Public hearing - Inquiry into child protection and the social services system – Supplementary questions

Sisters in Law Project

Reponses by Jane Matts in consultation with the SILP team.

It is our goal to keep these responses concise and offer the committee lived experience interviews in camera with materials if required.

1. What are the impacts on children when they are the subject of hearings in multiple jurisdictions?

Response:

We mainly experience impacts as it relates to

a) Family Law Jurisdiction with the state Police systems regarding a protection order;
b) Family Law jurisdiction with Police in Child Sex Abuse matters combined FaCs (JIRT).

It is our observation that children are not well supported by either systems nor is the evidence or the evidence of mothers well considered. The common response by Police that undermines the veracity of evidence is that the reports were made for the advantage of family law proceedings. The Inquest into the deaths of the Edwards children[1] keenly reflects what our members observe. This impacts the children's faith in systems set up to protect them. We also observe that they can be victims of retribution and refuse to report further. Some even say that reporting issues that cross both systems was a mistake as they feel that they are not heard. It is also not conceptualised that after family law proceedings are afoot violence can escalate.[2]

It is observed that the concerns of children are often minimised across these systems. When we discussed this as a group we agreed we could not remember an incident where the investigation resulted in changes in Family Law to make parental contact safe for children on a final basis. In fact, such reports by children and their carers in an adversarial system were used against our members.

[1] See paragraph 181 https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2021/Inquest_into_the_deaths_of_John_Jack_and_Jennifer_Edwards_-_findings_of_State_Coroner_dated_7_April_2021.pdf
[2] Ibid paragraph 118

We have examples in our group where the children will obtain Protection Orders, just for the children, where the Independent Children's Lawyer (ICL) in a family law jurisdiction ignores the evidence or worse. I have seen matters where there are no appointed ICL in situations where Domestic Violence has been identified. We also have examples of young children who report being shaken and threatened receiving a interim protection order where the perpetrators lawyer ahs provided family law evidence to the DPP in breach of the rules of evidence.

While the Department of Community and Justice representatives report being involved closely with the family law jurisdiction, even in Magellan matters, none of our members have observed this.

I also wish to point out that there is very little information for those going through court systems to understand how it all works and how to plan which can also impact children and their carers. It is also hard to find case workers to assist.

2. Can you outline some specific decisions in the Federal Circuit and Family Court relating to families in New South Wales, where parental responsibility or unsupervised contact has been given to child abusers?

Response:

In the submission[3] to the Committee in March 2021, the **Sisters in Law Project** observe the NSW cases below. Child Abusers have been defined as ones who have state Police protection orders against them due to the mothers or Mothers /children's experiences of domestic violence (DFV), child sex abuse or Risk of Significant Harm (ROSH) reports. It is observed that it is very difficult to convict some perpetrators as the abuse with Police at times reluctant to manage the behaviours. Again, in the process of managing perpetrator behaviours, it is our experience that Police step back when they are aware it is a matter before the family law court. It is also observed that children are rarely seen as victims, nor are there available services set up to manage the impact of domestic and family violence (DFV) on children.

Despite the impact of DFV or child sex abuse events on children, children are ordered to see their abusers by family court. Mothers in the group have described the process of managing contact with supervision services as problematic as safety issues can be poorly managed depending on how the intake process is managed. It is also our observance that Judgements have a story behind where the court can create a narrative that defies or minimised facts and failures.

Cases

Syms & Syms [2021] FamCA 38

Vale & Vale [2018] FamCA 19

In the matter of *Syms* we know factually that there were 2 ROSH reports , one that stated the father was a risk of sexual and emotional harm made before the Final Orders were brought down, were not before the court yet we have evidence that the ICL viewed these reports with formal Notices to Inspect. I also note there is other evidence that I believe needs to be given in camera.

