ABBEY'S PROJECT

A BRAVEHEARTS PAPER ON THE FAMILY LAW SYSTEM

'There is hope...'

Bravehearts
Educate Empower Protect
Our Kids

‘Hope’ is the thing with feathers

‘Hope’ is the thing with feathers
That perches in the soul
And sings the tune without the words
And never stops-at all
(Emily Dickinson**)**

Source: The Poems of Emily Dickinson
Edited by R.W. Franklin (Harvard University Press, 1999)

WARNING:
This paper contains explicit information and children’s drawings which are highly likely to cause distress. Please proceed with caution.

If assistance is required please call Bravehearts on **1800 272 831**.

ABN: 41 496 913 890

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Dedication to Abbey

This Project aims to give a voice to children, parents and others who have been through the Family Law System in Australia and feel they have not been heard, protected or supported by this system.

We would particularly like to dedicate the Family Law System Project to Abbey. Sadly, Abbey took her own life in 2013 when she was 17 years of age. Abbey's mother Gill fought to protect Abbey and her sisters from harm by their father but felt no support from the Family Law System. She believes that the system itself did not provide Abbey with any independent protection due to its adversarial nature and structure whereby the starting point is there will be contact unless the protective parent can prove harm will occur.

Gill says what Abbey most wanted in the period after she disclosed, and ultimately couldn't live without, was for institutions, such as the Police, Child Services and the Family Law Courts to act on her disclosures and to recognise the harm she suffered at the hands of her father.

The Family Law System Project is to be known as **Abbey's Project** in honour of the bravery of Abbey and her family for speaking out and tirelessly fighting against systems that were unable to protect Abbey from harm.

I am broken
I was only a girl
hiding under my sheets
you took away all my innocence
left me dead inside

You left me alone
to work it all out by myself
confused and lost I walked
through the tunnels of pain

You left me alone
after those nights
my silent tears never heard
my roar inside left to burn out

You stole me from my cave
abused my soul and took my trust
ditched it in a hole
and left me in the cold

I'm broken now
torn and ripped in pieces
I fight to repair the damage
but your breath remains on my chest

This cry for help was written by 17-year-old Abbey to her father - a convicted child sex offender. Just two months later she would take her life. On that day in November 2013, the light inside this once bright and bubbly Western Australian teenager was snuffed out when she tragically took her own life.

Abbey's story is testament to the devastation this abhorrent crime has on young victims:

ABBEY'S STORY

Abbey was 17 years old when she committed suicide in 2013. Prior to her death she suffered from mental health issues including anorexia, bulimia, self-harm and multiple suicide threats and a serious but failed attempt.

Gill and Abbey's father separated in February 2002, he moved out of the home and an informal parenting agreement was made. In August 2002 Abbey's childhood best friend Anne (not her real name) disclosed sexual assault perpetrated by Abbey's father and that Abbey was also assaulted. Abbey and her two sisters were interviewed by Police, but no disclosures were made.

After criminal charges were laid, for the sexual assault of Abbey's best friend, who was eight at the time of her disclosure,[1] Gill withheld Abbey and her sisters from visiting their father. He applied to the Family Court to allow him access. The matter was settled after mediation and consent orders were made. Gill reports being forced into mediation and being told by her lawyers that the father had rights to see the girls as no allegations had been proven and, because he had been caught out with Anne, he would be more careful. The orders required the father's parents to supervise his contact. Gill reports that she felt entirely unsupported by Family Services and the Court system in dealing with the pressure applied to her by the father and his family in what was a bewildering and frightening situation.

Abbey's father was convicted in June 2005. He was sentenced to four years imprisonment and released on parole after 2 years.[2] Anne's police statements and testimony in the criminal proceedings said that Abbey was sometimes in the bed with Anne and was assaulted simultaneously. Gill said that she received no support or assistance from Child Services to deal with the fact of the father's conviction. The father's family pressed for continued contact and the children were taken to see the father in prison by the father's new wife and his parents (who did not believe that he had offended). Upon his release the parents resumed contact[3] similar to the previous consent orders with the father's new wife supervising the contact. However, terms of his parole originally did not allow him to have overnight contact with children but Gill reports that he somehow managed to have this changed. Parole conditions were not discussed with Gill. Gill reports the father would try to

[1] http://www.theaustralian.com.au/news/nation/sex-abuse-case-reveals-family-court-failings/news-story/0ab2cbed82132a257b0c6ae3acc196fd

[2] ibid

[3] ibid

'push boundaries' and tried to increase contact with the children and would sometimes ask to have one of the children visit at a time.

In early 2009, family court proceedings were initiated as Gill again withheld contact after an incident of the father and his new wife fabricating a story to Abbey that Anne had recanted her allegations. The Child Protection Authority investigated and Gill was told that if she did not act protectively and get appropriate Family Court Orders, they would investigate her. Gill said that this forced her into an adversarial process in the family court where the father was effectively treated like any other parent when he was in fact convicted of child sexual offending. Gill reports that the father used the court processes to deflect attention from the real issue which was his recanting his acceptance of his sex offending problem, a step that had been instrumental in his completing the sex offender's course that was mandatory for him to get parole and permission to have night time contact with his children. Gill said that the Court did not take steps to protect the children itself but instead left it to her to navigate the slow and costly Family Court processes and it required mediation. Gill felt that she had to prove that the children were not safe. Meanwhile Gill said the father was telling the children that she was stupid and that she should not be stopping them seeing him. Gill reports that the failure of the system to step in to protect the children put the children in the middle of the conflict.

A Family Report was prepared which noted the conflict in the family and issues of the father's family claiming he was innocent (wrongly convicted) which confused the children. Further the report questioned why the father had such liberal time with the children, but noted that it was too late, and would damage the children, if contact was stopped at that time as the children were so attached to their father. Gill felt completely disempowered by that report and was afraid that if she took the matter to trial she would receive a worse outcome than if she tried to negotiate a compromise. The time involved was a factor as one of the children was very upset and so was the cost of going to trial. Gill thought she was not likely to succeed in reducing the contact between the father and the children due to the nature of the Family Court and the recommendations of the family report. Gill and the father again made consent orders which were ratified by the Family Court without any contact between the Court and the parties or the supervisors about the orders. These orders allowed Abbey to choose if she wanted to visit the father, but required her (or her older sister) to accompany her younger sister to visits. Further, the visits were to be supervised by the new wife, who did not believe that he had offended – thus effectively provided no supervision. The new wife instead sought to reinforce that the father was innocent and would often tell the children this.

Gill says that she felt completely unsupported by the Family Court and was treated by the system as though she might be a hysterical and vindictive wife, rather than what she was, a protective mother.[4] She considers all the focus should have been on the father and his offending and denials and protecting the children rather than being turned on her as occurred in the expert report.

[4] ibid

In May 2013, Abbey disclosed to Gill that she was abused by her father. After disclosing Abbey dissociated and was hospitalised. In hospital Abbey was interviewed by Police. Abbey's doctor told Gill that Abbey seemed empowered by speaking to Police; however the Police told Gill that they would not proceed as they did not believe that Abbey was strong enough and that she would be slaughtered by a defence lawyer. Gill notes that Abbey particularised to Police a number of incidents of assault that occurred between the ages of 3-7 years old; [5]however Abbey made more disclosures to family and a trusted friend, but due to her mental health was unable to make further Police statements.

Whilst Abbey was hospitalised, Gill sought a violence restraining order to prevent the father from having contact with the children. This was granted, but Gill reports being treated appallingly by the Children's Court as she was treated as if a hysterical woman and questioned by the judicial officer, but the father's lawyer was given assistance by the judicial officer.

In November Abbey took her life by overdosing on medication. Ten days after she died the Child Protection Authorities sent a letter to Gill saying that 'the department has assessed that [Abbey's father] has harmed Abbey and is at risk of harming [Abbey's younger sister] if they were to have unsupervised contact'.[6]

[5] ibid

[6] ibid

About Bravehearts

Our **Mission** is to prevent child sexual assault in our society.

Our **Vision** is to make Australia the safest place in the world to raise a child.

Our **Guiding Principles** are to at all times, do all things to serve our Mission without fear or favour and without compromise and to continually ensure that the best interests and protection of the child are placed before all other considerations.

Bravehearts has been actively contributing to the provision of child sexual assault services throughout the nation since 1997. As the first and largest registered charity specifically and holistically dedicated to addressing this issue in Australia, Bravehearts exists to protect Australian children against sexual harm. All activities fall under 'The 3 Piers' to Prevention: Educate, Empower, Protect. Our activities include but are not limited to:

EDUCATE

- Early childhood (aged 3-8) 'Ditto's Keep Safe Adventure' primary and pre-school based personal safety programs including cyber-safety.
- Personal Safety Programs for older children & young people and specific programs aimed at Indigenous children.

EMPOWER

- Community awareness raising campaigns including general media comment and specific campaigns such as our annual national White Balloon Day.
- Tiered child sexual assault awareness, support and response training and risk management policy and procedure training and services for all sectors in the community.

PROTECT

- Specialist advocacy support services for survivors and victims of child sexual assault and their families including a specialist supported child sexual assault 1800 crisis line.
- Specialist child sexual assault counselling is available to all children, adults and their non-offending family support.
- Policy and legislative reform, including collaboration with Federal and State Government departments and sector agencies.

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Preface

The production of this report has been agonising, fraught with moral and legal dilemma and exhausting for all involved, including the participants. For each, in our own way, it has tested our courage, resilience and our determination. But through it all we kept the reason for this project in mind: to prevent child sexual assault and protect children. It is for them that we present this report, stories of desperate children caught in a system that fails to protect them. We do so, in the hope that this time, somebody might listen and respond.

Abbey's Project is dedicated to beautiful Abbey, who tragically took her own life at age 17. Abbey disclosed to her mother, and others, of the sexual assaults she was suffering at the hands of her father. The police knew it was true, they had a witness, but that was not enough to proceed to a criminal conviction. Sadly, the knowledge about what had happened to Abbey did not permeate the system to protect her, a young girl who had no understanding on how to protect herself and who couldn't herself 'tell' on her father. The system failed Abbey until she couldn't take it anymore, until she decided that to find the peace and safety she craved she would need to leave her adored Mother and her loving siblings….. and go alone to heaven. This report stands as an enduring legacy to Abbey's beautiful spirit, her courage and her innocence.

For too many years we have been hearing the torturous testimony of desperate parents and children caught in the Family Law System, a system that includes all manner of authority figures such as police, Court reporters, ICL's, lawyers, expert witnesses and child protection departments. In 2013, we called on the Royal Commission into Institutional Responses to Child Sexual Abuse to expand their terms of reference to include the culture and practices of the Family Law System into its terms of reference (see Appendix A). We believe that as an Institution, the Family Courts of Australia have fundamentally failed too many of the children it has been tasked with protecting.

Over the past 20 years I have sat in court rooms and listened to proceedings where professional reports confirming the children's allegations have been dismissed, and instead the mother has been accused of 'overloading their child with anxiety, and destroying their relationship with the other parent'[1]; and I have felt sick. I have attended police stations with children who want to tell their story but can't. I can still see their distraught faces. I have listened to children tell their story, heard them cry and plead for help and I have held them and cried with them. I have watched them fall into depression, eating disorders and yes, suicide. It is excruciating. But the worst thing of all is that I have felt powerless to assist them.

Those of us who work in this area are more than 'ready, willing and able' to help these children, but too often the system won't let us. And it is in knowing what these kids are enduring and not being able to help stop it, that exhausts and cripples us.

[1] https://www.themonthly.com.au/issue/2015/november/1446296400/jess-hill/suffer-children (see Appendix 2)

In order to understand this impenetrable and sometimes cruel system, I have initiated this project in an attempt to uncover and reflect the experiences, testimony and outcomes for children and those trying to protect them through the Family Law System in Australia. We could not have done this without the support and generous private funding made available to us by Bruce and Jill Mathieson (ALH Group Pty Ltd) who understand the need to give children a voice and to keep them safe. Our role at Bravehearts is to educate, empower and protect our kids and this Family Court Project is one such achievement in delivering on our promise to Australia's children.

The response of the public to the invitation by Bravehearts to participate in this project has been overwhelming. We received over 320 expressions of interest. Clearly not all could be included in detail, and sadly, many of their experiences are so alike that including them would only serve to duplicate; however elements of their stories are included. Suffice to say, the experiences depicted in the 15 case studies highlighted in this report are in no way unique.

This project aims to overwhelmingly focus on the child rather than the parents. However in telling the stories we necessarily sought to capture the experience of all protective parents, and carers, men or women, by addressing the common themes in relation to dealings with the family law system where allegations of child sexual assault have been made. Please note that in order to ensure confidentiality, the names of all parties have been changed and any information pertaining the matter that may lead to the identification of the child/ren or family have been removed.

