

***Submission to the  
Parliamentary Inquiry into a better  
family law system to support and  
protect those affected by family violence.***

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regard to this submission contact:

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## *Executive Summary*

Junction Australia has provided a range of services to victims of domestic violence in South Australia for many years. We strongly support changes to the operation of the Family Court to better support victims of domestic and family violence.

Our key recommendations relate to the following points:

- *Safety and wellbeing of children must be the top priority in all decisions*
- *Court reports should not be the only source of information about parties and should be written by experts in domestic and family violence*
- *We strongly support the adoption of a new model for the Family Court, working more closely with other jurisdictions and in particular specialist Family Violence courts.*
- *The Family Court should prevent the appeals process from being used by abusive men to prolong the harassment and control of women and their children.*
- *All family law professionals (including judicial officers) should undertake mandatory domestic violence training, as well as training in the Safe and Together Model.*
- *There must be a national approach to intervention orders, and the Family Court must also act as soon as possible to resolve the conflict between Family Court orders and state-level intervention orders.*

## *Background*

Junction Australia (JA) is an independent, community based organisation that has been providing a wide range of services to disadvantaged communities across South Australia since 1979. These include support services for people who are homeless and/or have experienced domestic violence, counselling, supported accommodation for homelessness young people and residential care for young people under Guardianship of the Minister. JA delivers the specialist domestic violence service for the Fleurieu Peninsula and Kangaroo Island. As a result, JA regularly interacts with women and children experiencing Domestic Violence, and our staff sees the devastating effects of this on a daily basis.

In addition, as a Tier One registered housing provider of social and community housing in South Australia, we are currently the largest non-government provider of social housing for women who have experienced domestic violence.

Reducing domestic violence is a strategic priority for JA and we are committed to increasing the positive outcomes and housing options available for women and their children who have experienced domestic violence. We are actively involved in numerous state and regional level collaborations, round tables and networks that focus on improving the safety of women and children. In addition Sue Thomas, General Manager Community Services, is the Chair of the Australian Children's Safety Alliance (ACSA). ACSA is a group of Australian non-government and government organisations that have joined together with the primary aim of improving practice and systems at the intersection of domestic violence and child protection.

We appreciate the opportunity to submit to this Inquiry and see this as an extremely important opportunity improve the way the Family Court deals with matters involving domestic violence. Below we have responded to the specific Inquiry terms of reference that we have knowledge about.

## Response to select Terms of Reference

1. *how the family law system can more quickly and effectively ensure the safety of people who are or may be affected by family violence, including by:*
  - a. *facilitating the early identification of and response to family violence; and*
  - b. *considering the legal and non-legal support services required to support the early identification of and response to family violence;*

We believe there are a number of ways in which the Family Court could be improved to more quickly and effectively ensure the safety of those affected by domestic violence.

a. ***Safety and wellbeing of children must be the top priority in all decisions***

It has been observed by us in our work with clients, and also documented in a number of reports and articles that the Family Court has a tendency to emphasise a child's right to regular contact with both parents over the risk posed by domestic violence and abuse perpetrated by one of those parents.<sup>1,2,3</sup>

There is ample evidence about the harmful effects of domestic violence on children, negatively affecting their physical, emotional, psychological, social and developmental wellbeing.<sup>4,5</sup> Parents who have been violent and abusive towards current or former partners may have also abused the children directly, harmed their parent in their presence, undermined the relationship between them and their other parent, deprived them financially by controlling and withholding finances, and caused them to live in a home characterised by fear and uncertainty. Where these types of behaviours are present, they must be considered by the Family Court in making custody decisions, as they indicate a clear lack of understanding of the needs and wellbeing of children.

Evidence from those who work with men who abuse their partners shows that they are often rigid and controlling parents, may be likely to use overly harsh discipline, and may be likely to parent according to their own needs rather than those of the children.<sup>6</sup> Although all circumstances are different, we believe the Family Court must take these issues seriously and conduct thorough investigations into the nature of relationships between men known to be abusive towards their former partners, and their children. We believe a child's right to

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<sup>1</sup> Jeffries S (2016). In the best interests of the abuser: coercive control, child custody proceedings and the 'Expert' assessments that guide judicial determinations. *Laws*, 5(1), accessed online 1/5/17 <http://www.mdpi.com/2075-471X/5/1/14/htm>.

