



Butterfly by T. Aged 6

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

**Legal and Constitutional Affairs References Committee:
International child abduction to and from Australia**

Dear Senators

I am grateful for the chance to put in a submission about the above matter on behalf of our group, Justice for Children Australia. The group is made up of people from a wide variety of cultures, backgrounds, occupations, locals and circumstances.

We are united in wanting children to be treated fairly and kept safe.

All participants in the family law process must be treated with respect, given correct and relevant information and allowed a voice which is listened to and considered with care and compassion.

Our primary concern is that family law processes involving children must be focussed on the welfare, wellbeing, protection and happiness of the child and must be removed from the adversarial system which does not operate in their interests.

With this in mind, we offer comments on (e) below.

Terms of Reference

The incidence of international child abduction to and from Australia, including:

(e) any other related matters.

It seems to be accepted that, although in the past it was mainly men/fathers who took their children, recent statistics have shown that mothers account for the majority of these ‘abductions’.

I say ‘abductions’ because this is a very loaded term. Surely there is a difference between:

1. Sheltering **a child** from harm by taking him/her away from the perpetrator or from a harmful situation (e.g. family law perpetuating abuse, persecution – as for asylum-seekers) and
2. Using kidnapping as a weapon of revenge against the other **parent**.

Perhaps the difference is that 1. is more about the child’s welfare and 2. is more about the parent’s!

The extract below describes some of the reasons why children might be taken by some parents.

2.5 Reasons for abducting

Child abduction is a vastly different experience to relocation and usually eventuates because of a range of factors. These most commonly include domestic violence, extensive hostility between the former or estranged parents, resulting in a strong desire by one to wreak the ultimate revenge against the other parent; a deep sense of unfairness felt by one parent in relation to Family Court contact arrangements; fear of and inability to communicate between former partners and the

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proprietary nature of some parents' relationships with their children. The birth of the child can also expose differences in relation to the parents approach to child-rearing, discipline, inculcation of religious or cultural beliefs which become intolerable for one parent.

1

Justice for Children is interested in the effect of abduction on the children. This must in part be influenced by whether the child *wants* to go with the parent, finds some sort of security and happiness in another country, doesn't miss their familiar environment any more than they would if moving overseas for other reasons. If they are being removed from violence and abuse, it is likely that they would find living overseas a haven. There is also the other side:

The effect on children can be catastrophic. Children who are abducted are usually already going through the pain of their parents' relationship breakdown. They now face the trauma of losing contact with their familiar world including grandparents, school, friends and local community. The experience is perplexing and shocking as children try to make sense of a situation which is difficult to understand.

2

Family Law overrides children's rights to a safe and peaceful life

When mothers do take their children overseas, the majority do so because the system – usually Family Law – which they thought would help protect their children is actually delivering them into the arms of their abusers.

We have many instances where mothers who raised allegations of abuse and violence become trapped by a combination of the 'unfriendly' parent provision, biased 'single experts' and judicial discretion which refuses to listen to or investigate these allegations and instead shoots the messenger. Threats that children's access to their mother will be severely curtailed unless the allegations are withdrawn are usually carried out, in our experience because if the mother believes that they are telling the truth, how can they retract? The result is that the child loses meaningful contact with the mother they love and need. How can this possibly be good for the child?

is, as far as we know, still unable to see his mother, . He presumably doesn't identify her as a criminal but only as his Mum who he loves and wants to be with.

Much is said – and was said at the Senate Inquiry into Violence and Family Law (public hearing 08/07/11 – about false *allegations* of violence and abuse. Nothing much was said about false *denials* of abuse which can be even more damaging to children if the allegations are true.

False suspicions of intended abduction

How many times have these imagined plans been used to remove children from their mothers? To mention two cases: one 12 year old child who suffers from an intellectual disability was seized by 2 uniformed police early in the morning more than two years ago. She was not allowed to say goodbye to her mother (her primary carer from birth) and was taken away in a paddy wagon (still in her pyjamas) and has had no contact with her mother since. All this on the false allegation of her father that the mother was about to abduct the child and take her overseas.