[3] https://www.parliament.nsw.gov.au/ladocs/submissions/70916/Submission%2060%20-%20Sisters%20in%20Law%20Project.pdf

These matters had Risk of Significant Harm reports ignored by ICL's and the children ordered to live with the other parent with little or no contact with the protective parent. It is well documented that the family law jurisdiction has a pro contact culture. In *Vale & Vale* the children were removed from the mother in a hearing she wasn't informed about, not represented and no reasons were given despite there being an NSW state Protection Order including the children, and DFV identified in the family law proceedings. Despite the mother being self-represented and making a valid request for a review of a decision, it was dismissed without hearing the matter. An Appeal was filed addressing the conduct of proceedings, but a trial was conducted making the Appeal nugatory despite formal requests to Stay proceedings. The mother filed for Writ of Mandamus in the High Court, but they refused to accept the filing on 3 separate occasions, no reasons were given. The mother was given a further gag order by the court, in excess of s121 of the Family Law Act 1975.

One of the children, a 15-year-old, ran away from the perpetrator and the court issued a Recovery Order without checking the child's concerns or the state child protection position of safety. The child was hospitalised for 18 days, self-harming, because of the Order which saw the Police arrive with a Paddy wagon to man handle her back to her father. This child was still ordered by the court back into her father's care despite reports by FaCs (as it was then) identifying she was at Risk of Significant Harm in his care, and, where witness evidence indicated she was beaten with a belt. She refused and was not allowed to go to family and placed in a refuge at the request of her abusive father, with no funds as the father had sole parental responsibility and wouldn't approve Centrelink benefits.

Members are prepared to talk or present other information '*in camera*' as they fear for their safety and for some, their matters are before the court and there is a fear of retribution by the court. One who does not have a Pseudonym, experienced the death of her son due to indirect conduct of the court, where her children were removed from her initially, and due to the poor conduct of the father who had criminal convictions of assault. The adequacies of her lawyer (where the Legal Services Commissioner refused to act), should also be noted. This too is common as is the inadequate conduct of Legal Aid practitioners to manage the safety of survivors.

As an aside, it is important to note that some mothers in our group who have solid direct evidence of domestic violence believed that in the process of keeping their children safe that they were not believed, punished for reporting, identified as malicious, took photos of the abuse and that was used against them, where photo evidence gathering was seen as abusive.

3. Have your members and the women they support encountered challenges with the

use of professional evidence in the Family Court?

Response:

Sadly, it is common that professionals *outside the court system*, medical professionals who would meet the Evidence Act 1995 (Cth) definition of experts, are not well considered or their evidence applied. It is observed that in some Magellan matters especially, (child sex abuse), the court has not applied the view of professionals outside the court as it comes from the position of 'belief' and lacks the legal discerning eye. It is here I believe the committee could benefit from talking to PARVAN in NSW health for more information in my opinion.

It is my understanding that the court prefer AFCC (Association of Family Court Conciliators) trained practitioners. It is also my understanding that the training does not have professional registering body oversight which I believe needs to be rectified as seen in the UK Psychiatry court training[4].

I can furnish the committee evidence with permission, but in camera, evidence of child sex abuse Paediatric specialists who identify risk, where this evidence has not been considered in final orders.

Example A – Despite evidence of sexual abuse and ROSH, the Expert Report writer deems the mother 'fixated' and a risk to the relationship of the father with their children – She is now supervised.

Where the mother who has read the specialist reports and knows the professional opinion that sex abuse is likely to have occurred, is deemed as 'fixated' by the Family Court Expert in the belief the children have been abused. Where she has followed state requirements to be protective as there were ROSH reports. It is our observation that the relationship with the perpetrator seen as paramount, even by the report writer, not the fact that DCJ and other professionals has found him to be a risk. The children's voices are nullified by such reports that do not consider trauma, along with the protective parent.

One parent who had multiple protection orders against the father, was deemed an unsafe parent by the family court as she argued risk of the father to the court. She has no contact with her children. The report writer described her as 'mad, sad or bad' as she tried to manage the issues of proven domestic violence and the risk it poses. She was identified as the person facilitating the children's reluctance to visit an identified perpetrator. The trauma never conceptualised by the report writer and the court did not accept the evidence by the children's professional medical supports.