Disappointingly, we were unable to present a case study where the protective parent is the father but we assure readers that we do have Dads in as serious and desperate situations as Mums. One Dad comes to mind. He married his childhood sweetheart and they had two gorgeous little girls. The mother disclosed to him during their marriage that her father had sexually assaulted her when she was a small child. As a result they had nothing to do with Grandad. After the couple separated, when the girls were still very young, the mother and the girls went to live with the children's grandmother and grandfather (the perpetrator). The girl's father can do nothing but despair because without the testimony of the mother, there is no proof. He too is in a desperate situation and again, our only way to help him is to encourage him to provide his children with *Ditto's Keep Safe Adventure* personal safety education pack and hope that if something is happening, the girls will speak out and the system will believe them.

In presenting this work, I wish to acknowledge the complexity and difficulty experienced by professionals, particularly Magistrates and Judges working within the Family Law System. This is particularly so if child sexual assault allegations against one of the parents is made but the proof is not clear. Whilst we have come far in our knowledge and research in relation to child sexual assault, obviously it is not far enough. Every week in Australia, the Family Courts are ordering children into contact with, and even into the custody of, parents who are dangerous, toxic and abusive, many have histories of domestic violence and serious substance abuse, some are convicted predators - because Family Courts, do not have the powers, expertise, and resources to competently investigate allegations of child abuse.

There are critical flaws in a system that so lacks transparency and accountability: where parents can be ordered to pay tens of thousands of dollars for a court ordered report or face the loss of their child; where lawyers routinely advise that allegations of child sexual assault shouldn't be raised for fear of aggravating the system and risking being seen as vindictive, thus leading to the loss of their child; where the parent with the deepest pockets and the smoothest appearance wins the day; where children's own words are discounted; where they are cut off from every adult who can help them by being ordered not to visit a GP or counsellor and not to talk to anyone about what is happening to them; and where it appears that ensuring a child has a meaningful relationship with both parents comes at the cost of protecting children from harm and abuse.

The Family Law System, inclusive of all the contributors, as it stands now is, in my opinion, the most dangerous institution for children in this country.

We need a Royal Commission of Inquiry to fix it once and for all.

The findings from Abbey's report are clear, resounding, and hard to ignore. The family law system is failing some of our children and exposing them to further sexual assault and unacceptable risk. It appears illogical and intolerable to allow such a system to continue in its present form. We must seek further solutions and improvements in how to address child sexual assault and hold the family law system transparent and accountable for these vulnerable children. This report hopes to do just that.

Hetty Johnston AM
Founder and Chair, Bravehearts

Acknowledgements

I, on behalf of Bravehearts would like to thank the hundreds of individuals who have shared their experiences and thoughts with us through this process. While the scope of this project means that I cannot include every story, the voices of the children and their protective mothers, fathers and other caregivers have been included throughout this project. I acknowledge the strength and bravery it takes to speak out against the system.

The writing of this report is a result of the hard work and dedication of my colleagues, Carol Ronken, Heather Ploeger, Dr Rebekah Chapman and Tamara Hensen. I thank them for delivering this much needed and long awaited revelation into the Family Law System of Australia.

I would also like to thank the following for their invaluable feedback and contributions to this project:

- Dr Elspeth McInnes AM
- Dr Sunita Shaunak
- Judge Salvatore Vasta

Additionally, I wish to acknowledge those who have provided feedback on this report based on their personal experiences within the Family Court.

Abbey's Project has only been made possible through the funding provided by Bruce and Jill Mathieson (ALH Group Pty Ltd). It has only been through the generosity of Bruce and Jill that a voice has been given to so many who have fought, and many who continue to fight, to protect their children through the Family Law System.

I would also like to posthumously acknowledge the contribution of Emeritus Professor Freda Briggs AO, not only for her support for Abbey's Project, but for the years of dedication she gave to protecting children from sexual assault, abuse and neglect. Freda has been a strong voice and support for many facing the Family Law System. Passing away on the 6th April 2016, Freda was a fierce advocate for children and a passionate inspiration for so many working in the sector.

Hetty Johnston AM
Founder and Chair, Bravehearts

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Definitions and Terms

Child abuse – 'child abuse' is used to refer to the collective of all forms of harm to a child's wellbeing. These include emotional abuse, physical abuse and neglect, as well as cumulative harm and family violence.

Child sexual assault (CSA) – the term 'assault' is used in this report to refer to the criminal offence of sexually harming a child. 'Child sexual abuse' will be used in direct quotes, including from participants.

Custody/residency – the terms custody/residency are used interchangeably to refer to parental plan agreements and primary care orders.

Expert witness – is an individual with expert, specialised knowledge who has been appointed by the Court to prepare independent evidence to assist the Court in making a decision.

Family Courts/Family Law Courts – the terms 'Family Courts' and 'Family Law Courts' are used interchangeably within this report to refer to the collective of the different Courts

within Australia which oversee Family Law. These Courts are the Federal Circuit Court (formerly known as the Federal Magistrates Court), the Family Court of Australia and the Family Court of Western Australia.

Family Law System – the term 'Family Law System' is used throughout this report to refer to the system as a whole. 'Family Courts' and 'Family Law Courts' will be used interchangeably within this report to refer to the collective of the different Courts within Australia which oversee Family Law matters. These Courts include the Federal Circuit Court (formerly known as the Federal Magistrates Court), the Family Court of Australia and the Family Court of Western Australia.

Final order – is an order that is made at the closing of a matter by the Court.

Independent Children's Lawyer – is a lawyer appointed by the Courts to represent the child and their best interests in proceedings.

Interim order – is an order that is in place until another order or the final order is made.

Report Writer – the report writer is a consultant appointed by the Courts to prepare an assessment of the family to assist the Court make a decision about the wellbeing of a child.

Survivor/victim – the term 'survivor' is used interchangeably with 'victim'.

Executive Summary

In 2013, Bravehearts formally requested that the Royal Commission into Institutional Responses to Child Sexual Abuse expand its terms of reference and look into the systemic failures of the Australian Family Law System to adequately and appropriately dealing with allegations of sexual assault (see Appendix A). In recognition of the multitude of stories shared with Bravehearts about children being placed at risk of sexual assault, our position was that as an Institution making decisions about the custody and primary residency of children, the Family Courts must have the correct processes in place to ensure, as far as possible, the safety and protection of the child. As the Royal Commission was unable to broaden its remit to include the Family Law System, Bravehearts began to take steps look into the issues, and continues to advocate (Recommendation 1) for a Royal Commission into the Family Law System.

One in 5 children will be sexually harmed in some way before their 18th birthday, studies have found that males had prevalence rates of 4 to 8% for penetrative abuse and 12 to 16% for non-penetrative abuse, while females had prevalence rates of 7 to 12% for penetrative abuse and 23 to 36% for non-penetrative abuse (Mamun, Lawlor, O'Callaghan, Bor, Williams, & Najman, 2007). Research has also shown that child sexual assault and experience of domestic violence frequently co-occur (Pérez-Fuentes, Olfson, Villegas, Morcillo, Wang, & Blanco, 2013); and that child sexual assault often occurs alongside other forms of harm to the child (Pérez-Fuentes et al., 2013; Arata, Langhinrichsen-Rohling, Bowers, & O'Brien, 2007).

Research with young survivors of child sexual assault has shown that most frequently, delays in disclosure are related to fears of not being believed and feelings of shame and self-blame. Additionally, victims report the fear of upsetting family members (McElvaney, Greene, & Hogan, 2014), and in the case of familial child sexual assault, victims may delay disclosure due to the fear of family breakdown, and of disrupting relationships with those to whom a sense of loyalty and strong emotional ties may exist (Lyon & Ahern, 2011; Smallbone, Marshall, & Wortley, 2008). Research has suggested that the closer the relationship between the child and perpetrator, the less likely the child will be to disclose the assault (Goodman-Brown Edelstein, Goodman, Jones, & Gordon, 2003; Kogan 2004).

Children's matters in Family Law are decided based upon the paramount principle set out by the *Family Law Act 1975* ('FLA') This principle ensures that all decisions made in children's matters must be in the best interests of the child (*FLA*, ss 60CA & 60B). In 2006 the *FLA* was amended to set out two primary considerations to be applied by Judges which are intended to promote the best interests of the child. These primary considerations include ensuring that the child has a meaningful relationship with both parents through both parents being involved in their lives as much as possible; which is to be balanced against the need to protect the child from harm (*FLA*, ss 60CC(2)(a) & 60CC(2)(b)). In 2012, an amendment was made to direct the Court when applying these primary considerations to give more weight to the need to protect children from harm (*FLA*, s 60CC(2A)). This provision was added to make the law clearer.

The Family Law arena is complex, and parties are often characterised by intense hurt, massive disappointment and anger. The competing narratives of waring parents are often difficult to decipher, and children can become weapons in their arguments.

Complexity is further enhanced when parents come to Family Law System with allegations of child sexual assault by the other parent, particularly if the issue has not previously been raised with police or child protection authorities.

Abbey's Project aims to provide an avenue to share the experiences of those who have typically been silenced. It presents 15 case studies, along with Abbey's own story, to give a voice to the children and those parents fighting to protect their children.

Whilst it is acknowledged that the presented narratives have come from those parents who have not had positive experiences with the Family Law System, there is much to be learnt from them by services, lawyers and the legal system at large. They bring light to the changes that need to occur.

The current legal adversary argument is essentially designed to determine particular factual issues upon which existing rights depend. What that process fails to address well is actual and future risk to the child. Without adequate risk assessment or any clear values that places the protection of the child at the very top, unacceptable risk to the child appears to be permitted to continue.

Abbey's Project explores the issues impacting on the Family Law System in its role to ensure that the protection, safety and best interests of the child are safeguarded.

The Family Law System is not charged with investigating allegations of child sexual assault, but must rely on the information presented to it when making decisions as they relate to the level of risk to a child. However, as evidenced in the case studies presented in this report, the Family Law System has either become preoccupied with finding whether assault occurred in order to determine if a child is at risk of sexual assault, or conversely, the Courts, family law practitioners and officials conducting investigations have sought to avoid dealing with the substance of the allegations, on the grounds that they are subject of a family law matter, which, therefore, leads to insufficient information being available to the Court to make a finding regarding risk to the child.

It appears from the included case studies and the literature that the Court is more than often unwilling to make a finding of unacceptable risk due to the limitations this may make on change in the future relationship between the alleged offender and the child. We are pleased to have seen changes that shift the primary focus for the Family Law System to the right for the child to be safe and protected from sexual assault, harm and risk. The Courts' focus must not be about maintaining relationships at all costs (Recommendation 2).

As noted, while a significant number of matters that are tried in the Family Law System involve allegations of child sexual assault or child abuse more broadly (Moloney, Smyth, Weston, Richardson, Qu, & Gray, 2007), Courts do not have an investigatory role in such allegations. The Family Law System relies upon expert witness and report writers, independent children lawyers, child protection authorities and others, to provide the Court

with information to assist in the decision-making process where allegations have been raised.

As Bow, Quinnell, Zaroff and Assemany (2002) suggest, allegations are often made in an atmosphere of complex family dynamics with motives that extend from the parent seeking to protect the child from genuine concerns about risk and harm through to hostility and vindictiveness. Complicating this further is the similar symptomology between children in high-conflict family environments and those who have experienced child sexual assault. The importance in engaging those with expertise in the area of child sexual assault and child abuse and neglect more broadly is crucial to ensure that the symptomology displayed is not mistakenly attributed to high-conflict family dynamics.

A number of recommendations are made in relation to the investigation and decision-making process, primarily the establishment of a Child Advocacy Centre to increase collaborative decision-making and the quality of evidence that is presented to the Court (Recommendation 3), considering forming a multidisciplinary panel to assist in providing advice to the judge (Recommendation 4) and mandatory, specialised training in, for example, the areas of child sexual assault, family violence, trauma, the process of disclosure and impacts of grooming (Recommendation 5). The Family Law System can, and does, access additional information for consideration in matters. As well as child protection files, this may include counselling, medical and school reports. Recognising the difficulty in children and young people disclosing, the often lack of medical evidence and that the Court is often placed in a position where it is required to make a decision between two opposing and often unsubstantiated accounts (Lyon & Ahern, 2011), the consideration of available objective evidence may provide a useful avenue of verification. Bravehearts believes that seeking the views and opinions of those who know the child (including counsellors, teachers etc.) would provide invaluable assistance to the Courts.

The inclusion of the voice of the child in matters that relate to them is a critical issue for the Family Law System. Children's participation in the court process through the provision of evidence is not common within the Court. However, there are a number of avenues through which the Court currently attempts to include the child's views and voice, specifically through expert witnesses, report writers, the Independent Children's Lawyer and through additional reports. In addition, a judge may interview a child in chambers, however information attained in this interview is not admissible as evidence.

While there may advantages to a child being represented in the Court by a third independent party (for example, they do not have to attend court, they are not subject to cross-examination, they can be interviewed in a non-threatening space), the child's voice is easily lost in this process. Bravehearts believes that it is important to acknowledge that determining risk to a child is a process of gathering sufficient insight into a child's life and concerns around risk, and this cannot occur in a single meeting.

