and reports for the Courts.

QUESTION 6-1 Allegations of child sexual assault or family violence.

Proposal 6-2 The moment a child discloses is the best time to attain their best evidence. The longer the process takes the child away from that first and best evidence the less the child will speak and the less the court will know. Early fact finding is critical as is the role of Child Advocacy Centre.

Proposal 6-8 Co-location, but in a child centred and child friendly environment, is also a feature of the Children's Advocacy Centre model as is multi-jurisdictional service provision (State and Federal services come to the child, not the other way around). Courts and police stations are not appropriate environments for children to be interviewed and not conducive to children's best interests.

QUESTION 6-4 We again submit the introduction of Child Advocacy Centre model (ALRC 84 Seen and Heard Reco 92) as previously submitted. We expect that not only will matters be expedited with the use of this model but that we can deliver high quality, expert, tested, unbiased risk assessments and family reports to the Court and even more, that many matters may not progress to the Courts due to the collection of evidence we will provide to the court.

Proposal 6-11 Agreed.

Proposal 7-2 Child Advocacy Centres (CAC) should replace Family Hubs where there are matters involving allegations of harm against children.

Proposal 7-3 & 7.4 Agree and again, hearing a child's view is critical when allegations of child sexual assault or domestic violence accompany the matter.

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Proposal 7-7 Children should be invited and encouraged but not forced to express any views. Child development specialists could assist the child to express their views in art and other modes.

Proposal 7-8 This is the Children's Advocacy Centre Advocate role. The assessment of risk to the child and assessment of matter generally by the Multi-Disciplinary Team at the Children's Advocacy Centre is critical to the outcome. The earlier the assessment and the most thorough, the better the outcomes. The children's advocate would walk with the child throughout the entire process whether it be family courts, criminal courts or otherwise. Bravehearts envisage that if this Children's Advocacy Centre model is adopted, many matters headed for the family court will be redirected to the criminal courts.

Proposal 7-10 We are confounded as to why a legal representative would be considered the best placed to gather evidence that is relevant to an assessment of a child's safety and best interests or as an 'honest broker'. We submit this is the role of the Child Advocate.

QUESTION 7-2 The Children's Advocacy Centre would provide the solution to this question. The Children's Advocacy Centre could also incorporate specially trained legal representatives if required or alternatively, the court appointed ICLs could be utilised. The ICL would be provided with the report from the Children's Advocacy Centre inclusive of recommendations based on the best interests of the child and the child's views (where appropriate). The ICL's are then concerned with the legal aspects of the matter rather than the investigatory, recommendation making or social aspects. This is as it should be.

QUESTION 7-3 It is critical that the courts hear and understand the voice, experience and views of the child. Research is clear that children rarely lie about matters affecting their safety and wellbeing. On the other hand, parents are known to lie, exaggerate and omit information in order to present themselves in the best possible light. Children are more likely to not disclose at all than to lie about it. The best way to illicit the voice of a child is through a specially trained child development professional who is a forensic interviewer. We submit that the admissibility of communications between the children's advocate and a child should be granted in all cases and that the children's advocate become a witness to the child's voice where necessary.

Proposal 7-11 Children using video recordings of themselves should also be allowed in courts as well as copies of forensic interviews conducted by suitably qualified and trained professionals for the purposes of evidence gathering. Such interviews are conducted in a Children's Advocacy Centre and are recorded on video and audio.

Proposal 7-13 The Children and Young People's Advisory Board should be convened by the National Office for Child Protection.

QUESTION 8-1 People use the term Domestic Violence to include child sexual assault and yet it is predominately used to describe violence against adults (mostly women) in a relationship rather than inclusive of their children. So the critical issue facing children gets lost in this term. Child sexual assault needs be clearly stated, not presumably wrapped up in the DV terminology. In terms of the Family Law issues, Domestic violence, child sexual assault and serious harm covers the spectrum.

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Proposal 8-6 & 8-7 We agree that subpoenas in relation to evidence of protected confidences should not be issued without leave of the court. This will be particularly true as it relates to the views of the child and children's testimony tendered to the courts, which may not be sufficient for a criminal action but sufficient to establish a high level of risk. It could be dangerous to expose the child's voice to its alleged offending parent.

QUESTION 10-1 All court personnel should be aware of their obligations in relation to State and Federal criminal laws and mandatory reporting obligations.

Proposal 10-4 I am not sure that the Family Law Commission (Law) is the right body to oversight and manage training and workforce capability planning or accreditation of multi-disciplinary professionals working in the family law system. This is probably best suited to the National Office of Child Protection (child development and governance) given many of these professionals will have many memberships and accreditations and hopefully many will be independent of the Court. The real child protection experts are living and working in the States and Territories where the jurisdictional responsibility for child protection lies, not in the Family Court.

Proposal 10-6 Agreed.

Proposal 10-7 Agreed. All those supervising potential sex offenders need intensive and specific training and their premises should also be accredited as suitable for such work. Clear observation, supervision and clear understandings of what to look for are imperative.

QUESTION 10.3 Child contact services are important parts of the child protection system and should be treated as such. See also 10.7 above.

Proposal 10-9 Greater use of Private Multi-Disciplinary Family Report writers with appropriate qualifications is welcomed.

Proposal 10-12 Agreed.

Proposal 11-1 Agreed. Information sharing is critical to robust child protection and domestic violence decision making.

QUESTION 11-1 Any and all information held by police, child protection, education and NGOs should be admissible to the Court. We would say Yes to all dot points.

Proposal 12-11 Public discussion of prominent matters cannot be avoided and criminalising people for conducting a conversation is dangerous. Transparency is equally important as privacy. The child's best interests and public confidence and accountability is the key consideration.

Proposal 12-1 If the courts were better at risk assessment and delivered fair and robust outcomes, there would be less angst in the public arena and the current conversations would no doubt not be such an issue. Controlling social media is difficult.

.....Ends.....