<sup>2</sup> Perkins M (2015). Rights of children must trump violent parents: Rosie Batty. *The Age*, 28/9/15. Accessed online 1/5/17 <http://www.theage.com.au/victoria/rights-of-children-must-trump-violent-parents-rosie-batty-20150928-gjwo1p.html>.

<sup>3</sup> Hill J (2016). The Family Court has a serious attitude problem when it comes to domestic violence. *The Sydney Morning Herald* 2/5/16. Accessed online 1/5/17 <http://www.smh.com.au/lifestyle/news-and-views/opinion/the-family-court-has-a-serious-attitude-problem-when-it-comes-to-domestic-violence-20160501-goj6mg.html>

<sup>4</sup> Coroners Court of Victoria (2015). *Inquest into the death of Luke Geoffrey Batty*. Accessed online 2/5/17: [http://www.coronerscourt.vic.gov.au/resources/07cc4038-33f8-4e08-83b5-fd87bd386ccc/lukegeoffreybatty\\_085514.pdf](http://www.coronerscourt.vic.gov.au/resources/07cc4038-33f8-4e08-83b5-fd87bd386ccc/lukegeoffreybatty_085514.pdf)

<sup>5</sup> Campo, M (2015). *Children's exposure to domestic and family violence*. AIFS CFCA Paper No. 36. Accessed online 2/5/17: <https://aifs.gov.au/cfca/publications/childrens-exposure-domestic-and-family-violence>

<sup>6</sup> Bancroft, L (2002). The batterer as a parent. *Synergy (Newsletter of the National Council of Juvenile and Family Court Judges)*, 6(1), 6-8. Accessed online 2/5/17 <http://lundybancroft.com/articles/the-batterer-as-parent/>

grow up in a safe and stable environment is greater than the right of an abusive man to have a relationship with their child, and that any such relationship should not come at the expense of the former.

Bancroft <sup>7</sup> notes that abusive men can be very manipulative and present a persona to the court that is very different to the way they behave toward their families. This must be taken into consideration, and where there are allegations or documentations of abuse, we believe the Court cannot take the man's response at face value.

When abusive men continue to use children and access visits to stalk, harass, threaten or denigrate the other parent, this is inevitably harmful for the children and their understanding of healthy adult relationships.

***b. Court reports should not be the only source of information about parties and should be written by experts in domestic and family violence***

It has been our experience that Family court decisions often place too much weight on a single report, written by an 'expert' who neither has any previous experience with the family in question, and who may also have no expertise in domestic violence. With a majority of Family Law matters in Australia involving domestic violence<sup>7,8</sup>, we believe this is unacceptable.

We strongly believe that **all** Family Court report-writers should be required to meet minimum qualification requirements, and that they receive standard training in domestic violence. Further, we believe it should be a requirement where domestic violence has been documented, claimed or suspected in a Family Court matter, that any subsequent reports in the case are written by domestic violence experts. Understanding the lasting impact and risk posed by domestic violence requires a solid understanding of the dynamics of domestic violence and the methods of control and coercion exerted over victims. We believe that safe decisions about the future custody of children from families where domestic violence has occurred cannot possibly be made without this understanding.

In addition, we believe that the Family Court should have closer links with Child Protection and other services that have ongoing knowledge of the family and the risk posed by individual family members. Reports are often written after a very brief interview with family members, including children, and are therefore unlikely to reflect the history of abuse present in many families. We believe the Family Court should draw on all available evidence to make a decision that has the wellbeing of the child at its core. Also see section at point c) below about links with specialist courts.

We have noted from experience with clients that there can be a considerable financial imbalance between the two parties in Family Court cases. Where an abuser has exercised financial abuse over a current or former partner for many years, it is difficult for the victim to access the financial resources required for a Family Court case. Although legal aid may be

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<sup>7</sup> Richardson T (2016). Domestic violence a factor in 76% of SA family law cases. *InDaily*, 18/4/16. Accessed online 2/5/17: <http://indaily.com.au/news/2016/04/18/domestic-violence-a-factor-in-76-of-sa-family-law-cases/>

<sup>8</sup> AIFS (2007) *Allegations of family violence and child abuse in family law children's proceedings: A pre-reform exploratory study*. Research report 15. Accessed online 2/5/17: <https://aifs.gov.au/publications/allegations-family-violence-and-child-abuse-family-l/3-australian-research-allegations>

available, we have observed a similar imbalance in the ability to generate the financial resources required for ‘expert’ report writers. Abusive men are far more likely to have access to financial resources to pay for private ‘experts’ to provide reports that are in their favour. If the Family Court were to consider multiple sources of existing information about a family’s history as a matter of course, that would help to counter this problem.