Former Chief Justice Nicholson has spoken on his concerns about the impact of self-litigation in the Family Law System noting that: "the nature of the jurisdiction may be causative" (cited in Foster, 2003). Self-representation in the Family Law System may be a

result of declined Legal Aid applications and the unaffordability of private legal representation, although a proportion have reported that they are self-represented as they are unable to engage a lawyer because the client may have been perceived as difficult or the matter was seen as having no merit.

As was intended by the Family Law System, Legal Aid representation should be provided to all persons whose matters are included in the Family Law System who cannot otherwise afford representation. Funding into legal assistance services must be increased in line with the recommendations of the Productivity Commission's *Access to Justice Arrangements* report (2014) (Recommendation 24).

Numerous academic studies have identified the sceptical ideologies possessed by the various professionals in the Family Law context. Many professionals find it difficult to recognise families who have issues of child sexual assault, abuse or family violence and often will view the families through a lens of the professional's own interpretations and clouded by the myths, misinformation and biases that the professionals may hold (Brown & Alexander, 2007).

The research around false allegations in the Family Law System context is mixed. Research suggests that the rate of false allegations in the Court is similar to allegations made more generally, at between 1-9% (Brown, Frederico, Hewitt, & Sheehan, 1998; Higgins, 2007). In any discussion, it is important to note that many professionals believe that children underreport the extent and severity of the harm (London, Bruck, Ceci, & Shuman, 2005).

In making a decision in relation to parenting orders, the Court is, as previously outlined, obliged to consider the best interests of the child. While the underlying assumption in the Court is the benefit to children of a meaningful relationship with both parents and that it is beneficial to children for there to be 'equal shared parental responsibility', the central consideration is the protection of children from harm, be it sexual, physical, psychological or neglect. This means the need to protect children from harm should be given greater weight by the court.

Issues have been raised that even where supervised contact is ordered, the protective mechanisms put in place may be inadequate. While on the surface, supervised access may be presumed to provide a level of protection, concerns include, unaware supervisors who have a lack of understanding of grooming and offending behaviours (particularly when the supervisor is a family member or partner of the alleged offending parent), supervisors who are disbelieving of the allegations and who may place children at risk, the opportunities that may still be present for harm to occur, and the negative effects on children where contact is ordered against their wishes. It is well documented that sex offenders do not only groom children, but actively groom protective adults (Craven, Brown, & Gilchrist, 2006).

The final issue discussed in Abbey's project, and one that particularly underpins the lack of confidence in the Family Law System, is the question of accountability and transparency in processes and outcomes.

A separate Judicial Complaints procedure is in place for complaints about the conduct of a Judge, judicial officer or the judicial process/functions where complaints are referred to the Judicial Complaints Advisor. Complaint against legal representatives are dealt with according to State and Territory legislation, this includes complaints relating to Independent Children's Lawyers. Family Law System complaint procedures do not apply to expert witnesses or report writers who attract witness immunity, and whose evidence can only be contested as part of the Court process (Family Court of Australia, 2015d). Bravehearts believes they should – there must be some level of accountability for all participants in the process.

The matter of transparency in the Family Law System raises questions of what information or processes should be transparent, to whom and for what purpose, and how increased transparency impacts on privacy and confidentiality. There have been two general features to the debate about transparency in the context of the Court systems (Department for Constitutional Affairs, 2007):

- Increased openness in allowing people into Courts would allow for greater public scrutiny of court processes and decision making
- More information coming out of Courts for those taking part in proceedings as well as for others.

Both of these aspects are raised as avenues for increasing the legitimacy of the courts, and decreasing the courts vulnerability to claims of secrecy and that unfair decisions are being made behind closed doors.

For almost two decades Bravehearts has been alerted to concerning processes and decision-making in the Family Law System. It is our hope that Abbey's Project, the voices of those affected by the Courts, and the 30 recommendations made, will bring about an impetus for our Government to put the safety, protection and best interests of our children first and prompt real change in a system that is failing some of our children.

Recommendations

Recommendation 1:

That a Royal Commission be set up to scrutinise the failed decision making process, information sharing blackspots and the lack of expertise within the Family Law System of Australia, comprising:

- the Courts, Judges and related staff,
- all related Government institutions including Police, Departments of Child Protection, Education Departments,
- all the system NGO's including counselling services and Legal Aid, and
- private legal professions, court appointed Experts, Consultants and Court Advisors.

The Family Law system is failing with too many children who are suffering enormous trauma, mental health repercussions and too often death, in situations that could have been prevented.

- There needs to be recognition that as an institution, the Family Law System response to child sexual assault has been less than desirable and has failed vulnerable children.
- As with the current Royal Commission into Institutional Responses to Child Sexual Abuse, individuals and families should be offered private sessions to share their experiences without concern about repercussions.

Recommendation 2:

That the first consideration for the Family Law System must be that the child is safe and protected from harm and risk. The Courts' focus must not be about maintaining relationships at all costs:

- The paramount considerations should be refocused to ensure a culture where the child's safety is prioritised:
  - Protecting the child from both physical and psychological harm
  - Protecting the child from being subjected to neglect, violence or abuse

Recommendation 3:

Establish a Child Advocacy Centre based on international approaches to increase collaborative decision making and the quality of evidence that comes before the Court.

- All investigations regarding allegations of child sexual assault should ideally be conducted through a Child Advocacy Centre to ensure: professional practice standards based on formal qualifications; collaboration and information sharing occurs between agencies from the beginning of an investigation; a child is not required to be subjected to numerous interviews recounting assault; and, an immediate response from support agencies can be provided.

- All interviews seeking to obtain information on, and the veracity of, allegations of child sexual assault should be conducted by a specially trained children's forensic interviewer and include visual and audio recordings.

Recommendation 4:

Consideration needs to be given to establishing a multidisciplinary panel model to replace decision-making by a single judge and to ensure information is gathered that can enhance informed decision-making.

- This panel should be staffed by trauma-informed early childhood/child development, child sexual assault and abuse experts (for example, police, child protection, General Practitioner, child psychologist, school/child care) assisted by a lawyer/judge to advise the court. This will enhance the expertise, quality and robustness of decision and recommendation making.
- It is the role of this panel to ensure that reports from those who are known to the child and family are attained as part of the information gathering process.

Recommendation 5:

All personnel involved in the Family Law System (including child safety, police, judges, legal representatives) and professionals assisting the Court should be required to participate in mandatory specialised accreditation courses in the field of child sexual assault, family violence, trauma, the process of disclosure, the processes and implications of grooming and the accepted empirical evidence regarding child sexual assault prevalence and processes.

- Specialised training around grooming, the dynamic and impacts of child sexual assault be made mandatory for legal representatives in the Family Law System.

Recommendation 6:

To review the *Public Governance, Performance and Accountability Act 2013* so as to include Ministers, judges, consultants and independent contractors.
The objects of this Act are:
(a) to establish a coherent system of governance and accountability across Commonwealth entities; and
(b) to establish a performance framework across Commonwealth entities; and
(c) to require the Commonwealth and Commonwealth entities:
(i) to meet high standards of governance, performance and accountability; and
(ii) to provide meaningful information to the Parliament and the public; and
(iii) to use and manage public resources properly; and
(iv) to work cooperatively with others to achieve common objectives, where practicable; and
(d) to require Commonwealth companies to meet high standards of governance, performance and accountability.

Recommendation 7:

That a register be created detailing Reports Writers, Independent Child Lawyers and other Consultants, including expert witnesses, who have engaged in annual specialised professional development courses, and; only these professionals should be 'preferred providers' to provide reports in line with consumer expectations contained in the *Competition and Consumer Act 2010*

Recommendation 8:

That expert information provided to the court is comprehensive, research and evidence based and meets the requirements of expert opinion.

- Expert witnesses and report writers should have demonstrated expertise and minimum training in child sexual assault, family violence, trauma and child abuse, the process of disclosure, the processes and implications of grooming.
- Standardised reports should be considered.

Recommendation 9:

A review against the *Competition and Consumer Act 2010* needs to be conducted around the costs of reports.

Recommendation 10:

Processes for interviewing children and young people should be standardised and focussed on ensuring the child's voice is heard and the process is in line with best-practice. Interviews in relation to experts are videotaped. Parties should have the right to challenge the findings by requiring the independent panel to review the interview.

Recommendation 11:

Judges must satisfy themselves of the child's wishes and provide them with their rights to have a say in matters that affect them. Currently, a judge may interview a child in chambers. While the information attained in this interview is not admissible as evidence, this process should be used to ensure that the Judge hears the child's views.

Recommendation 12:

The guidelines for Independent Child Lawyers (ICL) conduct in the Family Law System should be amended to ensure the true representation of the child's best interests. This should include a:

- Mandatory consideration of reports and information pertaining to that child (including counselling, school, child care etc.) and that the information provided be tendered to the court.
- The ICL should be able to be cross examined in Court.

Recommendation 13:

An advocate, who has expertise in child development and trauma, is required to represent the child, support their best interests and ensure that the child's voice is being heard, unfiltered. If Recommendation 3 is taken on, this would preferably be a function of the Child Advocacy Centre.

- The child's advocate should be an individual with qualifications and training in child development, child sexual assault, child trauma and child abuse.
- The advocate should have a minimum of four face to face meetings each of no less than an hour with the child. The cost of this should be borne by the Court.

Recommendation 14:

The development of a co-operative approach between State and Federal agencies in responding to concerns about child sexual assault, abuse and neglect needs to occur. This includes:

- The mandatory sharing of information of any notifications/reports and assessments made by child protection. This should continue to occur even when the matter is before a court, civil or criminal.
- Consideration of risk to other children who may be in the care of the alleged offender.
- The elimination of the diffusion of responsibility and the anomaly between the Family Law Court System (Commonwealth) and Child Protection System (State).
- The relationship between the Family Courts of Australia, child protection and the police in each state should be strengthened to ensure that protective parents can receive police help e.g. when no contact orders are issued and the offender does not comply with orders made.

Recommendation 15:

There is a need to amend the confidentiality and admissibility sections of the Family Law Act. All barriers of information sharing to the court about a child be removed so that the court is provided with comprehensive information from all services involved with that child and his or her family so a detailed chronology of that child's life and experiences can be developed.

Recommendation 16:

The adversarial system should be changed to an inquisitorial system, to enable a greater focus on the rights and best interests of the child, rather than the rights of the parent/s. An inquisitorial system would facilitate opportunities for children and young people to participate if they wish. This would also allow for a comprehensive risk assessment to occur and a determination of actual and future risk to the child. This system would better reflect the legal test of the Family Law System which is on the balance of probabilities rather than the criminal test of beyond reasonable doubt.

Recommendation 17:

The Family Law Act 1975 (Cth) should be amended to include the Convention on the Rights of the Child as a schedule to the Act. This will allow decision makers to reference all parts of that Convention and apply the Convention's principles when making decisions.

Recommendation 18:

The child's views must be clearly ascertained when making parenting orders.

- Paramount consideration must be given to a child's views. A child's best interests cannot be determined if their views are ignored or unknown.
- Consideration needs to be made in reference to the child's age, whether they are the alleged victim, and in line with understanding the impact of the relationship between the child and parent and the effect of grooming.

Recommendation 19:

A shift of focus from allegations raised by the parent and the circumstances that those allegations are raised in, to a focus on the child. This may be achieved through:

- Information gathering.
- Trial of a formalised information gathering system.
- Utilising already in place procedure, such as the Family Report. Changing the standard practice of these personnel to include these other sources of information on the child's health, development and wellbeing. This will allow the Family Report Writers to have a more comprehensive and informed understanding of the child, family, parenting capacity, and family functioning in order to determine what is in the child's best interests.

Recommendation 20:

Clarification around 'unsubstantiated' and where evidence of sexual harm does not meet the criteria to meet standards in the criminal justice system, a professional opinion is sought on the likelihood of whether the child has been harmed.

Recommendation 21:

Protective parents should not be discouraged from raising disclosures or concerns about the risk to their child. The Family Law System must not have jurisdiction to make Orders that place restrictions on a child attending appointments with a qualified/registered medical practitioner, counsellor, or psychologist in relation to disclosures of child sexual assault, abuse or for any other reason unless a notification of suspected child abuse stemming from over-servicing is made by such practitioner.

- Protective parents should be provided with specialised support when disclosures or concerns are raised, including, where necessary, whistle-blower processes.

Recommendation 22:

Where a person has convictions for child sexual assault offences:

- If the offence/s are against the subject child, there should be a non-contact order give.
- If the offence/s are against other children, there should be a supervised only contact order.

Recommendation 23:

Where the Court makes a finding of unacceptable risk as it relates to child sexual assault, this should result in cessation of contact as a starting point.

- This position can be rebutted to a position of independently supervised contact and then unsupervised when the child is considered to be no longer at risk (an assessment made by an independent, qualified and experienced expert and supported by relevant reports and information from related bodies), and the alleged perpetrator has agreed to and undergone relevant assessments.

Recommendation 24:

As was intended by the Family Law System, Legal Aid representation should be provided to all persons whose matters are included in the Family Law System who cannot otherwise afford representation.

