

## **INQUIRY INTO CHILD PROTECTION**

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## **Submission to the NSW Legislative Council Inquiry into child protection.**

**From : Ben Hills\***

**Date June 23 2016**

It was a crime that shocked, if not the nation, certainly anyone in NSW who glanced at the newspaper headlines in February 2016 : a seven-year-old boy killed by the people who were supposed to be caring for him – his mother and her partner.

SBS Online asked me to research the case in depth and write the definitive account of what had happened to little Levai, how he came to be killed, why the system had failed him – and what should be done to prevent it happening again.

I would ask members of this committee to take the time to read the article which I wrote:

<http://www.sbs.com.au/news/feature/something-terrible-has-happened-levai>

When I began this investigation I never expected to discover that the circumstances of Levai's death were shrouded with official secrecy, designed not to protect the privacy of the child and his family, but to cover up the fact that the Department of Family and Community Services had been told repeatedly that the child was being terribly abused – but had mis-classified his case as not one for urgent investigation, and had failed to visit the family for more than two months, during which time he was beaten, tortured, starved and finally killed.

I was even more shocked when I began analysing the department's reports over the past decade or so, and those of the Ombudsman's Child Death Review team. It became apparent that, in spite of the introduction of some of Australia's toughest laws regarding child abuse, and in spite of an extra \$400 million being poured into the department over the past four years, Levai's was far from an isolated case.

Here are two statistics I would ask the committee to reflect on:

**First**, fewer than one allegation of child abuse reported to FACS ever results in a first-hand investigation. The precise figure is 28.1 per cent, and that figure has not changed in the past two years, despite a substantial increase in the department's resources. This is quite plainly totally inadequate. There is no point having draconian laws requiring the reporting of suspected child abuse if the authority to which the report is made fails to act to investigate the complaint and act, if necessary, to protect the child.

**Secondly**, as far as can be accurately calculated, in the past 16 years no fewer than 40 children have been killed after having been reported to FACS as being in harm's way. The figure varies from year to year, but shows no sign of falling. This is quite obviously an appalling toll, but there is no point in the Ombudsman, year after year, drawing our attention to it and recommending reforms if those recommendations are ignored.

As an investigative journalist of many years standing, I practice accurate, fair and balanced reporting of the facts – not advocacy. However, on this occasion I feel that the official response to Levai's death has been so lacking in any sense of accountability, or in any recognition of the urgency to address the manifest failures of the system to save him, that I have to speak out. The children of this state deserve a better return on the \$1.7 billion a year of tax-payers' money which is supposed to protect them.

It seems to me that there are three areas which would merit the committee's attention:

1. I believe that Levai's death raises serious questions about the competence and diligence of the social workers and the police who were aware of allegations that the boy was being abused – including allegations of sexual abuse – and did little or nothing to investigate. Many questions remain unanswered, as they are beyond the scope of the trials and the inquest. Is a family of five living in a tent in the middle of winter with no transport and inadequate clothing really not in need of accommodation? Why did the joint investigative response team – a liaison between FACS and police established specifically to deal with cases such as this – do nothing to investigate the abuse? Why did the presence of a new partner in the mother's life not trigger a response from the 'New Partner Tool' established by the department in June 2012 to raise a red flag in such cases?

It has been claimed by the police that they are unable to respond to such queries because Levai's murderer is appealing his conviction. Any competent lawyer will tell you this is nonsense because the appeal will be heard by a judge/judges alone, not a jury. It was established many years ago by the so-called Salmon ruling that if a judge could be influenced by 'outside' commentary such as media reporting then he is not fit to be a judge. It is plainly open to the committee to examine this case and to bring justice to Levai.

2. I have come to the conclusion that the root of the department's failure to perform its duty in a prompt and diligent manner is its culture of secrecy, which shields its employees from any accountability. NSW is the only state in Australia, and – as far as I know the only place in the world – where it is illegal to report the name of a child who has died whilst 'known' to FACS. During my investigation I was continually reminded by FACS of the provisions of the Children and Young Persons

(Care and Protection) Act of 1998 – which I took as a thinly-veiled threat that I would be prosecuted if I revealed some of the information I had obtained. Information which should be in the public domain.

What this means is that the death of children such as Levai never attracts the public scrutiny that it should, because media gatekeepers judge that the public is less interested in anonymous victims – and are prevented from using any image of the child to illustrate the story. Indeed, the only reason Levai's name can be used is because the judge in case ruled that "...it would be disrespectful to his memory to completely anonymize him."

This is probably not what the framers of the legislation intended. Indeed, one wonders why such a draconian measure was ever included in the law. There is no evidence whatsoever that suppressing a dead child's name has any effect at all on the administration of justice or the welfare of other children. Indeed, in the United States many jurisdictions hold case conferences for children in care which the public and the media are free to attend and report on. I refer in particular to the State of Colorado, which is an acknowledged world leader in child protection.

Unfortunately Australia has no First Amendment and I realize that no side of politics would support such an open approach to child protection. But I submit that it would do a great deal – at no cost – to raise public awareness of child abuse and to make the people charged with preventing it more responsible and accountable if sections 21 and 105 of the Act were amended to allow the reporting of the names of children who have died in circumstances such as Levai's, and the names of people associated with the case. Sunlight, as that great judge Louis Brandeis said, is the best of disinfectants.

3. It is particularly disappointing that no-one in the FACS system is accountable to the public – not even the minister. When I

approached his office with a series of questions about the mismanagement of the Levai case my queries were all referred to 'the department.' This is in spite of the fact that Section 15 of the Act specifies that :

The Minister is to promote a partnership approach between the government, non-government agencies, families, corporations, business agencies and the community in taking responsibility for and **dealing with children and young persons who are in need of care and protection under this Act.**

The Department when approached also refused to provide anyone to answer questions relating to Levai's death on the record. Even its publicity officer insisted on anonymity! There is never going to be any improvement in the performance of any public institution if no-one is ever held to account. I would suggest that The Office of the Senior Practitioner, the official responsible for FACS internal inquiries, be abolished and replaced by a completely independent supervisor with a statutory responsibility to the public via parliament, not the Minister or the department.

**\*Ben Hills is a freelance Sydney journalist who has investigated cases of child abuse and murder over more than 30 years.**

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