

INQUIRY INTO CHILD PROTECTION

Organisation: National Child Protection Alliance

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National Child Protection Alliance

in association with the National Council for Children Post Separation

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NEW SOUTH WALES LEGISLATIVE COUNCIL GENERAL PURPOSE STANDING COMMITTEE NO.2

INQUIRY INTO CHILD PROTECTION

We thank the Legislative Council of New South Wales and the General Purposes Standing Committee for this opportunity to voice our concerns regarding the abuse of children in NSW and the failings of the child protection systems to offer protection for those children. We are therefore most grateful to you for permitting us to share our concerns for many hundreds of children in NSW who are subjected to violence and abuse, and are even killed, subsequent to parental separations and which frequently involve Family Law proceedings. There is a long and tragic list of children who have been killed following parental separation and continuing contact for the abusive parent.

A. Introduction

1. The National Child Protection Alliance and the National Council for Children Post-Separation are independent, not-for-profit, non-governmental organisations formed several years ago, by leading academics, researchers, senior lawyers, heads of children's organisations, and child advocates in Australia who share a common concern for the unconscionable number of Australian children who are suffering abuses and exploitations in all its forms and by a wide range of perpetrators.
2. Our expert advisory group has included such notable persons as the late Emeritus Professor Freda Briggs, Dr Elspeth McInnes, the late Barbara Holborrow Magistrate, our President Maurice Kriss former barrister at law, and many other leading academics and researchers in the child protection field.
3. Some of our expert advisers have been engaged in child protection services and in legal services in Children's Courts in Australia, New Zealand, and Britain for more than 40 years and have advised, assisted, and supported children, young people, and protective parents during those processes;
4. Our evidence is therefore based on many hundreds of cases referred to NCPA over these years for information, advice, guidance, and support where children had been harmed or exploited, or were at risk of being harmed.

B. The Terms of Reference of the General Purposes Committee

We shall be confining our evidence, views, and comments to the primary element of the Committee's Terms of Reference i.e.

- a) *The capacity and effectiveness of systems, procedures, and practices to notify, investigate, and assess reports of children and young people at risk of harm adequacy and reliability of the safety, risk, and risk assessment tools*

C. The size and nature of the problem of harm and exploitation of children in NSW

1. Domestic/Family Violence in New South Wales

Statistical records of NSW Police indicate that they receive **approximately 60,000** reports of incidents domestic violence every year. Some of these reports will of course involve the same families but if it is assumed that three (3) are received regarding each family (i.e. 20,000) and families have on average two (2) children, then it can be reasonably estimated that domestic/family violence in NSW affects at least **40,000 children and young people every year**.

Overlaps between Intimate Partner Violence and Child Abuse.

High rates of overlap between intimate partner violence and child abuse have been reported (e.g. Banks et al., 2008; Stanley and Goddard, 1993). Goddard and Hiller (1993) examined records for over 200 children presenting at the child protection unit of a metropolitan Australian hospital. There were frequent reports of intimate partner violence in the families of these children, with 55 per cent coexistence in physical abuse cases.

Appel and Holden (1998) conducted a review of 31 studies examining overlaps between intimate partner violence and physical child abuse. Coexistence figures ranged from six per cent to 100 per cent, with an average of 40 per cent. Although the majority of previous research has examined overlaps between physical intimate partner violence and physical child abuse (Appel and Holden, 1998), some research has examined other types of child abuse. Goddard and Hiller (1993), for example, found intimate partner violence in the families of 40 per cent of the sexual abuse cases examined. McGuigan and Pratt (2001) reported that, compared to other families, families in which intimate partner violence was present in the first six months of a child's life were twice as likely to have had a confirmed report of psychological abuse (other than intimate partner violence) or neglect by the time the child reached five years of age.

The frequent coexistence of intimate partner violence and child abuse can be accounted for in a number of ways.

The perpetrator of intimate partner violence may also perpetrate against children in the same family (Appel and Holden, 1998). Conversely, mothers who are victims of intimate partner violence may be abusive towards their children (Hartley, 2004; Margolin et al., 2003).

Alternatively, children may be injured while attempting to intervene in incidents of intimate partner violence (Edleson et al., 2003), or while being carried by the adult victim at the time of assault.

This brief overview makes clear both that children living with violence between their caregivers are at substantial risk of harm, and that such violence frequently coexists with other types of child abuse. What is less clear is how the experiences of children who live with intimate partner violence are best conceptualised.

Research into the effects of intimate partner violence on children began in the early 1980s (Hershorn and Rosenbaum, 1985; Hinchey and Gavelek, 1982; Jaffe et al., 1985; Rosenbaum and O'Leary, 1981; Wolfe et al., 1985). Since then, the literature focusing on children living with intimate partner violence has grown exponentially (see Bedi and Goddard, 2007). A large amount of research has also examined relationships between intimate partner violence and child abuse (see Appel and Holden, 1998).

*Children forced to live with intimate partner violence experience a range of negative outcomes (see Bedi and Goddard, 2007; Buckley et al., 2007; Holt et al., 2008). Some children experiencing such violence develop **post-traumatic stress disorder**. (McCloskey and Walker, 2000). **Depression** (Jouriles et al., 1996), **anxiety** (Kerig, 1998), **loneliness** (McCloskey and Stuewig, 2001) and **lowered self-worth** (O'Brien et al., 1997) have all been reported in samples of child victims of intimate partner violence.*

Children living with intimate partner violence may also have **school difficulties**, with reports of **lowered verbal intellectual function** (Huth-Bocks et al., 2001) and **reading ability** (Mathias et al., 1995). Unsurprisingly, **rates of aggressive behaviour are higher in children living with intimate partner violence** than in control groups (Graham-Bermann and Levendosky, 1998). In addition, intimate partner violence may substantially affect the relationship between children and the non-abusive/victimised parent (see Humphreys et al., 2006a, 2006b, 2006c).