**c. *We strongly support the adoption of a new model for the Family Court, working more closely with other jurisdictions and in particular specialist Family Violence courts.***

Family Court matters often occur concurrently with many other matters including intervention or protection order hearings, State or Territory criminal cases for domestic violence and abuse, and child protection investigations or interventions. There is often a mismatch between the findings and outcomes of these separate matters (which we discuss further in relation to point 6), and in our experience there is usually very little or no information-sharing between these matters. We believe that if the Family Court was required to collect and consider information from different jurisdictions and systems, outcomes would be far more appropriate and in-line with other outcomes for the same family. This approach is argued for by the Victorian Coroner in the report of the inquest into the death of Luke Batty<sup>5</sup>, and also by the Family Law Council in their recent review.<sup>9,10</sup> We support a collaborative approach between courts, especially between the Family Court and specialist Family Violence courts that operate in most States and Territories.<sup>11</sup>

There is evidence for the effectiveness of therapeutic courts in changing behaviour (for example drug courts<sup>12</sup>), but they operate very differently to mainstream courts. Most feature ongoing involvement of the magistrate or judge to monitor behaviour of the defendant outside of court, and the provision of a range of services to help them to desist from further offending. In the case of domestic violence courts these services should include men’s behaviour change programs and support services to women and children affected by domestic violence. This is especially important when children are involved because there is clear evidence that early intervention and support can help counter the lasting effects of domestic violence exposure<sup>6</sup>. This approach improves the ability of the legal system to hold the perpetrator of the abuse to account and improves safety of women and children through closer monitoring of perpetrators and better support services.

We believe that appearances in court are important opportunities for intervention with men who are abusive towards their partners and families, and although the role of the Family

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<sup>9</sup> Family Law Council (2015). *Report to the Attorney-General on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems. Interim Report (Terms 1 & 2)*. Accessed online 2/5/17: <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Families-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems%E2%80%93Interim-Report-Terms-1-and-2.pdf>

<sup>10</sup> Family Law Council (2016). *Report to the Attorney-General on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems. Final Report (Terms 3,4 & 5)*. Accessed online 2/5/17 <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/Family-with-Complex-Needs-Intersection-of-Family-Law-and-Child-Protection-Systems-Final-Report-Terms-3-4-5.PDF>

<sup>11</sup> Australian Law Reform Commission (2010). *Family Violence – A National Legal Response (ALRC Report 14)*. Accessed online 2/5/17: <https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>.

<sup>12</sup> See: Australian Institute of Criminology, *Australian responses to illicit drugs: Drug courts* [http://www.aic.gov.au/criminal\\_justice\\_system/courts/specialist/drugcourts.html](http://www.aic.gov.au/criminal_justice_system/courts/specialist/drugcourts.html)

Court is not primarily to address this behaviour, where judicial officers in this jurisdiction have a solid understanding of domestic violence and can work in collaboration with other court jurisdictions, this opportunity can be better capitalised upon.

**d. *The Family Court should prevent the appeals process from being used by abusive men to prolong the harassment and control of women and their children.***

It is our experience that abusive men are able to use the Family Court and appeals processes to continue the abuse and harassment of their former partners. Court gives them the opportunity to continue to exert control over them and prevent them moving on with their lives, to force them to expend money on lawyers and other legal fees, force them to come into contact with them at court, and continue the cycle of fear and control. All available measures should be taken to prevent this from occurring. Other measures recommended by us in this submission would help prevent this from occurring (such as training for judicial officers and court staff as outlined at point 5), but we strongly recommend that any history of domestic violence should be taken into account when determining whether or not to hear an appeal in the Family Court.