Mothers learn to never mention child sex abuse because it can not be substantiated as a risk and children are removed from the protective parent. Expert Report Writers such a Dr Rikard Bell and others have been identified in media reports as interviewing children in front of their perpetrator

DCJ reports are often heavily redacted, and issues cannot be ascertained in some instances.

Example B – Not giving important evidence to report writers

One of our members was denied access to her DCJ risk reports in a family law matter. The mother subpoenaed the materials, not he ICL, despite a significant history of violence and criminal convictions. This self-represented mother at that time made an application to see her DCJ file in family law and the request was denied multiple times by chambers. Eventually the access was formally denied on the Commonwealth Courts Portal. All other parties, including the father was allowed to see what was reported but not the mother. These materials were not before a family law report writer, yet it could be argued, would have been important. In her trial, despite risk reports being made against the father by DCJ, her own lawyers engaged just for the trial, and the ICL stated in writing to her that the evidence was not required. These materials asserted she was the safe parent. Despite professional reports documenting physical assaults of the children, their fear and reluctance in seeing their father, the children were ordered to see their father monthly by supervision on a final basis. This has only recently stopped as Police stepped in due to continued breaches and intervened exercising s68R of the Family Law Act 1975. It is my proposition if the risk

[4] https://www.rcpsych.ac.uk/improving-care/ccqi/multi-source-feedback/maep?searchTerms=court%20report

notifications by DCJ were given to the report writer and the evidence placed before the court would the court have ordered no contact and protected the children?

As an aside, members have experienced rejection of well formulated GIPA requests to view the DCJ professional reports or told to wait 6 months and then be advised after that 6 month that the request is invalid. These requests can sometimes difficult to access.

b. **Do expert witnesses in the Family Court generally support the claims of**

protective parents?

In short, our experience is rarely but to ameliorate this we see the worst cases. It is our suggestion that these evaluation sessions by Experts need to be recorded as our members report inaccuracies. Accreditation processes embedded in their regulatory registering body must occur, not the AFCC would be beneficial. We also find that the Expert does not meet the Evidence Act 1995 Expert criteria.[5]

The views of the children are to be provided by an Expert under s62G(2). Often this can have little weight. It is suggested that children should be able to directly write their views as it is reported they can be misquoted.

I have observed matters where the Report was some 3 years prior and heavily relied upon. I can provide examples of this to the court but I am cautious under s121 under the Family Law Act 1975.

The system evaluation is not optimal. It is a snapshot and often relies on untested hearsay evidence to formulate a recommendation. The judge does not have to follow the recommendations.[6]

We observe that Magellan matters are badly managed, and we find DCJ acquiesce to the family law jurisdiction without applying due diligence. The Magellan protocol as identified Darryl Higgins[7] in his report in 2006 on Magellan is a secret [8]document that should be exposed for public review. We as mothers know if we report child sex abuse a report writer will disable our credibility, the evidence and come from a position of disbelief. The family court does not have the power of investigation as seen in DCJ and the Magellan outcomes do not reflect statistical empirical data of Bravehearts.[9] It is our recommendation that Magellan matters where there is ROSH reports should be transferred to DCJ and all family law proceedings cease until it is deemed by DCJ safe to do so.

https://aifs.gov.au/sites/default/files/publication-documents/magellan_0.pdf

[5] S177 – there is no expert certification process and the family law matters and certain divisions of the Evidence Act are suspended in child related proceedings see Family Law Act 1975 s 69ZT(1), 69ZT(2), s69ZT (3) s69ZT(4) s69ZT(5)

[6] See case precedent in The Marriage of Hall (1979) FamCA 73 and Klein v Klein [2010] FamCA 150

[7] https://aifs.gov.au/sites/default/files/publication-documents/magellan_0.pdf

[8] Ibid p 22 - The summary of Magellan is based principally on the "Magellan Manual" (Family Court of Australia, 2007), with additional information based on the evaluation of the pilot project by Brown, Sheehan, et al. (2001), as well as results of the current evaluation

[9] https://bravehearts.org.au/research-lobbying/stats-facts/prevalance-of-child-sexual-abuse/- 8% Boys, 20% girls