Although elevated rates of psychological problems have been reported in groups of child victims of intimate partner violence, there is substantial variability in individual outcomes (Skopp et al., 2005), with some children apparently showing few or no difficulties (Clements et al., 2008; Edleson, 1999a). This variability may relate to the nature of the experience, with the frequency and severity of violence likely to have an impact on outcomes (Kantor and Little, 2003). In addition, recent research has focused on identifying child-related factors that may mediate the association between intimate partner violence and psychological difficulties in children (e.g. Skopp et al., 2005).

Intimate Partner Violence and Child Abuse: A Child-Centred Perspective

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Starting with the ACEs (Adverse Childhood Experiences) study in 1998 medical **researchers have established the enormous and long term harm to children from being exposed to traumatic events such as witnessing domestic violence and direct physical or sexual abuse**. The research establishes that there is a cumulative adversity so that the more exposure a child suffers the greater the chance of serious medical consequences and the more serious those consequences are likely to be. There is now a substantial body of medical research that establishes not only the enormous harm to children, but the many mechanisms that result in increased illnesses and injuries during their childhood and for the rest of their lives. When court or other professionals fail to take sensible actions to safeguard children, or give more consideration to less important factors they are literally reducing the life expectancy of these children. –
 Serious Health Consequences to Children Witnessing Domestic Violence
 New Research Requires Changes in Custody Court Practices By Barry Goldstein 2015.

Family annihilation

A study has been published that analyses three decades of criminal records of British murder cases, drawing up psychological profiles of the four types of men who kill members of their own families.

"Family annihilators have received little attention as a separate category of killer," said Professor David Wilson, one of the paper's three authors, and Director of the Centre of Applied Criminology at Birmingham City University. Newspaper articles from 1980 to 2012 were used to find and analyse cases for the study, which is [published in the Howard Journal of Criminal Justice](#).

Of the 71 family "annihilators" identified for the study, 59 of them were male and 55 percent of them were in their thirties when they committed the crime.

The frequency with which these kind of murder cases are occurring is also increasing, the study found. Over half of the murders that were identified took place in the first decade of the 21st century.

"I usually deal with murder and serial murder, but this was a very dark place to go," Wilson tells Wired.co.uk. "So-called ordinary men who were loving husbands and fathers could do quite extraordinarily appalling things to their partners, ex-partners and their children."

Family annihilators were overwhelmingly not known to criminal justice or mental health services. For all intents and purposes these were loving husbands and good fathers, often holding down high profile jobs and seen publicly as being very, very successful

Professor David Wilson, Birmingham City University

Family break-up -- including related issues, such as access to children -- was the most common cause of family murders, followed by financial troubles, honour killings and mental illness. 81 percent of men who killed members of their family attempted to kill themselves afterwards.

People who are murdered usually have some kind of existing relationship with their murderer, Wilson says, but those who committed family annihilation were in no way "typical" murderers. "What's interesting and different about this category of murderer, is that those typical murderers will be well known to the criminal justice system, they'll have a criminal record, or they'll be known to the mental health services or drugs counsellors. Family annihilators were overwhelmingly not known to criminal justice or mental health services. For all intents and purposes these were loving husbands and good fathers, often holding down high profile jobs and seen publicly as being very, very successful. They were simply not on the radar."

In many instances of violence and abuse, the perpetrator can be seen to be exhibiting symptoms of psychopathic personality disorders e.g. absence of compassion and empathy for their victims, refuting any accusations of blame and commonly blaming the victims for causing his behaviours, and being completely without remorse. Such personalities often also tend to be cunning and manipulative in convincing third parties of their innocence and that they have caring, concerned features. Such cunning, deceitful, and manipulative behaviours have been labelled as 'Institutional Grooming' and be symbolic of a Jeekyll and Hyde character. The effects can frequently be seen in response by friends and relatives of the victims who believe the perpetrator is a good and kind person and not the fiend who is perpetrating the violence and abuse. The same can be seen when media report on interviews with murders and rapists and similar criminals. "But he always seemed such a nice and friendly bloke, who wouldn't hurt anyone!" they will say.

This dual personality is frequently observable in Family Court proceedings and even deceives Court personnel, lawyers, psychiatrists and psychologists who act as Consultants. Some examples from our cases include e.g.

In one case the mother suspected the female supervisor at a Contact Centre of having been manipulated and that she and the child's father may be in a relationship. She said nothing at the time, however, a couple of years later she found evidence when she saw a photo of them together on social media.

In other cases, the caseworkers too are often 'groomed' by perpetrators to believe the mother is vexatious and is coaching the child to make trouble for him. We have found that gullible and vulnerable caseworkers will often empathise and sympathise with an alleged child abuser, and write biased reports because of a lack of sufficient training. It is crucial that caseworkers are able to recognise the tactics of suspected sexual perpetrators in child abuse cases. This is not happening now and in these aspects of dual personalities extra training is vital.

If the abuser is self-representing they will find it easy to control the case. As a pro se 'lawyer' they must be consulted and must agree and this can delay the case for months. In one of the rare cases when child sexual abuse had been substantiated the judge ordered, 'urgent counselling' for the child to begin one week later. This was delayed for 7 months by the self-representing father, who somehow found ways and means of controlling the situation to his advantage as he knew that in counselling, the child was likely to disclose far more of the abuse thereby leading to the likelihood that contact would be stopped.

The tactics of the dual-personality psychopathic abuser are denial, then blaming the victim and/or others, minimising the offences and their effects, and if these are unsuccessful, to claiming they were lapses of self-control or caused by depression and would never recur. Family Courts find such defences as very convincing but they frequently do recur and result in further harms to the children.

2. The abuse and exploitation of Children and Young People in NSW

Very considerable caution has to be exercised in examining the extent of child abuse in Australia due to a number of factors. Principally that child protection is a State duty and each State has a

separate and distinct set of laws, policies, procedures, and practices. There is therefore no standardisation or uniformity in the provision of child protection services and no guarantee that every child or young person will receive the same quality of service. There can also be considerable variation in the quality of services within States.

This caveat has to be applied to all statements regarding the number and variety of child abuse data.