- Funding into legal assistance services must be increased in line with the recommendations of the Productivity Commission's *Access to Justice Arrangements* report (2014).
- Legal Aid funding structures/guidelines should be amended to ensure that representation is provided no matter the probability of success

Recommendation 25:

Parties should not be required to question, or be questioned by an alleged offender of child sexual assault or other forms of family violence.

- Further, the structures/guidelines should be amended so that a person who holds genuine and serious concerns for their safety is not required to engage in negotiation as intended by the *Family Law Act 1975* (Cth) and *Family Law Regulations 1984* (Cth).

Recommendation 26:

Contact centres need to be improved to ensure that there are minimal standards, training and oversight, including the ability for professionals supervising the contact to terminate the session if the child is considered distressed, under duress or unsafe.

- Review of contact centres to ensure they are compliant and trained.

Recommendation 27:

Professional supervised contact and associated reports should be reviewed periodically in the Court to ensure that the visits are: happening regularly, that they are a positive benefit and not stressful for the child and to determine whether supervised visits should continue or be changed in frequency or stopped for a short period or permanently if necessary. No long term orders of contact should be made.

Recommendation 28:

Complaint processes should be broadened to include concerns around the professional conduct of expert witnesses and report writers. Individuals should be accountable for their opinions and recommendations and not provided with court immunity.

- Whistle-blower processes must be in place to facilitate the openness and accountability of the courts.

Recommendation 29:

There should be a review of Section 121C (Restriction on publication of court proceedings) to ensure transparency of proceedings. Consideration be given to increasing public access to judgements to increase transparency, allowing research into process and systems, allow litigants an avenue to review their matter and provide a resource for those who may be facing Family Law System.

Recommendation 30:

There needs to be a greater focus on the impacts of domestic violence and AVOS should not be subjugated to parenting contact conditions.

Drawing by girl age six at counselling of 'Ditto'

CHAPTER 1

1.1 Child Sexual Assault

Child sexual assault (CSA) is a widespread and critical social problem. While there is general agreement on what constitutes the more serious forms of CSA, there is no universally accepted definition, and there has been considerable variation in how CSA has been defined across the rapidly increasing literature base (Collin-Vézina, Daignealty & Hébert, 2013). One problem has been that while the broadest definitions have lacked the level of detail needed to cover all forms of CSA, more specific definitions have not encompassed the various forms of CSA accurately enough.

While many earlier definitions of CSA included only contact harm, it has been more recently accepted that definitions of CSA incorporate both contact and non-contact activities, and that broadly CSA includes "any sexual activity perpetrated against a minor by threat, force, intimidation or manipulation" (Collin-Vézina et al., 2013). The types of acts encapsulated by this definition include a continuum of behaviours and range from non-contact sexual acts, such as exposure or exhibitionism, to sexual acts in which contact with the victim occurs, including for example, penetration (Haugaard, 2000). The World Health Organization definition of CSA formulated by the 1999 WHO Consultation on Child Abuse Prevention also incorporates both contact and non-contact forms of sexual assault, and specifies that CSA is "evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person" (World Health Organization, 2003, p76).

In the context of Family Law, sexual assault of a child means involving the child in a sexual activity where the child is used, directly or indirectly, as a sexual object and where there is unequal power in the relationship between the child and the person perpetrating the assault (*Family Law Act 1975*, s 4). Additionally, Family Law includes sexual assault in its definition of family violence (*FLA*, s 4AB(2)(b)) which is where violent, threatening or other behaviour is used by a person that coerces or controls a member of the person's family, or causes the family member to be fearful (*FLA*, s 4AB(1)).

Despite recent evolution of comprehensive definitions of CSA that reflect power imbalances and the abuse of trust in relationships, definitional issues, including for example, a standard age of consent or sexual maturity, remain yet to be resolved (Collin-Vézina et al., 2013). The lack of consensus in defining CSA for research purposes, along with barriers to reporting experiences of CSA and discrepancies in data collection systems, have led to issues in accurately understanding the extent of the problem, or prevalence of CSA, both in Australia and across the world. In addition, there remains a lack of understanding surrounding the psychology of how children respond, interpret and act in response to sexual assault. This is especially evident where their offender is a primary caregiver where the relationship itself becomes an important dynamic to consider.

Despite this, however, decades of research have led to a better understanding of the dynamics of CSA, which are unique and frequently differ from other forms of abuse, or from

the sexual assault of adults. For example, perpetrators of CSA are typically known to the child, and physical force or violence is rarely used; rather, the perpetrator attempts to gain the child's trust through a process of 'grooming' and sexualisation of the relationship over time (World Health Organization, 2006). In approximately half of CSA cases involving female victims, the perpetrator is a father, step-father or other male relative, while this is true in approximately one fifth of CSA cases involving male victims (Australian Bureau of Statistics, 2006).

Historically, there has been little understanding of CSA within the context of marriage breakdown. The focus was often on the 'warring partners' and any allegation made were seen as 'weapons' (Brown, Frederico, Hewitt & Sheehan, 2000) in the dispute. As knowledge around the dynamics of CSA within the family context has developed, it has been necessary for institutions such as the Family Law System to review and define policy and practice in line with these new understandings. Nicholson (1999) also acknowledged this issue when he noted that "child abuse is more widespread than (the Court's) existing protective methods detect" and further acknowledged that "there is a warning for all of us (judicial and child protection workers) – that we have a larger problem than we perhaps think".

1.2 Prevalence of Child Sexual Assault

Child sexual assault is an issue that affects many children and families. Despite this, however, it is difficult to accurately determine the rate of occurrence of CSA. Official child protection statistics reflect only the minority of cases that are reported to authorities, while rates reported across prevalence studies vary widely due to methodological factors, such as the population targeted, the definition of CSA and the age range specified, the wording of survey or interview questions, and the data collection methods used (Cashmore & Shackel, 2014). Additionally, prevalence studies are likely to produce underestimates of occurrence, when considering that some survivors will never disclose their experiences of CSA, even when asked directly about it through a survey or interview (Cashmore & Shackel, 2014).

Research has consistently shown that approximately 1 in 5 children will be a victim of some form of sexual exploitation before they reach the age of 18 (James, 2000; Dube, Anda, Whitfield, Brown, Felitti, Dong, Giles, 2005). One recent review of rates of CSA across 55 studies from 24 countries, for example, found that there was much heterogeneity in rates reported, and concluded that rates for females ranged from 8 – 31% and for males ranged from 3 – 17% (Barth, Bernetz, Heim, Trelle, Tonia, 2012). Further, a meta-analysis of rates of CSA from 217 studies published in the period from 1980 – 2008 found an overall rate of 18% for females and 8% for males (Stoltenborgh, van Ijzendoorn, Euser, & Bakermans-Kranenburg, 2011). The lowest rates were found in Asia (11% of females and 4% of males), while the highest rates were found among females in Australia (22%) and males in Africa (19%) (Stoltenborgh et al., 2011).

In Australia, two recent studies have reported prevalence rates of CSA prior to the age 16 years. The first, a 10 year cohort study of Victorian adolescents for which retrospective sexual assault data was available for 1,745 youth at age 24, found rates of 17% for females and 7% for males (Moore, Romaniuk, Olsson, Jayasinghe, Carlin, & Patton, 2010). The second, a birth cohort study with data available for 2,461 youth at age 21, revealed rates of

21% of females and 11% of males reporting non-penetrative sexual assault, and approximately 8% of both males and females reporting penetrative sexual assault prior to 16 years of age (Mamun, Lawlor, O'Callaghan, Bor, Williams, & Najman, 2007). The 2005 Australian Personal Safety Survey, meanwhile, provided data on sexual assault experienced prior to 15 years of age. The results of this survey showed that almost 1 million women (956,600 or 12%) and 337,400 (5%) males had experienced CSA prior to the age of 15 (Australian Bureau of Statistics, 2006).

Many studies have demonstrated that CSA is under-reported. For example, Stoltenborgh and colleagues (2011) showed that across the 217 studies they reviewed, the rates of CSA were more than 30 times greater in studies using self-reports as opposed to those that relied on official child protection or police data. In Australia, official child protection statistics show that between 2013 and 2014, 5,581 cases of CSA were substantiated nationwide (Australian Institute of Health and Welfare, 2015). Australian recorded crime statistics, meanwhile, show that of the total number of sexual assault cases reported in 2014 (20,677), 60% (12,446) involved victims aged between 0 and 19 years (Australian Bureau of Statistics, 2015).

Within the context of Family Law, some research evidence suggests that there is an increase in the risk of CSA among children who do not live with both biological parents (Sammut, 2014), however Quadara and colleagues (2015) argue that the literature is in disagreement regarding rates of CSA among biological as compared with blended families. Research has also shown that CSA and experience of domestic violence frequently co-occur (Pérez-Fuentes, Olfson, Villegas, Morcillo, Wang, & Blanco, 2013); and that CSA often occurs alongside other forms of harm to the child (Pérez-Fuentes et al., 2013; Arata, Langhinrichsen-Rohling, Bowers, & O'Brien, 2007).

There is frequently little data made available by the Family Law System, and therefore little analysis, on the number of cases filed involving allegations of CSA and the proportion of these involving substantiated harm to the child. The few Australian studies that have been conducted have, however, found that approximately 10% of Family Law System matters involve allegations of CSA (Moloney, Smyth, Weston, Richardson, Qu, & Gray, 2007; Brown et al., 2000; Parkinson, 1998). Information released by the Courts showed that in 2013-2014, 14.6% of applications for final orders involved a family violence notice, which includes all forms of child abuse or domestic violence (Family Court of Australia, 2014).

1.3 Indicators of Child Sexual Assault

Often, the first knowledge of the sexual assault of a child comes from a disclosure. However, it is known that the majority of CSA victims do not disclose during childhood, with up to 80% not purposefully disclosing before adulthood (Alaggia, 2005; London, Bruck, Ceci, & Shuman, 2005). In some cases, health care professionals rely on physical and behavioural indicators to assist in the detection of CSA. In particular, pregnancy, vaginal or anal bleeding or discharge, or sexually transmitted diseases may indicate cases of CSA (Victorian Department of Human Services, 2013).

While many physical and behavioural indicators may be seen as 'red flags' for potential cases of CSA, the presence of such indicators does not necessarily prove that a child has been harmed (World Health Organization, 2003). Additionally, a child who is experiencing CSA may not display any outward signs; in particular, clear physical findings of sexual assault are rarely seen in children (World Health Organization, 2003). In some cases, however, potential physical indicators of CSA (alongside pregnancy, bleeding, discharge or sexually transmitted disease) may include injury to the genital or rectal area, inflammation of the genital area, discomfort in urinating or defecating, or recurrent urinary tract infection (Western Australian Department of Health, 2004).

Behavioural indicators of CSA, meanwhile, may include a child's engagement in sexualised behaviours that are inappropriate to their age (Western Australian Department of Health, 2004). While the majority of CSA victims do not engage in sexualised behaviour, it is important to note that a child's engagement in such behaviours may be indicative of CSA (World Health Organization, 2003). While it can be difficult in some instances to distinguish developmentally appropriate from inappropriate sexual behaviours, generally, a child's sexualised behaviours may be considered problematic if they: involve force, threats or aggression, occur between children of different ages or developmental levels, cause harm or place a child at risk, continue despite attempts at intervention, are disruptive to normal activities or interests, are associated with emotional distress, or occur at a greater frequency than expected (Ontario Centre of Excellence for Child and Youth Mental Health, 2014).

Alongside engagement in sexualised behaviours, indicators of CSA may also include regression in behaviour or school performance, sleep disturbances, irritability or clingy behaviour, somatic complaints, social problems, delinquent or aggressive behaviour, self-injurious behaviour, toileting difficulties and symptoms of emotional disturbance such as anxiety, fearfulness, or depression (Victorian Department of Human Services, 2013; Western Australian Department of Health, 2004; World Health Organisation, 2003).

1.4 Disclosure of Child Sexual Assault

Most victims of CSA do not disclose during childhood, with up to 80% not purposefully disclosing before adulthood (London, et al., 2005; Alaggia, 2005). An even smaller proportion of cases are ever reported to the police. In a review of 13 retrospective studies with adult survivors, London and colleagues (London, Bruck, Wright, & Ceci 2008) found that just 5-13% of CSA cases were reported to police. Further, McElvaney's (2015) review of disclosure studies showed that significant proportions of adults had never disclosed their experiences of CSA, either officially or informally.

Alongside the secrecy that accompanies CSA, there is frequently a lack of physical evidence, meaning that a child's disclosure is critical in terms of enabling the cessation of harm and commencement of support and intervention (Reitsema & Grietens, 2016). Disclosure is not always made following a conscious decision, however, with younger children more likely to 'accidentally' disclose and older children more likely to make purposeful disclosures (London et al., 2005). In qualitative research with young people who had experienced CSA, McElvaney and colleagues (McElvaney, Greene, & Hogan, 2014, p. 928) found that many

"both wanted to tell and did not want to tell". While children may attempt to maintain the secrecy of their experience, at some point, intentional or accidental hints may be made that point to the CSA (Reitsema & Grietens, 2016). Disclosure of CSA has most recently been conceptualised as a process that unfolds over time, with different behavioural and verbal, direct and indirect signs and expressions being made by the victim, and responses to these being gauged prior to further disclosure events (Reitsama & Grietens, 2016).

