Submission No 17

INQUIRY INTO IMPACT OF THE *FAMILY LAW AMENDMENT (SHARED PARENTAL RESPONSIBILITY) ACT 2006* (CTH)

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Submission

Inquiry into the Impact of the Family Law Amendment

SHARED PARENTING RESPONSIBILITY – ACT 2006

My family's experiences of the child-unfriendly Family Court have led me to respond to the *Inquiry into the Impact of the Family Law Amendment.*

First, I am a believer in shared parenting and I understand that in most divorce cases parents try to respond to the needs of their children without court interference. Responsible parents know what is in the best interests of their children.

The situation changes drastically when domestic violence and child abuse are involved. The Australian Family Law Council in their 2002 Report: '*Family Law and Child Protection'* noted that if parents have separated, child protection is seen by state child protection agencies as a private matter which the protective parent must pursue through the Family Court with little or no support or involvement from the agencies themselves. This was identified by the Council as a key problem for child protection in Australia given that many private litigants in the Family Court lack the financial and legal capabilities to effectively fight to protect their children from abuse through private legal channels.

A further problem for child protection is the pro-contact culture that has developed in the Family Court of Australia. A significant body of research suggests that the *1995 Family Law Reform Act* heralded a paradigm shift from prioritising child protection to prioritising the right of fathers to equal contact regardless of the child's safety and the quality of the relationship. Recent findings by Kaspiew suggest that fathers' claims now carry greater legitimacy than mothers' at a number of levels[1]. Family violence

[1] Kaspiew,R. (2005) 'Violence in contested children's cases: An empirical exploration' 19 Australian Journal of Family Law p 132.

"*must be of an extreme nature and have a very firm evidential basis, before it can be argued to be a 'disqualifying' factor in residence or contact applications"*[2].

It is against this background that Parental Alienation Syndrome (or "PAS") -the scientifically discredited theory of disgraced American psychiatrist Dr Richard Gardner has been promoted and flourishes in the Family Court of Australia. Acceptance of this by the judiciary helps child sex offenders to successfully claim custody of their own child victims.

The PAS theory asserts that children are 'brainwashed' or 'programmed' by their mothers to make false allegations of abuse against their fathers for the purpose of gaining advantage in custody litigation. Mothers are then perceived as damaging children's emotional development by believing their disclosures of abuse. According to the theory the only remedy is to place the children with their abusers and severely curtail or totally prohibit children's contact with their protective parents who are labelled as 'alienators'.

PAS has become a weapon of choice for fathers' rights groups and family court lawyers in cases where child abuse is alleged. The PAS paradigm endorses the idea that children cannot properly articulate their experiences of abuse and are prone to coaching, manipulation and lying. The paradigm privileges the accused parent's right to enforce a relationship with the child. UniSA's Dr Elspeth McInnes states that: "*PAS is a winner with violent parents because (a) it enables the abuser to occupy the role of the victim and (b) assists and legitimizes their continuing access for abuse".* A further incentive in arguing PAS for an abusive parent is that the Court's focus is diverted from the alleged abuse of the child to the character and mental health of the mother. Most protective parents are emotional when they learn that their children have been sexually abused but in the light of an accusation of PAS, this is interpreted as the mother's mental ill health which can be examined and attacked. Her attempt to protect the child is then framed as prima facie evidence of PAS against the father.

[2] Ibid at 114.

The use of PAS-based reasoning by Family Court judges and lawyers to decide cases of alleged child abuse is a consequence of an unacceptable lack of education and understanding about child abuse and PAS in that Court. In many cases the professional opinions of child psychologists, paediatricians and mental health professionals with decades of experience of working in the child protection field, have been dismissed by the judiciary, zealous in their belief in PAS and the father's right to contact.

Criticisms of the PAS Theory

The widespread use of PAS in family courts has never been matched by acceptance within the international scientific community. The theory has been criticised in numerous publications. For example:

- *PAS is not in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders IV*[3] *(DSM IV) or earlier versions.*
- *Richard Gardner's work was never published in a peer-reviewed journal and his books were self-published*
- *Gardner's theory was not recognised by the American Psychological Society*[4]
- *Not a single study has confirmed that mental health professionals can reliably diagnose PAS.*
- *The Diagnostic criteria suggested by Gardner are similar to those for his now widely discredited test for fabricating allegations of sexual abuse – the Sex Abuse Legitimacy Scale (SAL).*
- *The fundamental assumption at the heart of PAS - i.e. that children frequently lie about sexual abuse - is contradicted by all the major research in the area*[5].
- *The idea that false allegations of child sexual abuse increase in custodial litigation has been contradicted by research conducted both within Australia and internationally*[6].

[3] The DSM IV (published in 1994) is the accepted international standard for psychiatric disorders.
[4] Emeritus Professor Laura Berk, State University of Illinois at Normal. Email contact
[5] See supra note 4.
[6] In two Australian studies, the rate of unsubstantiated allegations of sexual abuse, as assessed by state child protection workers, was no higher among couples involved in Family Court disputes than in the general population – Hume, M 'Child Sexual Abuse Allegations and the Family Court' and Brown, T.

- *The PAS theory is blatantly sexist and targeted against mothers.*
- *PAS is not applicable if abuse has been substantiated*
- *Several American Courts have rejected PAS as scientifically baseless and disallowed its admission as evidence*[7].
- *Gardner promoted paedophilia in his writings*[8].