One in five Australian children are abused - physically, emotionally, psychologically, sexually, or any combination of these abuses. Many are emotionally and physically neglected. Every year in Australia, reports to child protection authorities are made by concerned Australians of the abuse of approximately 300,000 children. However, research studies show that only 40% of Australians would make such reports to the statutory authorities if they became aware that a child or young person was being abused. It has also been reasonably estimated that 1.2 million Australian women have suffered violent assault within their own homes and many will have young children who are abused during such incidents. It is highly likely therefore that child abuse in Australia is seriously under-reported and there are many more children who are suffering abuse.

Of the reported incidents of child abuse, child protection authorities investigate less than half of such reports, but over 40% are substantiated. Substantiation means that there is sufficient evidence of abuse to require immediate protective action or other forms of intervention. Unsubstantiated does not mean that the child has not been abused, only that there is insufficient evidence to take interventive action.

In regard to physical abuse, research suggests that both mothers and fathers may physically abuse children with 55.6% experiencing abuse from their father/stepfather and 25.9% experiencing abuse from their mother/stepmother.

Only a person who has a responsibility to provide appropriate care for a child can fail to provide that care, therefore neglect is predominantly a parental issue.

Evidence suggests that mothers are more likely than fathers to be held responsible for child neglect. This is consistent with the fact that mothers tend to be the primary caregiver and are usually held accountable for ensuring the safety of children even in two-parent families.

In light of societal views on gender roles, it has been argued that this may constitute unreasonable "mother blaming", particularly of single mothers. In these cases, the problems for the parent distracts them from providing the necessary care for their child. A strong correlation exists between chronic neglect of children and parental drug and alcohol use, poverty, domestic violence, mental health problems.

Evidence overwhelmingly indicates that the majority of child sexual abuse is perpetrated by males. In all cases of child abuse involving male perpetrators, over 26% were associated with sexual abuse compared to just 2% of cases involving female perpetrators.

In cases of children who had been sexually abused, 13.5% identified that the abuse came from their father/stepfather, 30.2% was perpetrated by another male relative, 16.9% by a family friend, 15.6% by an acquaintance/neighbour and 15.3% by other known person.

American studies have shown that males made up 90% of child rapists and sexual abusers perpetrators, while 3.9% of perpetrators were female with a further 6% classified as "unknown gender".

It can be reasonably and conservatively estimated that every year in Australia, over 40,000 Australian children and young people are being sexually abused by a parent, relative, or family friend.

'Child protection statistics tell us how many children come into contact with child protection services. They are the only data routinely collected in Australia that give an idea of the number of children experiencing child abuse and neglect. However, there are several problems with these data that has resulted in some children who have been abused or neglected not being included in child protection statistics; and some who have not been abused or neglected being included in child protection statistics. Child protection statistics are the best available indicator of the extent of the problem of child abuse and neglect in Australia. However, they do not reveal with accuracy how many children in the community have been abused or neglected.' = AIHW 2015

NSW data are not comparable with other jurisdictions. NSW has a differential investigation response whereby an investigation may be undertaken over two stages. Only the more serious cases lead to a recorded substantiation outcome. Following the NSW 'Keep Them Safe Reforms', the 2010-11 data reflect the first full year of reporting under legislative changes to the NSW *Children and Young Persons (Care and Protection) Act 1998* proclaimed on 24 January 2010.

3. Total Substantiations (First Stage) of child abuse in NSW 2013/2014

Total substantiations - 26,215

Total Substantiations (Second Stage) of child abuse in NSW 2013/2014

Emotional Abuse	-	4,767	39%
Neglect	-	4740	28%
Physical Abuse	-	2686	19%
Sexual Abuse	-	2881	14%
TOTAL		15974	

Domestic Violence and the inherent abuse of children

Statistics from Domestic Violence organisations and research studies have consistently shown that in the period immediately after parental separation is a time when children are in most danger from abuse and even death perpetrated by a violent parent. Such abuse of children occurs during incidents of intimate partner violence or may be direct abuse of the child.

The report, *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence*, represents the first systematic study of global data on the prevalence of violence against women – both by partners and non-partners. Some 35% of all women will experience either intimate partner or non-partner violence. The study finds that intimate partner violence is the most common type of violence against women, affecting 30% of women worldwide.

A significant group of children in NSW who have suffered or may be suffering abuse prior to or after parental separation. Statistics from Domestic Violence organisations and research studies have consistently shown that in the period immediately after parental separation is a time when children are in most danger from abuse and even death perpetrated by a violent parent. Such abuse of children occurs during incidents of intimate partner violence or may be direct abuse of the child.

4. Impact on physical and mental health

World Health Organisation Report: The WHO report details the impact of violence on the physical and mental health of women and girls. This can range from broken bones to pregnancy-related complications, mental problems and impaired social functioning.

"These findings send a powerful message that violence against women is a global health problem of epidemic proportions," said Dr Margaret Chan, Director-General, WHO. "We also see that the world's health systems can and must do more for women who experience violence."

The report's key findings on the health impacts of violence by an intimate partner were:

- **Death and injury** – The study found that globally, 38% of all women who were murdered were murdered by their intimate partners, and 42% of women who have experienced physical or sexual violence at the hands of a partner had experienced injuries as a result.
- **Depression** – Partner violence is a major contributor to women's mental health problems, with women who have experienced partner violence being almost twice as likely to experience depression compared to women who have not experienced any violence.
- **Alcohol use problems** – Women experiencing intimate partner violence are almost twice as likely as other women to have alcohol-use problems.
- **Sexually transmitted infections** – Women who experience physical and/or sexual partner violence are 1.5 times more likely to acquire syphilis infection, chlamydia, or gonorrhoea. In some regions (including sub-Saharan Africa), they are 1.5 times more likely to acquire HIV.
- **Unwanted pregnancy and abortion** – Both partner violence and non-partner sexual violence are associated with unwanted pregnancy; the report found that women experiencing physical and/or sexual partner violence are twice as likely to have an abortion than women who do not experience this violence.
- **Low birth-weight babies** – Women who experience partner violence have a 16% greater chance of having a low birth-weight baby.