2. *the making of consent orders where there are allegations or findings of family violence, having regard to the legislative and regulatory frameworks, and whether these frameworks can be improved to better support the safety of family members, as well as other arrangements which may be put in place as alternative or complementary measures;*
3. *the effectiveness of arrangements which are in place in the family courts, and the family law system more broadly, to support families before the courts where one or more party is self represented, and where there are allegations or findings of domestic violence;*
4. *how the family law system can better support people who have been subjected to family violence recover financially, including the extent to which family violence should be taken into account in the making of property division orders;*
5. *how the capacity of all family law professionals – including judges, lawyers, registrars, family dispute resolutions practitioners and family report writers – can be strengthened in relation to matters concerning family violence;*

***All family law professionals (including judicial officers) should undertake mandatory domestic violence training, as well as training in the Safe and Together Model.***

In line with many of the points raised above and the evidence about the prevalence of domestic violence in Family Court matters<sup>8,9</sup>, we support mandatory domestic violence training for all family law professionals listed above. In addition, we believe all family law professionals associated with the Family Court should undertake training in the Safe and Together model<sup>1</sup>. The model is an approach to working at the intersection of child protection and domestic violence that emphasises understanding the patterns of abuse within relationships, understanding the protective behaviours of non-offending parents, and reframing abusive behaviour to better understand its impact on children. The model focusses on holding the perpetrator of the violence to account and intervening with him to increase the safety of the non-offending parent and their children.

Key benefits of this approach for the Family Court include that it enables a child-centred conceptualisation of the impact of the abuse; it emphasises the safety and stability of children; and it provides for intervention with abusive men, rather than ignoring or even facilitating their abuse. It is our view that no professionals should be making decisions about

the care of children in the context of domestic violence without a thorough understanding of these principles, and the dynamics of domestic violence more generally.

Please also note our comments in relation to training requirements for report writers at point 1.b) above.

6. *the potential for a national approach for the administration and enforcement of intervention orders for personal protection, however described.*

***There must be a national approach to intervention orders, and the Family Court must also act as soon as possible to resolve the conflict between Family Court orders and state-level intervention orders.***

There is a known and well-documented conflict between Family Court-issued orders and state-level intervention or protection orders, such that a Family Court order will take precedence over an inconsistent protection or intervention order and effectively invalidate the protection order.<sup>13,14</sup>

We have witnessed the impact of this first-hand in a case where a client was forced to give up her child to her violent and abusive former partner, knowing this was placing him at serious risk of harm. A woman relocated from Queensland to South Australia after experiencing many years of severe violence and abuse from her former partner. She became a client of our service and also obtained a South Australian intervention order against her former partner, protecting both herself and her son. She was instructed by South Australia Police (SAPOL) to go directly to her local police station if she saw her former partner, which she did. On arrival at the police station he produced a federal 'recovery order' for the child, which allowed him to take the child back to Queensland. SAPOL officers advised the woman that there was nothing they could do in this instance to keep her son safe with her. In this case the Family Court order enabled the abusive man to continue to inflict fear upon his former partner and child and to take the boy from the safety of his protective parent.

A national approach to the administration and enforcement of intervention orders is very important, as it will enable victims of abuse to travel or relocate to different states and maintain the protection that is provided by intervention orders. However, the national approach must do more than share information and orders across states and territories. It must also address the very dangerous inconsistency between federal and state level orders. This is a matter of extreme urgency and currently undermines the effectiveness of intervention orders, putting the safety of children at risk.

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<sup>13</sup> OCSAR (2013). *Intervention Orders and the Intervention Response Model: Evaluation Report 1*. SA Attorney-General's Dept. Accessed online 2/5/17:

[http://www.ocsar.sa.gov.au/docs/evaluation\\_reports/Intervention\\_Order\\_Evaluation\\_Report\\_1.pdf](http://www.ocsar.sa.gov.au/docs/evaluation_reports/Intervention_Order_Evaluation_Report_1.pdf)

<sup>14</sup> Family Court of Australia (2015). *The Family Courts and Family Violence*. Presentation by The Hon chief Justice Diana Bryant AO to the Judicial Conference of Australia Colloquium, 10 October 2015. Accessed online 2/5/17: <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/speeches-conference-papers/2015/speech-bryant-familyviolence>.