Research with young survivors of CSA has shown that most frequently, delays in disclosure are related to fears of not being believed and feelings of shame and self-blame. Additionally, victims report the fear of upsetting family members (McElvaney et al., 2014), and in the case of familial CSA, victims may delay disclosure due to the fear of family breakdown, and of disrupting relationships with those to whom a sense of loyalty and strong emotional ties may exist (Lyon & Ahern, 2011; Smallbone, Marshall, & Wortley, 2008). Research has suggested that the closer the relationship between the child and perpetrator, the less likely the child will be to disclose the assault (Goodman-Brown Edelstein, Goodman, Jones, & Gordon, 2003; Kogan 2004). Collin-Vezina and colleagues (Collin-Vézina, De La Sablonnière-Griffin, Palmer, & Milne, 2015) have recently presented a model of barriers to disclosure of CSA through an ecological lens, with barriers identified as being 'within' (e.g. mechanisms to self-protect), in relation to 'others' (e.g. a context of family violence and dysfunction), and in relation to the 'social world' (e.g. fears of being labelled).

Research has shown that in some cases, victims' fears that act to delay, and in some cases prevent disclosure are well founded. Such studies reveal that some children who disclose are faced with negative responses and in many cases are not protected from further sexual harm (Lamb & Edgar-Smith, 1994; Palmer, Brown, Rae-Grant, & Loughlin, 1999; Roesler & Wind, 1994). A study with female incest survivors found that of those who disclosed in childhood to a parent, just 37% recalled supportive responses (Roesler & Wind, 1994). Evidence suggests that less supportive responses are received when disclosure occurs in childhood rather than adulthood, when disclosure is to a parent rather than to a friend or other non-family, and when the perpetrator is a family member rather than acquaintance or stranger (Lamb & Edgar-Smith, 1994; Roesler & Wind, 1994; Ullman, 2007). Some studies suggest that mothers are less likely to support their children when the perpetrator is a current partner or someone with whom they have an intimate or dependant relationship (Reitsema & Grietens, 2016).

Many studies have shown that while younger children are most likely to disclose to a parent or parent figure, adolescents and adults are most likely to disclose experiences of CSA to a friend (McElvaney, 2015; Reitsema & Grietens, 2016). Research reveals that recipients of disclosure (family members, friends and teachers) have a crucial role, as their response and subsequent actions can strongly influence the ongoing process of disclosure and the long-term outcomes of the CSA survivor. Jonzon and Lindblad (2005) suggest that the process of disclosure and the response of those being disclosed to may be even more predictive of the long-term consequences of CSA than the characteristics of the assault experienced. For example, the reaction of a disclosure recipient is particularly important, as positive,

supportive responses can promote the recovery and future wellbeing of survivors though the reduction of feelings of shame, self-blame and isolation (Easton, 2014).

1.5 Impact of Child Sexual Assault

There has been extensive research into the impact of CSA on the subsequent functioning of victims and survivors. The impacts of CSA are thought to occur across at least three stages, with the child's initial reaction to their victimisation, followed by their accommodation to ongoing sexual harm (if relevant), and the longer term impact on adolescent and adult functioning (Briere & Elliott, 1994). In the short term, Kendall-Tackett and colleagues' (Kendell-Tackett, Myer Williams, & Finkelhor, 1993) review of 45 studies showed that children who have experienced CSA have more symptoms, including for example, behaviour problems, poor self-esteem, and sexualised behaviours, than those who have not experienced CSA. More than 80% of children who have experienced CSA are reported to have some posttraumatic stress symptoms (McLeer, Deblinger, Henry, & Orvaschel, 1992), and a variety of studies have also shown that CSA is associated with emotional distress and a range of cognitive distortions in childhood, including hopelessness, impaired trust and self-blame (Briere & Elliott, 1994).

While some initial reactions to victimisation may abate in childhood, other consequences of CSA may persist or develop over the longer term (Briere & Elliott, 1994). Many reviews have described the various long term impacts of CSA, while indicating that CSA does not reliably predict any one condition or set of difficulties (Barnes & Josefowitz, 2014). In this way, CSA has been described as a nonspecific risk factor for a multitude of adverse outcomes (Cashmore & Shackel, 2014).

Barnes and Josefowitz (2014), for example, reviewed the wide range of long-term outcomes that have been associated with CSA, including psychological difficulties such as depression, anxiety, sleep disorders, personality disorders and psychotic disorders, behavioural problems such as substance abuse, self-harm, eating disorders, conduct disorders and antisocial behaviour, as well as relationship difficulties, poorer physical health, and poorer educational and occupational achievement. Corroborating the findings of these narrative reviews, one study analysing seven meta-analyses on CSA and adult psychopathology found CSA to be a nonspecific risk factor for a range of adverse mental health outcomes (Hillberg, Hamilton-Giachritsis & Dixon, 2011). Longitudinal survey research has also supported the findings of these reviews. A New Zealand birth cohort study, for example, found that CSA prior to age 16 was associated with a range of adverse outcomes at age 30, including depression, anxiety, alcohol and drug dependence, PTSD symptoms, and reduced self-esteem and life satisfaction (Fergusson, McLeod & Horwood, 2013). These negative outcomes were also found to increase alongside the increasing severity of CSA experienced (Fergusson et al., 2013).

A body of literature has also revealed links between the experience of CSA and later suicide or attempted suicide. For example, an Australian study of 2,759 substantiated cases of CSA, with a follow up period of up to 44 years, showed that the rates of suicide and accidental drug overdose were significantly higher among those who experienced CSA compared with

age-limited national data for the general population (Cutajar, Mullen, Ogloff, Thomas, Wells, & Spataro, 2010).

Despite the increased risk of such outcomes among victims of CSA, it has been reported that up to 25% of victims experience no psychological problems in childhood and that up to 40% of survivors exhibit no clear psychopathology in adulthood (Walsh, Fortier & DiLillo, 2010). Barnes and Josefowitz (2014) discuss the adverse consequences of CSA as being predicted by a complex interplay between the presence of risk and resiliency factors within an individual and their social environments, and the features of the sexual assault itself, including the nature and duration of the childhood experiences. Further research has identified several key factors that are predictive of increased negative impact into adulthood, including a child's younger age at first experience, greater number of sexual assault episodes, longer duration of the sexual assault, the presence of coercion, force or threats, more invasive sexual contact, more than one perpetrator, parental mental illness, criminal activity and substance use, and perpetration by a father or father figure (Barnes & Josefowitz, 2014; Martin & Silverstone, 2013). Social support, meanwhile, has been shown to mediate the effect of trauma and reduce the likelihood of negative outcomes resulting from experiences of CSA (Charuvastra & Cloitre, 2008). In particular, a key determinant of positive long-term outcomes among CSA victims appears to be early disclosure that results in the provision of social and emotional support (Arata, 1998; Fergusson & Mullen, 1999).

Drawing by six-year-old boy

CHAPTER 2

This Chapter outlines the Family Law process in Australia.

2.1 Family Law in Australia

> *The Family Law system refers collectively to the family courts (the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia) and all family law and post-separation services, including legal aid and private legal services as well as family relationships services such as family dispute resolution, counselling, parenting orders programs and contact services funded by the Attorney-General's Department. 'Services outside the family law system' is understood to mean services provided by statutory agencies such as State and Territory Child Protection departments, mental health and drug and alcohol services and other non-government community sector service providers*. (Family Law Council Discussion Paper, 2015)

The Family Law system exists to assist parties to settle disputes about matters relating to the family. Family Law is administered by Judges under the Commonwealth *Family Law Act 1975* ('FLA') and, in most Australian States (see information on the Family Law System of Western Australia below), these matters are heard in the Federal Circuit Court (formerly the Federal Magistrates Court) or Family Court of Australia based upon rules and regulations set out by the Federal Government. The Family Court of Australia or Federal Circuit Court hears first instance matters and the Family Court of Australia also hears appeals. Matters can also be appealed to the High Court of Australia, but, historically, there have been few Family Law matters heard by the High Court. Majority of Family Law cases are now filed and heard in the Federal Circuit Court (Family Court of Australia, undated-b), meaning the Family Court of Australia is becoming smaller and is only managing appeals and more complex Family Law matters (Family Court of Australia, 2013a). These complex matters typically involve international family law, significant family violence, serious allegations of child sexual assault and abuse, mental illness and substance abuse (Family Court of Australia, 2013a).

On January 1, 2015, the Federal Circuit Court has changed their process where any Family Law matter filed in this registry is to be accompanied with a Notice of Risk form. This form replaces the Form 4 Notice of Child Abuse or Family Violence which was required to be filed only when such concerns were present in a matter. The Notice of Risk form is designed to allow the Federal Circuit Court to: better meet its obligations under s 69ZQ (*FLA*), identify a wider range of risks relevant to parenting and have earlier identification and responses to risks for children (Federal Circuit Court of Australia, 2015). If a matter is moved to the Family Law System, a Form 4 Notice of Child Abuse or Family Violence must still be filed where such issues are present in a matter.

Children's matters in Family Law are decided based upon the paramount principle set out by the *FLA*. This principle ensures that all decisions made in children's matters must be in the best interests of the child (*FLA*, ss 60CA & 60B). In 2006 the *FLA* was amended to set out two

primary considerations to be applied by Judges which are intended to promote the best interests of the child. These primary considerations include ensuring that the child has a meaningful relationship with both parents through both parents being involved in their lives as much as possible; which is to be balanced against the need to protect the child from harm (*FLA*, ss 60CC(2)(a) & 60CC(2)(b)). In 2012, an amendment was made to direct the Court when applying these primary considerations to give more weight to the need to protect children from harm (*FLA*, s 60CC(2A)). This provision was added to make the law clearer; whereas before this amendment, the same principle existed through previously decided cases (which are required to be followed).

Under the *Family Law Act*, there is a presumption that it is in the best interests of the child for the parents to have equal shared parental responsibility for the child (*FLA*, s 61DA). The Court is also able to assign certain aspects of parental responsibility to a parent where required, so long as sufficient detail is provided regarding what aspects of responsibility is being assigned (*Chappell v Chappell* (2008) FLC 93). However, the *Family Law Act* also notes the presumption does not apply if there are reasonable grounds to believe that a parent has abused the child or engaged in other forms of family violence. If the presumption does apply (i.e. there are no concerns of, or no reasonable belief a parent has engaged in, family violence) then the Court must automatically consider whether it is in the child's best interests to spend equal time with a parent or substantial and significant time with a parent. If the presumption does not apply, the Court can consider what other contact arrangements would be in the child's best interests bearing in mind the primary considerations noted above.

In addition the Family Law System, with the Federal Circuit Court of Australia, has developed the 'Family Violence Best Practice Principles' to "contribute to furthering the courts' commitment to protecting litigants and children from harm resulting from family violence and abuse" (Family Court of Australia, 2015a).

> The Best Practice Principles recognise:
>
> - the harmful effects of family violence and abuse on victims,
> - the prominence given to the issue of family violence in the Family Law Act, and
> - the principles guiding the case management system for the disposition of cases involving allegations of abuse of children.
>
> The Best Practice Principles apply in all cases involving family violence or child abuse (or the risk of either) in proceedings before courts exercising jurisdiction under the Family Law Act, and provide useful background information for decision makers, legal practitioners and individuals involved in these cases.
>
> See: www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/family-violence-best-practice-principles/

2.1.2 Family Law System in Western Australia

In Western Australia, Family Law is administered a little differently. The Western Australia Federal Circuit Court does not exercise Family Law jurisdiction (Harland, Cooper, Rathus, & Alexander, 2011) nor engage in the Magellan program. Instead, Western Australia chose to establish a Family Law System run through state legislation applying Western Australia's own *Family Court Act 1997* (WA) and the *FLA*. Therefore, the Family Court of Western Australia is an autonomous state court (Nicholson, 1999) and cases are run differently according to Western Australia's own rules and regulations. This includes the 'Columbus Project' analogous to the Magellan Program described below. Appeals from the Family Court of Western Australia are heard in the Family Court of Australia.

The reasons for Western Australia establishing its own Family Court rules and processes was to provide a unified jurisdiction to administer Family Law matters at both federal and state level and allow Western Australia to have jurisdiction in Family Law matters. Additionally, Western Australia sought to keep the administration of Family Law closer to the people it was designed to serve rather than removing responsibility to the Federal Government and creating another Federal Court.

2.1.3 Family Law Process where there are Allegations of Child Sexual Assault

Where there are allegations of CSA (or any other form of child abuse or family violence) the *Family Law Act* ('*FLA*') requires the person raising the allegations to file a notice (a Form 4 Notice of Child Abuse or Family Violence) to the Court hearing the proceedings and serve a copy of this notice on the person who is alleged to have harmed the child or from whom the child is alleged to be at risk of harm (s 67Z(2), *FLA*). Subsequently, the Registrar Manager must notify the relevant state child welfare authority when they receive this notice (s 67Z(3), *FLA*) no matter whether they receive, or know of, any supporting evidence or information. Additionally, if a Court officer or professional (such as the Registrar, consultant, ICL or dispute resolution practitioner), in the course of performing their duties, has reasonable grounds for suspecting a child has been harmed, or is at risk of being harmed, that person must notify the relevant State child welfare authority (s 67ZA, *FLA*).