"This new data shows that violence against women is extremely common. We urgently need to invest in prevention to address the underlying causes of this global women's health problem." said Professor Charlotte Watts, from the London School of Hygiene & Tropical Medicine.

"Holden (2003), noting the absence of adequate terminology, proposed that describing children as 'exposed' to intimate partner violence better reflects the various ways in which children experience living with violence in the home. Although this description captures more of the complexity of children's experiences than does the term 'witness', it also implies a passivity on the part of children. This is not supported by evidence of children's intervention in intimate partner violence (e.g. see Edleson et al., 2003).

An interesting approach to describing experiences of violence in childhood is taken by Saunders (2003). Noting that isolated forms of violence against children such as sexual abuse, physical abuse and living with intimate partner violence frequently co-occur."..... "It has previously been argued that even when visible, children subjected to abuse are frequently rendered inaudible by their experiences (e.g. Mudaly and Goddard, 2006). Unfortunately, experiences that silence children include not just abuse; children may also be silenced by the legal and medical systems that seek to assist them (Goddard, 1996).

Children forced to live with intimate partner violence are in a unique position to inform adults about the experience of living in these circumstances, as well as about the responses of the legal, welfare and medical systems. The opportunity to have one's perspective heard may also have important therapeutic implications for victims of trauma (McLeod, 2008; Mudaly and Goddard,

2006). A focus on listening to children who have lived with intimate partner violence may therefore have an intrinsic value for the children involved, as well as improving adults' understanding of how children experience intimate partner violence (Houghton, 2006). Finally, as demonstrated in previous research, children, even young children, are able to provide insightful perspectives on their experiences of abuse (Joseph et al., 2006; Mudaly and Goddard, 2006).

It is now commonly known that children and young people living in a household where intimate partner violence occurs suffer severe and long-lasting emotional and psychological harms. i.e.

'Psychological abuse, however, has been defined as 'sustained, repetitive, inappropriate behaviour that damages or substantially reduces the creative and developmental potential of mental facilities and mental processes' (O'Hagan, 2006, p. 55). Emotional abuse has been described as 'sustained, repetitive, inappropriate, emotional responses to the child's felt emotions and their accompanying expressive behaviour' (O'Hagan, 2006, p. 46).'

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5. Child Sexual Abuse

Child Sexual Abuse is common.

'The sexual abuse of children is a serious social concern in Australia. According to the Australian Bureau of Statistics' (ABS 2005) Personal Safety Survey, 12 percent of women and 4.5 percent of men in Australia report having been sexually abused before the age of 15 years. The survey defined child sexual abuse as 'any act, by an adult, involving a child under the age of 15 years in sexual activity' (ABS 2005: 12). In total, the ABS (2005: 42) estimated that in 2005, 1,294,000 people living in Australia (337,400 males and 956,600 females) had experienced sexual abuse before the age of 15. The Australian Institute of Health and Welfare's (AIHW 2010) data on child protection indicate that during the 2008–09 financial year, there were 5,591 substantiations of child abuse notifications for sexual abuse of children aged 17 years or less. This figure does not reflect the total number of incidents of child sexual abuse, as much child sexual abuse goes unreported.

The prevalence of child sexual abuse is difficult to determine for a variety of reasons and estimates vary considerably. Finkelhor (1994) found that internationally, estimates vary from between seven percent and 36 percent for women, and three and 29 percent for men. A random sample of 2,869 18 to 24 year olds in the United Kingdom found that 11 percent reported having been sexually abused before the age of 13 years (Cawson et al. 2000). Price-Robertson, Bromfield and Vassallo's (2010) summary of Australian prevalence studies estimates that four to eight percent of males and seven to 12 percent of females experience penetrative child sexual abuse and 12 to 16 percent of males and 23 to 36 percent of females experience non-penetrative child sexual abuse.

As Price-Robertson, Bromfield and Vassallo (2010) suggest, the term 'child sexual abuse' refers to a wide variety of behaviours, including both contact offences (e.g. fondling genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or another object, fondling of breasts) and non-contact offences (e.g. voyeurism, exhibitionism and exposing the child to pornography). Definitions of child sexual abuse adopted by researchers can influence the prevalence of abuse reported (Price-Robertson, Bromfield & Vassallo 2010).

It has been well-documented that the sexual abuse of children has a range of very serious consequences for victims. Zwi et al. (2007) list depression, post-traumatic stress disorder, antisocial behaviours, suicidality, eating disorders, alcohol and drug misuse, post-partum depression, parenting difficulties, sexual re-victimisation and sexual dysfunction as some of

the manifestations of child sexual abuse among victims (see also Abel & Harlow 2001; Kendall-Tackett, Williams & Finkelhor 2001)
Australian Institute of Criminology 2011

Mazza and Dennerstein in Australia (2001) showed that 36% of Australian women had experienced CSA before the age of 16 and this was defined as contact. The figure of around 1 in 3 female and 1 in 4 male children is replicated in many studies all over the world. On the basis of these well-established data, it is to be expected that families proceeding through FC will be no different and therefore we need to consider that 1 in 3 female and 1 in 4 male children coming before the court may be the victim of CSA. (In fact there is good reason to consider that these families are more dysfunctional than a community sample.) It is extremely difficult to determine that sexual abuse did not happen.

This is the major problem in considering the possibility of false allegations. Once made such allegations are difficult to disprove. There are strongly confounding presentations, e.g. a child may exhibit attachment and lack of fear towards a known abuser and a child may exhibit mistrust and fear towards a parent who has been falsely accused.

Most Child Sexual Abuse is unreported. When reported it is hard to prove and most studies show that false allegations occur in a minority of cases. Carolyn Quadrio
http://www.aic.gov.au/media_library/conferences/2003-abuse/quadrio.pdf

6. The Intersection of the State Child Protection Laws and the Federal Family Law

Of particular concern to us at the moment are the numbers of reports and referrals we are receiving regarding children and young people whose future care and welfare are being determined by Family Courts regarding their residency with a particular parent and contact arrangements with the non-resident parent.