¹ Living in Limbo ISS Australia Feb 2005

² Ibid

In another case, a mother was giving her three young children (who lived with her, always their primary carer) a break in a 'posh' hotel. On the unsubstantiated word of the father that she was about to abduct the children, seven Federal Police broke down the door, seized the screaming children and took them away. After six years of separation and continual battle, the middle child has recently been able to see her mother. The youngest was three when the incident occurred.

Both these cases (and they are typical of many) seem much more like kidnapping by the Court system than any crime by the mothers.

Reliance on 'single experts'

We have evidence that these experts (a very small gene pool in family law apparently) often show a remarkable bias and to put it bluntly, a shallow and amateurish *modus operandi* when it comes to making assessments which will have a major lifelong impact on children.

This old but interesting extract from SMH article 13/06/00 by Bettina Arndt sums it up quite well.

'Sorry' to man accused of sex abuse

The investigation by department district officers Ms * and Mr * - described by the department as "brief and urgent" - involved a four-hour interview with the two girls.

A leading Sydney child psychiatrist, Dr Brent Waters, reviewed the DOCS files to provide expert evidence for the District Court proceedings. His report described the investigation as "extremely coercive" and unprofessional.

Dr Waters strongly criticised the interviews for containing leading questions and failing to acknowledge the children's emphatic denials that any sexual activity had taken place.

We have conclusive evidence that some experts currently practising in the field of family law make 'extremely coercive and unprofessional' reports on parents and children, thereby causing children to be removed from loving and protective parents and made to reside in abusive homes. The experts often make assessments in less than one hour and this certainly does not meet the AMA or other professional body protocols.

In 2007 a Family Court Judge wrote in her final orders a damning critique of one process conducted by an expert (see last page of this submission). Unfortunately we have found this sort of unprofessional behaviour fairly common in the family law system.

When a protective parent realises that the court is actually working against the right of the child to be safe and protected, what can that parent do except leave? To such a parent, the system seems impervious to reason, opaque, self-regulating and unaccountable. They are not alone in thinking that there are fatal flaws in family law and related systems. Children die. Others die.

How many mothers and children who fall foul of this system regret that no abduction took place? The children might have been better off raised by a loving parent who really cared about them anywhere in the world than being ordered to live with a vengeful abuser who made their lives hell. It would be miraculous if these children do not turn out – as many already have – to be abusers, addicts or killers themselves.

Please think of the children when you look at the **International child abduction to and from Australia.**

We wish you well in arriving at a decision which will help them.

Yours sincerely

Ariel Marguin

Justice for Children Australia

Extracts from J4C supplementary submission to Family Law Family violence inquiry 22/07/11

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

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

Unfriendly parent provision must be repealed:

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

Attached (not with this sub at 28/07/11) table shows 31 partly de-identified examples of what happened to children when the child, their protective parent (and until Family Law was involved, their primary carer), and even a third party (eg paediatrician) alleged violence or abuse. This may seem like a small sample but we have almost identical information from many other cases, with evidence and court transcripts. We can provide further details if required.

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

The following is an excerpt from Judge's Final Orders. Astonishingly the Judge gave the children to the husband.. See

<http://www.justiceforchildreनाustralia.org/apps/videos/videos/show/12666162-australia-s-secret-shame>

i21. It is in my view extremely unfortunate that the expert who prepared the reports has a practice of having the children who are the subject of the dispute being present when she takes a history of that dispute from the parent they are living with. I agree with the mother's belief that the children could very well, and indeed I think most likely, have got the impression by being included in that first interview that they were "expected" to behave in certain ways.

22. These children are very much aware of the court process, they are represented. The selection of the same expert, in the face of the mother's opposition, may well have been seen by them as a signal that the outcome was going to be the same as in the earlier litigation. That the boys elected not to be observed with the mother after this process is hardly surprising. That they were distressed at making that election is hardly surprising. Their expressed wishes are made in circumstances which put them under duress.

23. I found the expert's report completely unhelpful in those circumstances. I would not see it as appropriate for the expert to be further involved in this matter, either in the selection of a counsellor for the boys or for her reports to be used as a history by any counsellor who might work with the boys.ⁱⁱⁱ