The PAS theory accepted by the Family Courts of Australia is described as "junk science at its worst" by Dr. Paul Fink, President of the Leadership Council on Child Abuse and Interpersonal Violence, and a former President of the American Psychiatric Association. Furthermore, the 2006 edition of "*Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide*," published by The National Council of Juvenile and Family Court Judges, includes a strong statement condemning the use of PAS which it calls a "discredited" syndrome that favours child abusers in custody determinations.

In addition, the Spring 2006 issue of the *American Bar Association's Children's Legal Rights Journal* provided a comprehensive analysis of all legal cases involving allegations of PAS. This definitive review concludes that science, law, and policy all oppose the admissibility of PAS in the courtroom.

In 2003, Gardner displayed his own mental ill health by cutting his throat and stabbing himself several times while under the influence of drugs[9].

Why the use of PAS by the Australian Family Court is a violation of children's rights under the Convention on the Rights of the Child

The use of PAS to dismiss children's disclosures of abuse increases the risk that they will be exposed to continuing abuse. Children's best interests are never served by a

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'Child Abuse In The Context Of Parental Alienation and Divorce'. A large US study reached the same conclusions – see Macdonald note 4.

[7] See for example *In the Interest of T.M.W*, 553 So.2d 260 (Florida District Court of Appeals)

[8] In a 1992 book -'True and False Accusations of Child Sex Abuse'– "paedophilia… is a widespread and accepted practice among literally billions of people". In another book Gardner wrote "what I am against is the excessively moralistic and punitive reaction that many members of our society have toward paedophiles…(going) far beyond what I consider to be the gravity of the crime" – Salem Witch Trials Revisited (1992).

[9] The Coroner's report is available on the Internet

willingness to sacrifice their relationship with their primary caregiver to facilitate a relationship with a secondary caregiver. This is a core principle of developmental psychology. A young child's relationship with their primary caregiver is absolutely fundamental to their best interests and should never be jeopardized or put at risk.

For abused children this principle is even more pertinent. If they disclose abuse to a protective parent who believes them, they will rely on that parent to protect them from their abuser. A victim will come to identify almost totally with their protective parent. PAS encourages courts to view this natural reaction of an abused child as prima facie evidence of "alienation". To remove children from their protector and place them with their abuser constitutes the most damaging form of psychological abuse. The PAS theory is dangerous because by its very logic, it does not acknowledge cases in which abuse has actually occurred, instead portraying the normal reactions of an abused child towards the protective parent as pathological. The adoption of the PAS paradigm by the Family Court therefore carries with it enormous risks that children's actual disclosures of abuse will be dismissed as 'coaching' and will not be believed. In some cases, child victims are banned from receiving counselling. Protective parents are likely to be restricted to occasional, supervised contact (preventing the mention of abuse) and may be banned from seeking medical help for their children and from reporting further indications of abuse (which surely contravenes the rights of the child).

The acceptance of the theory by judges in the Family Court is absolutely contrary to the best interests of abused children.

Parents who try to protect their abused children from abuse in the Family Court are at risk of being confronted by a system that is suspicious of their motives and is doubtful of their accusations and willing to use PAS-related reasoning to punish them for alleging abuse. This is not a system that operates in the best interests of abused children.

Several of Australia's foremost experts in child abuse now counsel protective parents not to raise accusations of sexual abuse in Family Court litigation. This is because they will most likely be "discredited" and face an increased risk of losing custody of

the abused child. *A system where parents cannot speak up about abuse in order to protect their own children for fear of losing them is not a system prioritising the best interests of the child.*

Unfortunately, the only way that a protective parent can protect a child is by an appeal which is both slow and extremely costly.

CONCLUSIONS

Given that PAS lacks scientific credibility, it is outrageous that it has been accepted by the Family Court of Australia to give sex offenders and violent parents residence of their victims.

PAS-related decisions should be banned should be banned federally as is happening in the USA

There are now so many children who were sent by Family Courts to live with their abusers that they have set up a mutual support group on the Internet.

This is a national disgrace.

Child friendly courts need to be set up for Family Law. By that I mean that judges must be trained in child development and child abuse. Being an expert in law is not enough when judges have the responsibility for making potentially damaging decisions in relation to children's lives. Their ignorance is displayed in their decisions but sadly the media is banned from disclosing them to the public.

Former Chief Justice Nicholson is on record as saying that child abuse cases should not be heard in the Family Court: they should be in a special non-adversarial court or in state Youth Courts. I agree.

Confidential as per Committee resolution.

I am aware of cases where shared parenting and even residence have been given to fathers convicted of child sex offences, rape and violence. This simply isn't good enough.

The secrecy clause 121 should be discarded so that judges' decisions can be reported, albeit without identifying children. Many of the bizarre decisions that are made would not be made if judges were not so well protected..

So long as the Australian Family Court is ignoring and neglecting the fact that most children are abused by their own parents/step parents and or family members and does not protect our children, equal shared parenting responsibility can cause great and lasting harm. How long will it be before victims are claiming compensation from governments for decisions made based on judicial ignorance?

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Without child protection in place equal shared parenting responsibility can NOT work.

Since this tragedy happened to my family I have become a support person for children, parents and grandparents and have heard similar stories repeatedly.

At the end of his visit to Australia, Nelson Mandella said that a country does not deserve to be called a nation if it does not protect its children. And we are certainly not protecting them from abuse.

Yours sincerely

Gudrun Schmidt
(Grandmother)