In many of such cases the Courts are being guided by the opinions of certain professional groups, and a pattern and trajectory can be observed whereby children appear to be being given contact with and even into residency with parents where they may be at very high risk of abuse.

This pattern and trajectory of such cases tends to have the following consistent features:

- Children are accused of fabricating their allegations of being abused (despite the legal presumption in the Evidence Act that children must be treated as competent witnesses and their evidence to be treated as reliable and credible);
- Parents who convey the children's allegations to Courts are accused of being 'Delusional' or of having Personality Disorders (without a competent psychiatric assessment in accordance with psychiatric Good Practice);
- Parents alleging abuse are accused of seeking to 'Alienate' the children against the other parent (despite the refusal of the American Psychiatric Assn to include the theory of Parental Alienation Syndrome in the DSM V and widespread condemnation of PAS among the relevant professional community for its lack of scientifically based research);
- The manipulative and grooming behaviours by accused abusive parents of the legal processes and evidence of their behaviours which meet the diagnostic criteria of Anti-Social Personality Disorders (Psychopathy) but a failure to conduct a psychiatric Assessment on such parents.

The Family Courts do not have the statutory powers, nor the expertise, nor the resources to investigate allegations of child abuser and domestic violence. Federal Parliamentary Committee (2005 'Every Picture Tells a Story' and Chief Justice Diana Bryant – Brisbane Speech 2009.

More recently, Chief Justice Bryant has admitted that the Family Courts are in a state of chaos and turmoil in regard to examining allegations of child abuse and the future risk factors to children and young people. E.g.

"Chief Justice Bryant was not surprised by the number of submissions on the family law system. "The family courts are currently overwhelmed by urgent applications regarding children in which allegations of violence are raised and lack adequate resources to deal with them in a thorough way, pending a complete and final hearing," she said.

Chief Justice Bryant said judges decided on parenting orders in the best interest of the child, but parties to disputes had to wait more than a year for a final hearing, where all family violence allegations - usually involving denials - could be tested.

*"This delay is unacceptable and leads to the further problem that interim orders - **which are made without a thorough investigation of allegations from both sides** - will have to be in place until the final hearing, rather than being only in place for a short period," she said. Early risk assessments and expert reports would help, but were generally not available."*

Chief Justice Bryant's singular and simplistic solution to these problems is to seek a further \$17 Million to add to the already \$6 Billion costs of the Family Court system. A defective, deficient, and dysfunctional system cannot be improved simply by investing more money into it when it requires root and branch reforms.

The NSW government are responsible under its own laws for the safety of children and their protection from harms and exploitation. The very serious question which the NSW government must address is therefore:

Can the NSW government continue to permit the Family Court system to place children with abusive, dangerous, and toxic parents to continue their abuses of those children by an deficient, defective, and dysfunctional Family Court system which has been so readily admitted by its Chief Officer.?

Limitations of Family Courts where there are allegations of Child Abuse

Where such allegations are made in Family Court proceedings, there is provision in the Family Law Act for them to be referred to the State Child Protection authority. Parents can submit a Form 4 for this purpose and frequently do but State Authorities only become involved in 25% of such cases. **False allegations of child abuse to Family Courts occur in less than 9% of cases (55% are made by fathers and 45% by mothers)** which contradicts the current mythology which exists in the Family Courts. [Monash University – Thea Brown].

In the minority of cases which the State investigate some are 'substantiated' but this is often disregarded by the Family Courts, but if the allegations are 'unsubstantiated' this is accepted as proof that the allegations are false and the alleging **Protective Parent** is frequently punished by the Court for raising them.

'Substantiated' means that it is considered that there is sufficient evidence to satisfy the civil standard of evidential prof. i.e. Balance of Probabilities, although there may not be sufficient evidence to satisfy the criminal standard.

'Unsubstantiated' does not mean that the child has not been abused, only that there is insufficient evidence to prove such abuse to the civil standard.

In the absence of a State investigation or as well as, the Family Courts appoint consultants, usually psychiatrists or psychologists, and the focus turns back on the alleging Protective Parent and not on the allegedly Abusive Parent.

Invariably, the alleging **Protective Parent** is labelled by psychologists as having Borderline Personality Disorder (frequently a misdiagnosis as many such mothers are suffering from Complex Post Traumatic Stress after suffering years of violence and abuse), the children's disclosures of abuse (in most cases sexual abuse) are disregarded and allegations are made by the Consultants that the mother has 'coached' the children, despite there being no evidence whatsoever that this has occurred. Such scenarios are readily accepted by the Family Courts, despite the fact that the Consultants have neither the training, nor the expertise, nor the statutory authority to investigate child abuse allegations, and frequently contaminate and corrupt the evidence on which the statutory authorities would rely if they investigated the allegations.

Family Courts welcome such analyses as it then makes it easier for them to apply the shared parenting provisions by either giving equal parental responsibilities to both parents or in many cases ordering the children into residency with the **allegedly abusive parent** (there are cases of children being so placed with male parents with convictions for child sexual abuse, paedophilia, rape, and serious violence including violence against the **Protective Parent**.) and for the **Protective Parent** not to be allowed contact for 6 months and then only under strict supervision. In one instance a mother is not allowed contact with her 8-year-old son until he reaches the age of 18 years.

After children and young people are ordered into residency with the **Abusive Parent**, they frequently continue to disclose and report abuse, but they are not believed and **Courts often order that if they continue to disclose abuse, this must not be reported to the police or the State Authorities**. If the child exhibits extreme emotional and behavioural disorders as a consequence of the continuing abuse, it is also ordered by the Family Courts that they must not receive psychological counselling.

Although it is a requirement of the Family Law Act 1975, that Family Courts must inform the State CP authorities where allegations of child abuse and domestic violence have been made, this is rarely done, and State authorities are therefore involved in less than 25% of such cases.