2.1.3.1 Standard of Proof

In the Family Law System the Judges have an unenviable and difficult position of applying the principles of the *Family Law Act* to individual cases in line with previous decisions made. Where a matter involves allegations of CSA, the Family Law System does not have the power to investigate the allegations. It must merely rely on all of the information that is presented to the Court to inform the decisions it makes. Further, the Court does not have the duty to make a finding about the criminality of the allegations of CSA, such as a Criminal court would (*M v M* (1988) 166 CLR 69 ('*M v M*'), p. 581); and, if the Family Law System is satisfied that an offence occurred, this must be assessed at the civil standard of proof (being on the balance of probabilities) and with regard to certain factors as set out in civil cases (*M v M*). These factors include "the seriousness of the allegations made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a

particular finding ...(and) should not be produced by inexact proofs, indefinite testimony or indirect inferences," (*Briginshaw v Briginshaw* (1938) as cited in *M v M*, p. 582); and are also explicitly set out in s 140 of the *Evidence Act 1995* (Cth). Therefore, the more serious the offence, and gravity of the consequences, the required strength of the evidence is higher and can vary between cases (Pannu, 2014).

One of the leading decisions relating to child protection in Family Law is *M v M*. This case requires the Judges to make decisions, based upon the evidence put before them in the Court, that protect the children against risks in the future (including all forms of abuse to a child), whilst also balancing requirements to foster the family relationships of the parties. Therefore, when deciding cases involving allegations of CSA, the Family Law System is not to grant custody or access to a parent if that custody or access would expose the child to an unacceptable risk of sexual assault (Parkinson, 1998). And, when deciding whether there is an unacceptable risk, the Court must deeply consider the facts of the case and provide adequate explanations for their findings (*Re W (Sex Abuse: Standard of Proof)* [2004] FAMCA 768 ('*Re W*')); which is one of the more recent and leading cases regarding CSA allegations and was decided by the Full Court upon appeal).

> *The assessment of 'unacceptable risk' has two aspects to it. The first is the prospect of whether something might happen. The second is the consequence of the risk happening. The prospect of something happening might be low but the consequences might be catastrophic and in those circumstances, even though the prospect is low, the risk is unacceptable.*
>
> *Currently, the application of the test appears to be loosely applied by the Courts, in many respects, and, in some cases, there is more weight given to the right for the child to have a meaningful relationship with both parents, rather than the overall physical safety of the child and, indeed, potentially, the safety of the Other Parent.* (Ludemann, undated)

2.1.4 Magellan Program

The Magellan program is designed to hear Family Law matters that involve serious allegations of harm to a child (Family Court of Australia, 2015b). The Family Law System assert that the Magellan program is designed to deal with these matters as effectively and efficiently as possible and focus on the children in the matter. Where a notice of Family Violence is filed making serious allegations of CSA, this usually gives rise to the matter being heard in the Family Court of Australia under the Magellan program (Family Court of Australia, undated-a). The Magellan program allows judges to have more control over the matter including making requests from the relevant state child protection institution for information relating to the agency's dealings with the child or family and the institution's assessment of that information.

The Court explains (Family Court of Australia, 2015b), where a matter is referred to the Magellan program, there is an "early front loading" of resources such as the appointment of an Independent Children's Lawyer ('ICL') and representation for self-represented litigants. This stems from Legal Aid funding in the relevant state. Further, the program involves "a close liaison on case management between external information providers" and has a specific small group of judges, registrars and consultants. And, where possible, they seek to ensure the matters are managed by the same team from start to finish and aim to have the matter completed in less than six months.

A 2011 evaluation of the Magellan program found (Higgins, 2007):

- The average Magellan case took 7.3 months to finalise from the date it was included in a Magellan list, which is only slightly longer than the prescribed timeframe of 6 months.
- Generally, the Court and other agencies processed Magellan cases differently from Magellan-like cases, in line with the agreed Magellan protocols.
- There were differences among the registries in protocols, case-management procedures, and some of the success indicators (e.g., timelines).
- Magellan cases had greater involvement of the statutory child protection department.
- Magellan cases had an average of 6.2 Court events, compared to 10.9 for Magellan-like cases.
- Magellan cases were dealt with by 3.4 different judicial officers on average, compared to 5.7 for Magellan-like cases.
- Magellan cases were more likely to settle earlier…
- The total duration of cases, from the date of application to finalisation was shorter by an average of 4.6 months.
- From the date the Court was advised of the allegations to the case outcome, Magellan cases were resolved 3.4 months faster…

The following were identified as key elements of Magellan:

- Cooperation between all the agencies involved (particularly the statutory child protection departments);
- Court timeliness and prioritisation of Magellan cases;
- Early reports from the child protection department (the 'Magellan Report');
- Good individual case management (Judge-led);
- A dedicated Magellan Registrar;
- Un-capped legal aid funding;
- Independent Children's Lawyers to independently represent the interests of children; and
- A focus on children's best interests

Further, Higgins (2007) noted that there was a disparity of views between Court professionals and parents. While Court professionals thought the Magellan program worked well, parents did not.

2.2 The Rights of the Child

On 20th November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child ('the Convention'). All countries, except the United States of America, have signed or ratified the Convention. Australia became a State Party by ratification in December 1990.

By signing the Convention, countries have the duty to ensure all children enjoy the rights set out in the treaty. In particular:

Article 3 sets out:

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
2. *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

Under Article 19 it was agreed that:

1. *State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
2. *Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for the identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment, described heretofore, and as appropriate, for judicial involvement.*

Article 34 requires that:

Children shall be protected from all forms of sexual exploitation and sexual abuse.

Governments shall take appropriate measures to prevent:

a) the inducement or coercion of a child to engage in any sexual activity;

b) *the exploitative use of children in prostitution or other unlawful sexual practices;*

c) *the exploitative use of children in pornographic performances and materials.*

Article 39 states that:

> *Governments shall take all appropriate measures to promote physical and psychological recovery and social reintegration of child victims of any form of neglect, exploitation, abuse, torture or any other forms of cruel, inhuman or degrading treatment or punishment.*

The Convention is not explicitly included as part of the *FLA* which, the Federal government has said, means Judges should not apply the provisions of the Convention when making decisions (Fitzroy Legal Service, 2013). However, this position is ambiguous as a previous High Court judgement required Judges to ensure their decisions were in line with treaties ratified by Australia (*Minister for Immigration and Ethnic Affairs v Teoh* [1995] HCA 20).

The *FLA* has, however, always contained provisions requiring all decisions to consider the interests of the children as the paramount consideration, though the wording changed slightly when the Convention was ratified by Australia (Australian Law Reform Commission, 2010). The *FLA* has also always required decision makers to protect the rights of the child and to promote their welfare under s 43(1)(c).

Former Chief Justice of the Family Court of Australia, Alistair Nicholson, has commented that Australia should not be selective regarding the rights which are incorporated into domestic legislation "thereby detracting from the holistic intended impact of the instruments from which those rights are drawn," (2002). As noted by a protective parent participating in this project: "*Children have a right to as 'normal' an upbringing as possible. They need love and stability. The institutionalisation of my family via the family court processes created significant problems and hardship for our family. We are in such a better place since we have become a 'normal' family*".

Dear dad,
I feel worried, scared and frustrated because you are not true with me and at times you get carried away and this hurt me. what I would like is for you to be more gentle with me.
I do not like it when you tickle, lick, crack my toes and force me bacon, eggs and orange juice. Sit on me and make me swear at me and also hurt the cat. it would make me happy if you just played gentle it would also make me happy to have my own bed.

Love from

[redacted]

Thank you.

Letter sent from an eight year-old girl to her father

CHAPTER 3

Warning: the following narratives contain explicit material that may cause distress.

3.1 Introduction

The Family Court arena is complex, and parties are often characterised by intense hurt, massive disappointment and anger. The competing narratives of waring parents are often difficult to decipher, and children can become weapons in their arguments.

Complexity is further enhanced when parents come to the Family Court with allegations of child sexual assault by the other parent, particularly if the issue has not previously been raised with Police or Child Protection Authorities.

These narratives are about such families and they contain three possible victims, the child, the mother, and the father. When allegations of child sexual assault are made, all three are affected, but none more so than the child regardless of if the allegations are true. Family law is based on the best interests of the child and consideration is given to ensuring that the child has a meaningful relationship with both parents; which is balanced against the need to protect the child from harm. In what appears to be robust yet ambiguous legislation, these narratives depict that the best interests of the child is at times seen as synonymous to, and of equal value to, the child having contact with both parents. The ultimate question is at what cost to the child who is sexually assaulted and subjected to ongoing contact with the alleged offender? And who ends up wearing the burden of this injustice?

Whilst it is acknowledged that the following narratives have come from those parents who have not had positive experiences with the Family Law System, there is much to be learnt from them by services, lawyers and the legal system at large. They bring light to the changes that need to occur. In these narratives, often the voice of the child is missing in decisions that are life changing for them. Although their disclosures are hard to ignore, and equally hard to forget, their inability or fear to provide disclosure to meeting the criminal test, for example, the number of assaults, dates, times, and locations, mean that their voice and their cry for help often goes unheeded. For those professionals and organisations who are given a voice, it is often polarised, with some believing the allegations of sexual assault to be true, whilst others simultaneously believing that the children had 'lied', 'fantasised' or had 'fabricated' the allegations. Or alternatively they had been coached by a 'mad', 'vindictive' and 'alienating' parent (usually the mother). For those who advocate for the child's best interests, not only is their voice ignored but these narratives suggest that many professionals to whom the court does listen are not experts in child protection, do not meet the child,

Drawing by six-year old boy

or spend very little time with them. In other cases, in light of the concerning information available, conclusions and recommendations arrived at through formal 'expert' assessments and their ultimate decision making appears incredulous.

Ironically, the system which is set up to protect the child, ultimately begins to mimic the parents, with professionals siding with one or other parent. The existence and effects of family violence is minimised and subjugated to parenting orders. Criminal behaviour is considered as 'being in the past', or 'attached to harm of another'. A lack of sexual boundaries or behaviour by a parent becomes classified as 'inappropriate' and 'unsubstantiated' becomes defined as 'it didn't happen'. It is easier to believe that parents don't sexually harm their children, than accept the horror of the reality.

Whilst there is a plethora of research on all aspects of child sexual assault and dynamics of offending, it has yet to fully translate into practice. There are gaps and inadequacies in the process. The current legal adversary argument is essentially designed to determine particular factual issues upon which existing rights depend. What that process fails to address well is actual and future risk to the child. Without adequate risk assessment or any clear values that places the protection of the child at the very top, unacceptable risk to the child appears to be permitted to continue, either through 'informal', 'consent' or 'court' orders.

If we are to value and protect children we need to prioritise them, and take the time and provide the resources for their experience to be fully appreciated and understood. For as these narratives show, they are unable to protect themselves.

These are their stories…

3.2 Case Studies

Note: These Australian stories are difficult to read, extremely confronting and may be distressing to some readers. For confidentiality reasons names have been changed and general terms have been assigned in particular instances, for example, violence restraining order (VRO) or Child Protection Authority.

VIOLET'S STORY

Violet was born to Hanna and Bill in 1997. Prior to their marriage the father completed a rehabilitation program for his frequent use and abuse of marijuana. Following his marriage to Hanna he relapsed.

Their marriage was subsequently characterised by paternal drug use and domestic violence, which included regular sexual assault of Hanna which became worse when she became pregnant. Hanna said that Bill would throw her across the room, and after Violet was born, attempted to choke her. He was cruel to their animals. He was also said to break furniture and punch holes in walls. There were witnesses to his verbal abuse of Hanna and the holes in the walls were sighted by others. When Violet was three months of age, and in his car, Bill

was arrested and convicted for drug use and intent to drive a motor vehicle whilst under the influence of drugs.

In 1997, Hanna saw a counsellor about the problems in her relationship with Bill. One of her main concerns which she expressed to the counsellor was Bill's violence towards her and the fear that this would damage Violet psychologically if not physically. The counsellor formed the view that Bill was not aware of the extent of his own violence and was not taking responsibility for his violence in the relationship. The parents attended counselling together. Bill acknowledged he had a problem and needed help. Although he agreed to attend a support group he did not attend, nor did he present to further sessions after the initial three. He continued to be abusive of Hanna in front of Violet, and although Hanna would call the Police, this was said not to discourage him. The assaults continued and in 1998, Hanna sought medical attention after one particular incident of family violence whereby she was hurt while holding Violet. Following this incident the parents separated.

After the parents separated Violet had contact with her father, which although irregular, included overnight visits. Bill would frequently phone Hanna with requests/demands to see Violet and he was frequently abusive. Hanna was concerned about whether he was still using marijuana and would be effected by it when he was caring for Violet. Hanna reported she usually gave in to his demands because of the abuse and harassment to which Bill subjected her.