Child Protection and Police investigations in such instances tend to be cursory and a simple 'Substantiated' or 'Unsubstantiated' opinion is given to the Family Courts.

However, in many of the cases which we have received the State Child Protection Authority have been involved in various ways but have failed to act to protect the children.

The prevailing view among CP workers and Police appears to be that the Family Courts will override any concerns they may have, in a mistaken belief that Federal Family Laws nullify and supersede State laws and it is pointless therefore to become involved or to intervene.

However, **the Family Law does not nullify nor supersede State laws regarding child protection.** i.e.

Family Law Act 1975 Section 69ZK Child welfare laws not affected

(1) A court having jurisdiction under this Act **must not make an order under this Act (other than an order under Division 7) in relation to a child who is under the care (however described) of a person under a child welfare law** unless:

- (a) the order is expressed to come into effect when the child ceases to be under that care; or
- (b) the order is made in proceedings relating to the child in respect of the institution or continuation of which the written consent of a child welfare officer of the relevant State or Territory has been obtained.

(2) Nothing in this Act, and no decree under this Act, affects:

- (a) the jurisdiction of a court, or the power of an authority, under a child welfare law to make an order, or to take any other action, by which a child is placed under the care (however described) of a person under a child welfare law; or
 - (b) any such order made or action taken; or
 - (c) the operation of a child welfare law in relation to a child.
- (3) If it appears to a court having jurisdiction under this Act that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in paragraph (2)(a) in relation to a child, the first-mentioned court may adjourn any proceedings before it that relate to the child.

In the vast majority of instances, there is an abusive parent towards the children and a protective parent, who has usually themselves suffered violence and abuse. Instances where both parents are abusing their children are extremely rare. The protective parent often opposes the abusive parent having a shared parenting arrangement and the Family Courts are extremely punitive towards such protective parents and if they continue to oppose such an arrangement, the Family Courts order that the abusive parent will have sole parental responsibility and residency of the children.

The violence and abuse continues. Domestic violence perpetrators know this and that by obtaining custody of the children, it will give them the opportunity to continue the violence and abuse.

The Family Courts are in fact frequently undoing the very considerable advances which are being made by State and Federal governments in protecting women and children from domestic violence, and are allowing the perpetrators to gain control over their victims and to continue in their abuse and violence..

This has been seen in alarming frequency when children have been killed, most recently in the case of Luke Batty and previously with Darcey Freeman who was thrown from Melbourne's Westgate Bridge by her father, and the three Farquharson boys whose father drove his car into a dam and drowned them. There are many similarly horrendous cases in the last decade. Family Courts are completely unable to assess the risks to children in such circumstances or such situations would not have arisen nor would they have done in many thousands of other instances where children have been harmed after an abusive, violent parent has been given contact or Shared Parenting residency.

After the children are placed in the custody of the abusive parent, the children continue to complain and disclose the ongoing abuse to the protective parent, and often to doctors/psychologists etc. and which often involves sexual abuse.

When the protective parent reports these further disclosures to State Child Protection workers they are often told that they must stop any further contact or they must not return the children to the abusive parent, or they, the protective parent, will be failing to protect their child and the State CP workers will take action against them. This puts the protective parent in a highly invidious position of being caught between breaching a Federal Family Law or acting against a State law – they must decide either to send their children back to the abusive parent or to breach the Family Court Orders, knowing it will result in their losing residency of the children and being allowed little further contact with them.

If the Protective Parent reports these further disclosures of abuse to the Family Court, the Courts then invariably further order that the children's complaints and disclosures must not be reported to the State CP authorities and the children must not be taken to psychologists if they are exhibiting emotional and behavioural disorders without the permission of the

allegedly abusive parent. (A clear contravention of State laws and children's rights to medical treatment).

In no other area of the law, is the permission of the alleged offender required before the matter can be reported to the Police or the State authority. Nor are the victims of such offenders ordered back to live with the alleged offender, as there is an exceedingly high risk that the victims may be threatened or coerced into changing their testimony or withdrawing their allegations. Yet this is a frequent occurrence in Family Courts.

RECOMMENDATIONS

We would make the following recommendations for the Committee's consideration:

Recommendation 1. - UN CONVENTION ON THE RIGHTS OF CHILDREN AND YOUNG PEOPLE

The UN Convention on the Rights of the Child was signed by the Australian government in 1991.

However, it has never been enacted into either the Commonwealth law nor the laws of the States and Territories and the effect of this is that children and young people have only nebulous and notional rights and have no means of enforcing those rights, nor of having recourse to law if their rights are violated and abused, if necessary in the Courts.

Recommendation: We would recommend that the NSW government be the first State in Australia to fully embed the UN Convention on the Rights of the Child in a single Act of Parliament;

Recommendation 2. - THE PARTICULAR RIGHT OF CHILDREN AND YOUNG PEOPLE TO HAVE THEIR VIEWS AND WISHES CONSIDERED IN ANY ADMINISTRATIVE OR LEGAL PROCEEDINGS WHICH MAY AFFECT THEIR FUTURE CARE AND WELFARE

Recommendation: That in all proceedings where decisions are being taken in regard to the future care and welfare of children, that children and young people have the right to present their views directly in such proceedings, or to appoint and instruct a law or legal advocate to present their views;

Recommendation 3. - THE RIGHTS OF CHILDREN TO BE PROTECTED FROM HARM AND EXPLOITATIONS

Where children and young people may be involved in Family Law proceedings, that the Director-General instruct child protection staff, and police officers are similarly instructed, that they must intervene and act in accordance with NSW Child Protection Laws where they consider there is clear and convincing evidence that a child has been caused harm or is at risk of harm and/or exploitation and making full utilisation of the State Laws in such matters.

i.e.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 - SECT 20

Request for assistance by child or young person

20 Request for assistance by child or young person

A child or young person may seek assistance from the Director-General.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 - SECT 22

22 Director-General's response to requests for assistance

(1) If a person or non-government agency seeks assistance from the Director-General under this Part (whether or not a child or young person is suspected of being in need of care and protection), the Director-General must:

- (a) provide whatever advice or material assistance, or make such referral, as the Director-General considers necessary, or
- (b) take whatever other action the Director-General considers necessary, to safeguard or promote the safety, welfare and well-being of the child or young person.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 - SECT 36

Principles of intervention

36 Principles of intervention

(1) In deciding the appropriate response to a report concerning a child or young person, the Director-General must have regard to the following principles:

- (a) The immediate safety, welfare and well-being of the child or young person, and of other children or young persons in the usual residential setting of the child or young person, must be given paramount consideration.
- (b) Subject to paragraph (a), any action must be appropriate to the age of the child or young person, any disability the child, young person or his or her family members have, and the circumstances, language, religion and cultural background of the family.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 - SECT 34

Taking of action by Director-General

34 Taking of action by Director-General

(1) If the Director-General forms the opinion, on reasonable grounds, that a child or young person is in need of care and protection, the Director-General is to take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child or young person.

(2) Without limiting subsection (1), the action that the Director-General might take in response to a report includes the following:

- (a) providing, or arranging for the provision of, support services for the child or young person and his or her family,
- (b) development, in consultation with the parents (jointly or separately), of a care plan to meet the needs of the child or young person and his or her family that:
 - (i) does not involve taking the matter before the Children's Court, or
 - (ii) may be registered with the Children's Court, or
 - (iii) is the basis for consent orders made by the Children's Court,
- (b1) development, in consultation with one or more primary care-givers for a child or young person, of a parent responsibility contract instead of taking a matter concerning the child's or young person's need for care and protection before the Children's Court (except in the event of a breach of the contract),
- (c) ensuring the protection of the child or young person by exercising the Director-General's emergency protection powers as referred to in Part 1 of Chapter 5,
- (d) seeking appropriate orders from the Children's Court.

Note: In considering what action to take under this section, the Director-General is to have regard to the grounds under section 71 on which the Children's Court may make a care order.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 - SECT 46

Emergency care and protection orders

46 Emergency care and protection orders

- (1) The Children's Court may make an order for the emergency care and protection of a child or young person if it is satisfied that the child or young person is at risk of serious harm.
- (2) The order, while in force, places the child or young person in the care responsibility of the Director-General or the person specified in the order.
- (3) The order has effect for a maximum period of 14 days, unless the order is extended in accordance with subsection (4).
- (4) An order under this section may, while the order remains in force, be extended once only for a further maximum period of 14 days.
- (5) If an application is made for the extension of an order under this section before the order expires, the order remains in force until the Children's Court makes a final determination on the application, even if that occurs after the original expiry date.

Recommendation : We recommend that the NSW government reinforce with its social work staff and its police personnel, to act immediately to safeguard and protect child involved in Family Law proceedings where there are allegations that children may be suffering direct harm or during incidents of domestic violence.

Recommendation 4. - PROTECTIVE PARENT RESPONSIBILITY CONTRACT

When a **Protective Parent** has separated from an abusive, violent parent, that parent and the children remain at very serious risk of harm. Such children need every protection that the law can provide.

NSW State uniquely has a provision in its laws which can offer children immediate protection. It is the legal provision for a **Parent Responsibility Contract under the Children and Young Persons (Care and Protection) Act 1998 Section 38A**

i.e.

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) ACT 1998 - SECT 38A

Parent responsibility contracts

38A Parent responsibility contracts

(1) A

"parent responsibility contract" is either or both of the following:

- (a) an agreement between the [Secretary](#) and one or more [primary care-givers](#) for a [child](#) or [young person](#) that contains provisions aimed at improving the [parenting](#) skills of the [primary care-givers](#) and encouraging them to accept greater responsibility for the [child](#) or [young person](#),
 - (b) an agreement between the [Secretary](#) and either or both expectant [parents](#) whose unborn [child](#) is the subject of a pre-natal [report](#) under section 25 that contains provisions aimed at improving the [parenting](#) skills of the prospective [parent](#) and reducing the likelihood that the [child](#) will be at risk of significant harm after birth.
- (2) A [parent responsibility contract](#) must:
- (a) be in writing, and
 - (b) be signed by the [Secretary](#) and each [primary care-giver](#) or each expectant [parent](#) who is to be a party to the contract, and
 - (c) be in the form (if any) prescribed by the regulations, and
 - (d) be registered with the [Children's Court](#), and
 - (e) specify the period (not exceeding 12 months) during which the contract will (unless varied under section 38B) be in force, commencing on the date on which the agreement is registered with the [Children's Court](#), and
 - (f) specify the circumstances in which a breach of a term of the contract by a party to the contract will authorise the [Secretary](#) to file a [contract breach notice](#) with the [Children's Court](#).

This would bring such children under the protection of the Department of Family and Community Services, but without necessitating Care Proceedings in the Children's Courts, although this could ultimately be an option if a child is not sufficiently protected. It also recognises the duty and responsibility of the NSW State government to protect children from harm and exploitation under these Acts and the UN Convention on the Rights of the Child.

It similarly recognises that very often one parent may be an abusive parent while the other parent is a Protective Parent, but who requires the support and assistance and a form of legal protection by the State Authorities, before determinations are made by the Family Courts regarding who the child will live with and the contact arrangements for the non-resident parent.

It would require only a minor amendment to this section of the existing law to include the term 'Protective' Parent Responsibility Contract.

It would provide a **Gateway** for protecting children who would otherwise continue to suffer abuse and violence by a violent, toxic, and dangerous parent after separation.

By introducing this amendment it would enable the Director-General and his staff to work in cooperation with protective parents in protecting this group of children, whilst a comprehensive and thorough investigation is conducted into the abuse allegations and to meet the requirements in certain situations where there are concerns and reasonable grounds to believe that children have been abused, or are at risk of abuse.

These amendments, although fairly minor, will have very significant implications in protecting a particular group of children, but will involve no additional resources, and may in fact assist in the more efficient and effective use of resources.