Six months after separating from Bill, Hanna moved states with Violet. Prior to her move the Police commenced proceedings for a violence restraining order (VRO). The mother's reasons for the move was that "I desperately needed for Violet and I to be away from the abuse of Bill. I do not consider that it is in Violet's best interests to grow up knowing her father only as someone who yells and hits her mother. Financially I could no longer support myself and Violet". Within two months Bill was also living in the same state as Hanna after being informed from a family member of her move.

In 1999, Bill filed an Application in the Family Court seeking Interim and Final Orders that Violet reside with him. Hanna responded opposing the Application. She also commenced proceedings for a VRO, which had originally been commenced by the Police relying on a statement from her, prior to her move. Hanna's father became concerned with the changes he observed in Violet after she had contact with her father. These observations included a regression in toilet training as well as Violet reacting strongly to quick hand movements and raised male voices by becoming agitated and frightened. She had also became aggressive or alternatively teary. He subsequently submitted an Affidavit to the court in August 2009 opposing increased time with her father due to the negative impact he was already having on Violet's behaviour and development.

In September 1999, Interim Consent Orders were made in the Family Court providing Bill telephone contact with Violet twice per week and Saturday contact for six hours and at other times to which the parents agreed. Hanna allowed Bill to have some overnight contacts with Violet. An Interim VRO was also granted which named Hanna as the protected person. Despite the Interim VRO the father continued to harass her, which resulted in the

Police giving Bill a formal warning to stop making the intimidating telephone calls. Although initially Bill contested the VRO, at the hearing he withdrew his opposition and consented, without admissions, to a VRO for three years.

Hanna noted that after the first contact with her father, Violet regressed from being toilet trained to wearing nappies, was unsettled for two days following, and her behaviour was challenging. Hanna reported that Violet would have nightmares, would wake screaming and appeared frightened and would urinate on the floor. Violet refused to speak to her father on the phone. Bill would on occasion return Violet late, shout, threaten and verbally abuse Hanna and her friends and accuse her of "shacking up with the whole of the church".

In 2000, Bill commenced proceedings in the Family Court seeking custody of Violet. The Judge accepted the evidence of Bill having been verbally and physically abusive and assaulting the mother on a number of occasions and noted that he was also controlling as he withheld financial support in an effort to have Hanna reconcile with him. The father stated that he only "pushed and slapped her". Bill also appeared to blame Hanna for his violence. Further, the Judge was of the opinion that Hanna's attitude to parenting was adequate; however, Bill was not able to give priority to Violet's needs and instead used Violet as a hostage in a power play. The Family Court Judge also accepted the evidence in relation to Violet's challenging behaviours, however thought that her regression in toilet training was likely due to an awareness of her mother's apprehensiveness and witnessing abusive behaviours by her father.

Given the family dynamics and in the best interests of the child, the Family Court Orders made by the Judge provided for one year of supervised visits on alternate Sundays and there was a requirement that Bill "address his problems". The supervisor was to be appointed by the Director of Court Counselling. It was thought by the Judge that any unsupervised contact would have been contrary to Violet's best interests as there was risk of witnessing abusive behaviours from Bill. The Court stated that the supervised contact would only occur for one year and if during that time the father did not address his problems and satisfy the mother or the court that he had done so, the contact would end.

Hanna says that her lawyers pressured her into accepting unsupervised contact after the expiration of one year, and if she took the matter back to Court, Violet, now aged four years, may be ordered to spend increased amounts of time with her father or live with him. Subsequently, Consent Orders were made in 2002 which provided for Violet to have contact with her father alternate weekends from 4pm Friday to 5pm Sunday and for four hours on a weekday evening during school term.

In 2003, access was to increase to include the first four days of each school holidays, and in 2004, Bill was to have access of Violet for half of the school holidays. Initially Bill had a girlfriend living with him but then they separated. In effect, given the matter was not taken back to court it allowed for no means to ensure whether Bill had addressed his drug use or violent behaviours as stipulated in the previous court order and whether Violet was safe in his care.

Hanna says that she began to suspect something was going on with her daughter, as Violet would return from contact visits saying her father would not let her sleep in her own bed and he called her derogatory names. Violet also became more distant. Hanna suspected that Bill was using drugs as he was displaying similar behaviour as she had witnessed previously.

In July 2004, the Victim Services department referred Violet, aged seven, to a clinical psychologist for free counselling. Violet met the criteria as being a victim of crime and having access to free counselling, as she had witnessed/experienced the violence perpetrated on her mother by her father. She had also witnessed, whilst having contact with her father, the violence her father perpetrated on his new partners. Violet was seen on two occasions and the psychologist submitted a report requesting further treatment sessions. The psychologist felt that Violet was exhibiting a range of fear symptoms relating to the prospects of seeing her father, was continuing to have nightmares, had witnessed domestic violence and was insecure regarding bullying at school. In the same month, Violet's father submitted an Application to the Court for Orders seeking more contact with her. He was successful with his Application.

In early 2005, when Hanna attended a parent-teacher interview, the school counsellor was also present. The counsellor told Hanna of their concerns regarding Violet's behaviour. The teachers were saying that Violet was showing signs of child sexual assault, including changes in her disposition and behaviour when Bill came to school to collect her. They felt that that Violet seemed very frightened. They advised Hanna to do something about it. Violet commenced seeing a child and family counsellor who advised Hanna to make a report to the Child Protection Authority.

In the following months, Violet had a poor appetite and was eating very little. She subsequently lost four kilograms in weight. The school noticed that Violet was frequently tense and upset prior to and after weekends and the midweek day when she went to stay with her father. It was at this time that Violet returned home from contact and informed her mother that the school had spoken to him about Violet not wanting to see him anymore and her father then asked Violet if she wanted to see him. Violet responded that she didn't know. Her father stated that he was her dad, so she should be saying yes. Hanna initially withheld Violet from contact with her father after these disclosures from Violet following this visit and due to Violet's distress.

In May 2005, Violet aged eight, reported to a teacher that her father was hurting her by sitting on her and not letting her move, slapping her face, holding a pillow over her face, verbally abusing her and calling her names. She added that she felt unsafe with her father. The teachers noted Violet's distress when she had to spend time with Bill. They relayed this information to Hanna, who had also been told by Violet that Bill punched the family's pet and other things and that she was forced to sleep in her father's bed.

Violet wrote her father a letter whilst at school, with the support of the counsellor, telling her father that she didn't like it when he was rough and it would make her happy to have her own bed. She also stated in the letter that she did not want orange juice, egg and bacon and wanted it to stop. Each word (orange juice, egg and bacon) was code for particular

sexual acts that her father would perpetrate on her. The code was not disclosed by Violet to the counsellor, teacher or her mother at that time. A teacher posted the letter for Violet and it arrived on the same day she was to have contact with him. Violet's mother was unaware of the contents of the letter. After returning from contact Violet informed her mother that her father received her letter that she wrote him, teased her about it, poked her and said "oh I'm not allowed to do that now, you don't like it." He then got angry, didn't speak to her for a while, but then kept asking who helped her write the letter.

In August 2005, Violet disclosed to a teacher her father was touching her and her "vagina was sticky, wet and gluey" in the morning when she wakes up. Additionally, she described her vagina as being very sore and stinging on waking. The Principal contacted Hanna to come to a meeting and asked why she hadn't been in contact with the Child Protection Authority. Violet disclosed the same information that she told her teacher to her mother as well as the fact that "daddy has got lots of naked ladies on his computer" and that she found some of the pictures in his bed. Violet commented about her father being mean, hating him, thinking he is on drugs and that he kicks her and calls her names. Hanna ceased Violet's contact visits with her father after speaking with the Principal about Violet's disclosures. After this time, Violet appeared more settled and happier.

As well as having made a notification to the Child Protection Authority, Violet and Hanna were interviewed by the Police however Violet did not disclose everything as, according to her mother, she was "too frightened to tell the full story". Hanna was unaware at the time of the threats that the father had made to Violet to silence her. Although Violet was forensically medically examined there was not enough evidence generated to lay charges and Hanna felt that the hospital staff were dismissive. The Police informed her that they could not proceed until Violet told them as much as she could.

In August 2005, the GP referred Violet to a child/adolescent clinical psychologist. It was the GP's opinion that Violet had been experiencing chronic anxiety and depression which was attributed to the ongoing legal disputes initiated by her father and the resultant fear of being forced to see him against her will. In the same month, Hanna received a letter from a Caseworker stating that they were closing Violet's Child Protection case as they had been unable to get into contact with her. Hanna replied to the Manager by letter stating that she had not received any telephone calls, and that she was dismayed at it being closed given at least ten reports have been made from herself, the school and a counsellor and the seriousness of the concerns. Hanna also wrote in her letter that closure with a referral to the protective behaviours program placed an unreasonable onus on Violet. Hanna requested that the matter be reviewed.

Violet commenced seeing a counsellor at the sexual assault service in September 2005 to learn protective behaviours. Violet expressed fear of being with her father to her counsellor and her school. She continued to display disturbed behaviours such as defacing pictures of him and writing notes of hatred to him. Undated, but assumedly in 2005, Violet drew a picture about a dream she had. It is captioned "one night at dad's house". It reads: "I had a dream. I was in my bed (Dad doesn't let me sleep in my bed and I had the dream in dad's bed). I was asleep. Dad came in my room I did not no (sic) Dad was there thoed (sic) me

were he (illegible) should not". The picture depicts "Dad" and "me" and is titled "the dream". The bubble depicts a person lying in bed, two people watching, and one person touching the person lying on the bed.

In October 2005, Bill filed an Application regarding Contravention of Orders without reasonable excuse. The contact then resumed unsupervised weekly. Hanna spoke with Bill in relation to some of the concerns. This resulted in Violet returning from contact saying "please don't say anything to Daddy, it only makes it worse next time when I go there". Hanna subsequently filed a Form 4 Notice in the Court, outlining all of Bill's abusive behaviours towards Violet.

In November 2005, Violet was interviewed by the Child Protection Authority. She disclosed that her father was physically abusing her (poking, pinching, punching, slapping and sitting on her). Hanna was subsequently interviewed and she felt believed. A number of telephone calls between Hanna and the Child Protection Authority followed with one officer stating that "we're starting care proceedings for Violet in Children's Court". However, this did not eventuate.

In February 2006, a psychological assessment of Violet was sought by the mother through her solicitor in relation to the Contravention of Orders. It was thought it may also assist the Court in their decision making. The private report was to shed some light on the underlying reasons why Violet refused to have contact with her father. The psychologist interviewed Violet and came to the conclusion that she no longer felt safe in his presence and was very definite about her view of her father and sincere in not wanting any contact at present. The report concluded: "*It would be ideal if the ongoing threats of legal action towards the mother could stop and this nine year old assured an opportunity to attend school and get on with her life in a harmonious and safe adult environment."*

In the same month, the Child Protection Authority wrote to Hanna noting that they were closing Violet's file due to conflicting priorities and advised that Violet's case was unallocated. The previous Caseworker had removed themselves from the case once they realised that they knew the father's family, due to a conflict of interest. The Child Protection Authority produced notes to the Court under subpoena, noting that there had been eleven risk of harm reports in relation to Violet.

In March 2006, Hanna's barrister provided an overview of Court Proceedings to her solicitor. The barrister noted the Magistrate rejected the suggestion that there was seminal fluid on Violet's clothing and whilst agreeing Violet was distressed, the Magistrate was of the opinion that this was due to the mother's distress.

Hanna reported that evidence of the father's previous criminal history was brought into the Family Court. This included speeding fines, assault charges for "bashing a security guard at a night club", drug charges for being found with possession of drugs and smoking them in the car with Violet in it with the windows up, indecent exposure and AVOs relating to stalking Hanna and other women.

Hanna notes that the response from the Court was that the offences were committed a long time ago and people change. The Court subsequently ordered that Bill have one hour supervised access with Violet until the matter came back to Court in April 2006.

In April 2006, after Court proceedings, contact was resumed for two hours. When Violet was informed that contact was resuming for two hours and not one, she was said by Hanna to shake, become quiet and cry. After contact resumed with her father, Violet would hide, shake, cry and hold on to her mother saying "please don't make me go". Violet's distress continued throughout the year. She would say she hated him (her father), destroy gifts and letters he gave her, and any photos of them both. Violet would also have trouble sleeping, but would not talk to her mother about why. Nor did she want to eat or drink anything at her father's during contact, and often requested food to take to contact. Violet often returned from visits saying "I feel scared", and when her mother asked her why she stated; "He yells at me, you do believe me don't you mummy?" Later Violet informed her mother she "wants to be normal…why is her father so mean…I don't want to go through this…I hate him…I want this to be over…".

In June, Violet's psychologist provided an Affidavit to the court. The psychologist provided their opinion that Violet was traumatised by the ongoing dispute between her parents. The psychologist noted Violet was worried about being alone with her father and felt uncomfortable with his touches on her thighs or "private parts".