If this amendment were made it would not be necessary to undertake a full investigation of the alleged abuse in order to satisfy the civil standard of evidential proof [a balance of probabilities] and as required by the Family Courts, nor the criminal standard of evidential proof [beyond reasonable doubt], as such proceedings are not envisaged at this stage.

It will have the additional benefit of giving the Director-General the opportunity in due course to conduct a comprehensive and thorough investigation during the six-month period of the Contract in the knowledge that the child is being protected.

It will also bring such children under the protection of the Department of Family and Community Services, but without necessitating Care Proceedings in the Children's Courts, although this could ultimately be an option if a child is not sufficiently protected. This recognises the duty and responsibilities of the State government to protect children from harm and exploitation under these Acts and the UN Convention on the Rights of the Child.

It recognises that very often one parent may be an abusive parent while the other parent is a Protective Parent, but who requires the support and assistance and a form of legal protection by the State Authorities, before determinations are made by the Family Courts regarding who the child will live with and the contact arrangements for the non-resident parent.

In some current instances, children are forced to have contact with their alleged abuser or even to live with their alleged abuser, yet in no other area of law do victims of similar assaults have such contact, or have to live with their alleged assailant during the period of investigation. Victims have the right to protection until matters are determined by due process of law.

This is seen as a Gateway for protecting children who would otherwise continue to suffer abuse and violence by a violent, toxic, and dangerous parent.

The specifics of the proposed amendments are therefore to extend the present powers of the Director-General to enter into a Protective Parent Responsibility Contract with a protective parent under the Parenting Contract provisions of NSW laws, in circumstances where there are concerns that a child has been or may be abused and there are reasonable grounds for the making of such a Contract.

Recommendation: We recommend that the NSW government introduce a Protective Parent Responsibility Contract which would be an extension of the existing procedures and would provide immediate protection from harm for children engaged in Family Law processes.

7. INVESTIGATION PROCEDURES AND PRACTICES FOLLOWING DISCLOSURES AND REPORTS OF CHILD ABUSE AND EXPLOITATIONS

In many of the cases reported to NCPA regarding children involved in Family Court proceedings, it is clear that only a cursory and primitive investigations has been conducted. Often this involves little more than a one-hour interview with the child and an interview with the alleged offender/perpetrator parent. If the alleged offender/ perpetrator denies the alleged offence of harming the child, the investigation is abandoned as unsubstantiated.

It is clear therefore that either the Child Protection Procedures for investigations in NSW are not being followed, or that such procedures are inadequate and in need of review and reform.

Best Practice in Procedures involving allegations of child abuse, and absolutely essential in cases of disclosures by children of child sexual abuse are:

- A. **An examination of and report on the child by a forensic paediatrician** to establish any physical evidence;
- B. **An examination of and report on the child by a forensic clinical psychologist** for emotional and behavioural signs of abuse;
- C. **A collating of direct and indirect [persons to whom the child may have disclosed/reported the abuse] witness statements;**
- D. **Carefully conducted interviews of the child with an independent person present** to provide support and comfort for the child.
- E. **A statement by the alleged abuser** regarding any evidence collected as above.

During this process both parents would retain full parental rights but the Director-General would have the powers to determine where the child will live and what contact arrangements will be allowed for the non-resident and allegedly abusive parent. It would not therefore impact upon non-abusive parents where reasonable arrangements exist to ensure the child is looked after by one parent and has significant and substantial time with the other non-resident parent.

- Whilst such Procedures may not be necessary in all cases of reported child abuse and exploitation, **they are absolutely essential in cases where children and young people disclose or report sexual abuse**

Recommendation: - We recommend that the NSW government issue a directive to its child protection personnel and to police officers to initiate the above procedures in all situations where they receive reports of child sexual abuse, and with discretion in cases of emotional and physical abuse in order to maximise the availability of corroborative evidence to children's disclosures, or reports, of such abuse.

8. TRIBUNALS OF INQUIRY - INQUISITORIAL MODELS OF DECISION-MAKING IN CHILD PROTECTION CASES

In 2005, the federal Parliamentary Committee examining the Family Law strongly recommended that decisions regarding the future care and welfare of children would best be made by the setting up of an inquisitorial system to replace the current adversarial model. [Every Picture Tells a Story]. Such a system was the platform on which the other 27 of their recommendations would operate and which were embodied in the 2006 Family Law amendments. This Families Tribunal system was the only recommendation which was not implemented and decisions regarding children have continued to be made by an archaic, antagonistic, and acrimonious adversarial system which pitches parents into polarised positions and results in much of the intense conflicts in such cases. Mediation in such cases has been a failure and not viable where there have been allegations of violence and abuse. Similarly with the 'Magellan' system in the Family Courts for dealing with child sexual abuse cases. Placing parents as adversaries is not the best way to examine, analyse, and determine whether child abuse has occurred and the future risk a parent may present to a child.

The Families Tribunal envisaged by the Parliamentary Committee envisaged a panel of persons with expertise in child protection and the various abuses of children and young people, and experience in domestic violence, and in child development and the individual Physical, Emotional, Social, and Intellectual Needs of children. Such a Panel would have the assistance of a single senior legal counsel to order reports and to examine the parties witnesses. There are several models of inquisitorial tribunals which could be adapted for this purpose.

This Families Tribunal would also eliminate many of the very high costs of legal representation and of engaging 'independent' consultants many of whom in the current system, do not currently have the requisite knowledge, training and experience in child abuse and domestic violence and their effects nor to advise on what is demonstrably and measurably to the advantage of and interests of individual children.

Recommendation: - We strongly recommend that the NSW government examine the possibility of introducing a system of Families Tribunals based on an inquisitorial model, and which we earnestly believe would be to the very considerable benefit of many hundreds of NSW children and young people and to provide the best possible outcomes for them in circumstances where they have suffered abuse and exploitation.

We very much hope that the information, and comments we have provided will be of assistance to the Committee and look forward to reading your final report and recommendations.

Charles Pragnell

Dip.S.W., L.R.C.C. [UK Home Office].

Executive Chairman
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