In the same month, new contact arrangements commenced pursuant to fresh Orders for Violet to visit with her father for four hours each Wednesday evening.

In July, Violet was taken to a doctor and diagnosed with cystitis,[7] and the doctor asked her "if someone has touched her where they shouldn't".

Violet's teachers also noted Violet's distress when her father attended the school, and informed the mother's new partner that Violet was crying at school. Violet also told her friends that she was crying because she was afraid of going to her dad's at night. Violet began telling her mother that she wanted to take her own food to her father's when she was staying there and was distressed while stating this. On occasion, Violet refused to eat at her father's. On one occasion, after being upset following access, she told her mother that "my heart is shattered".

In September 2006, the Federal Magistrates Court made Orders providing for additional weeknight contact for four hours with her father. The ICL had interviewed Violet and asked who she wanted to live with and Violet replied her mother. Hanna claimed that was all that Violet was asked. Hanna was ordered (Order 3) to encourage Violet to enjoy the periods of time with her father and to encourage Violet to have meals with her father. She was also restrained from preparing food for Violet (Order 4) and from taking Violet to a counsellor unless agreed by both parties and the ICL (Order 5).

[7] Urinary tract infection.

In October 2006, the school reported to the mother that Violet was having panic attacks. In December 2006 Violet informed her mother about the contact she had just had with her father: "I am sick. I am hungry, but I feel so sick I can't eat." She also told her mother that her father threw presents at her, yelled and told her that her mother and stepfather are liars and God is going to get them because they are making his life miserable.

During 2006, Violet also made various disclosures to her stepfather when he picked her up from contact. These disclosures included that her father tickles her and she doesn't like it, and that he slapped her after she hit him to make him stop; that he calls her names; that she feels sick in the stomach; that her father threw his x-box when he was unable to play the game; that there are naked women in magazines and on his computer. Violet further stated that she "doesn't want to go, she hates him and can you make it stop".

In January 2007, Violet's stepfather reported to Police that Violet disclosed that her father was tickling and touching her and that she had to hit him in the back of the head to stop him. Violet stated that "it was the only way I get him to listen to me or get off me and get him to stop….How else am I meant to get him to stop doing things to me that I don't like".

When the stepfather reported this, the Police reportedly responded by saying that it sounded like a Family Court matter and that there was nothing they could do. They advised the stepfather to phone the Child Protection Authority.

Violet informed her mother "you can't make me do this (go to contact)…you don't know what I'm going through…no-one knows what I'm going through". She continued to disclose to her mother that her father touches her. Violet spoke of her food tasting funny and the mother formed the belief that Hanna was being drugged.

In April 2007, when Violet was interviewed on her own by the Family Report Writer, she disclosed again that her father touched her in her private parts, she slept in bed with him and that when she woke up she felt "sticky and gooey". She would have a shower because it was sticky and gooey. Violet described a dark figure appearing beside the bed, and when she checked the side of the bed where the father had been, he wasn't there. "There were no lights on, he leant over me, and he was sort of tall. He touched me down there. I don't remember very well". The Family Report Writer then interviewed Violet with the father present. Violet was again asked about the allegations of sexual assault whilst being interviewed with her father sitting next to her. Violet did not respond, but when prompted said "he punched me". When asked about "bad touching", Violet said she didn't know.

The Family Report Writer also interviewed Hanna and Bill together. Hanna says Bill began swearing and stormed out of the Report Writer's office saying, "see what I have to put up with Doc. I am not sitting here any longer." Hanna noted that the Family Court Writer did not reflect this in their report and instead, commented that "Bill handled the attack from Hanna well".

The Family Report Writer subsequently recommended that Bill have regular weekend contact with Violet, now aged ten years, each alternate weekend from Friday to Monday and a time in the intervening week and an afternoon, along with half of the school holidays.

Hanna was to *"have counselling her help her manage her anxiety so she is able to support contact. Further, if Hanna was unable to support the relationship between Violet and Bill, or if further spurious allegations of sexual assault arose, then Hanna would require a psychiatric assessment and Violet live with Bill and Hanna to have contact with the child."*

Although the Family Report Writer observed a very difficult relationship between Violet and her father and a reluctance by Violet during observation of her time with him; they felt "*that Violet has a deep and useful relationship which should be encouraged in the absence of other factors."*

The Family Report Writer found the allegations to be *"somewhat fantastic, extraordinary or unlikely*", and to have arisen in the context of Hanna's anxieties and difficulties with Bill. The Family Report Writer stated that Hanna appeared to have allowed herself to accept *"ludicrous stories about her child being drugged, bound with duct tape and ejaculated on by Bill and for the smell to be on her pyjamas for an extended period of time".*

The Family Report Writer felt that Bill had made 'significant gains' since separation regarding drugs and violence. Although Violet responded "no" when asked did she want to spend time with Bill, the Family Report Writer was of the opinion *"given that she admitted to enjoying some things, this was a contradiction to her previous answer"*. When recommending contact, the Family Report Writer wrote that it was their belief *"that contact would raise Hanna's anxiety and she may have difficulty containing it and therefore may make further allegations to undermine the relationship with Bill."*

Subsequently, In August 2007, Consent Orders were made in the Family Court of Australia which provided for equal shared responsibility and Violet to see her father four weekends per school term and half of the holidays.

In line with the Family Report Writer's recommendations, Hanna was to attend a counsellor to 'manage her anxiety'. Within seven days from the date of the orders, she was to contact the Manager of the Child Dispute Services of the Court's registry and obtain a recommendation for a counsellor, and then within a further seven days contact that counsellor and arrange an appointment. The counsellor was to be provided with a copy of the report by the Family Report Writer, and Hanna was to attend the counsellor for as long as reasonably deemed appropriate by the counsellor and pay the reasonable fees of the counsellor.

Hanna was also required to have Violet attend the Independent Child Lawyer (ICL) so that Violet could be informed of the orders by the ICL.

Each parent was requested to obtain a referral and attend a "parenting after separation course" and provide proof of attendance to each other, and to the ICL.

As a consequence of the court proceedings and the damning Family Report, Hanna felt completely "stopped and powerless" to do anything to stop contact. She felt that the Family Report had basically concluded that she was psychotic regarding Violet and that she had "put all of the ideas in Violet's mind".

Hanna was informed by her lawyer that if she contested the findings they would take Violet away as she would "look like a crazy lady". She was also unable to seek help for Violet because the Orders required the father to be notified if they sought help for Violet and therefore, they were unable to get her help.

In March 2010, Bill's now ex-girlfriend wrote to Hanna noting that her relationship with Bill had ended due to his violence and drug use. His ex-girlfriend noted her safety concern for Violet and stated that there was now no-one to supervise Violet and Bill during visits. The ex-girlfriend described domestic violence incidents that Violet witnessed between them and an incident where Bill threatened to slit Violet's throat.

Further, she spoke of having an Interim Order after Bill breached the existing VRO protecting her and two of their children. The Interim Order was made as Bill held a knife against his girlfriend's throat threatening to kill her, whilst she was holding their young child. As a result of this incident, Bill went to jail for approximately one month.

Prior to Bill going to jail, Hanna's solicitors wrote to Bill. They noted that Violet did not want to see Bill and Hanna wouldn't consent to unsupervised access. Bill wrote to Hanna's solicitors in May 2010 requesting re-instatement of phone contact only.

When Bill was in jail, Hanna stopped contact between Violet and Bill and it never resumed after he was released. Nor was Hanna involved in any further Family Court proceedings.

SALLY, JACOB AND TOM'S STORY

Wendy and Adam married and had three children; Sally, who was born in 1989, Jacob in 1993 and Tom in 1998. They were married for over ten years and during this time Wendy said that Adam threatened to commit suicide on multiple occasions. He would regularly say "I have no friends, no family…give me a gun and I'll do the job now". He also spoke about driving himself under a truck. As well as his threats of suicide, Wendy reported that Adam advised "I can see myself treating you and the kids badly, but I just don't think I'll be able to help myself". Adam had also told Wendy that he himself had been sexually assaulted for years as a child by a relative. Wendy reported that Adam was also prone to mood swings and was very abusive and controlling. His behaviour became erratic.

Wendy says the children were harmed both physically and mentally before she became aware of the sexual assaults perpetrated on the children by their father. Sally was fearful of her father and kept a runaway bag full of her favourite clothes and toys.

At the end of 1997, Wendy was told by Adam's sister that she had been "molested" by Adam as a young child and was still attending counselling. She would not leave her children alone with Adam and told Wendy to watch her own children "closely when they are with him".

In 1999, Sally, aged ten, told her mother that when her father took her shopping he made her try on ladies clothes. On another occasion when attempting to buy unsuitable clothing

for her, including lingerie, he claimed she needed a bra, although Sally was not physically developed at that time.

In January 2000, there was a domestic violence incident perpetrated by Adam on Wendy, followed by an incident where Adam, angry and frustrated with Tom, aged 16 months, knocked him over with his hand and Tom hit his head against a wooden chair. Tom had to go to hospital due to bleeding from his ear caused by the blow. Wendy stayed with friends that night and made a statement to Police regarding the incident with Tom, following which a violence restraining order (VRO) was taken out.

The Police informed Wendy that Adam was trying to report her as missing. The Police said that they were concerned as Adam was talking about committing suicide, and he had a rifle.

Following this incident of violence, Wendy and Adam separated. The children were now aged 11, 7, and 16 months. Wendy feared that Adam's suicidal ideations may have also included the children.

Having left the relationship, Wendy alleged significant harassment and intimidation by Adam who used this as a strategy in relation to contact and residency issues. Subsequently, the VRO taken out at the time of her departure became the first of many domestic violence proceedings, spanning for six years on a yearly basis. On at least ten occasions the VRO's were extended, and breached by Adam on numerous occasions. In 2000 and 2006, the children were also listed as protected persons and in 2002, Wendy was awarded victim compensation following the incidents of domestic violence perpetrated by Adam on her.

After the parents' separation, Sally refused to go to contact with her father and disclosed to her mother that "I don't like him" (her father) and that he "scares" her. Sally informed her mother that when six years of age, he would come into her room and want her to do something to him, which she couldn't remember, and that the next thing she remembered was lying on her back on the bed, arms by her side, staring up at the ceiling and crying - with him sitting at the end of the bed. Sally also said that her father would buy her sexy lady clothes and make her wear it and then just look at her. Tom, aged two, would return from contact visits referring to his penis as a "dick" and would regularly masturbate himself with both hands and thrust against objects. Following Sally's disclosure, Wendy made a statement to the Police, who took out a VRO.

The VRO was granted at the end of January 2000, with the mother and children listed as protected persons. Adam was not to intimidate or stalk; nor assault, molest, harass, threaten or otherwise interfere with protected persons; or go within 150m of their residence, work or other specified premises, nor approach the school, nor contact or phone the protected person except for the purpose of arranging or exercising access to children as agreed.

In March 2000, Wendy and Sally attended counselling and Jacob, aged seven, began counselling at school every second day. The teacher informed Wendy that she was very concerned that Jacob had become withdrawn from the rest of the class and isolated himself. On one occasion when returning late from contact Jacob stated "we're late because daddy

had a fight with someone on the side of the road…the lady in the other car was crying for dad to stop". Tom was then aged 18 months.

In April 2000, Sally, aged 11 years, went for contact with her father, the first since the parents' separation. In August Adam was charged with breaching his VRO, after Adam had attended Wendy's home causing property damage. Wendy reported this to the Police, who advised her to move. The following month, Adam continued to intimidate her and the children. Wendy then made a further statement regarding Adam breaching the VRO. By December, Sally refused to see Adam for contact. There were also incidents of violence when the boys were being made available to Adam for contact at the Police Station. On one occasion, Adam was ordered to leave the Police Station due to being aggressive, swearing and threatening. When leaving he yelled at Wendy "I hate your fucking guts and I'm going to get you for this!" After leaving, Adam then came back and had an argument with a Police Officer, and the Officer threatened to lock him up if he didn't leave.

In March 2001, Wendy discovered that her brake cables to her car had been tampered with the previous night. It was also during this month that Tom experienced reoccurring infections of the foreskin of his penis. While Wendy was bathing him and attempting to show him how to retract the foreskin, Tom stated "Don't do that. Daddy does that on his bed under the towel." Wendy reported this to the Child Protection Authority and was allegedly told that Tom was not in immediate danger because he resided with his mother and she (the Child Protection Authority) would take note of the discussion.

In 2001, Family Court proceedings commenced. The Family Court matter was to run over a period of approximately 9 years and was heard in different states.

Wendy said that during this time she was "consistently informed by lawyers up until the final proceedings that the father has equal share of the children and (she) has to accept the fact he would be a permanent part of their lives".

In May 2001, Orders were made by the Family Court for the children to reside with their mother and that the father have alternate weekend contact from 5pm Friday to 5pm Sunday and additionally one afternoon per fortnight for 2½ hours. Sally did not want to have contact with her father and sought that the father not seek formal Orders in respect to contact with her. This was granted by the Court, although if she wished to have contact with her father the mother was to *"facilitate and encourage her to maintain contact with him*."

The visits with the boys took place for over two years before the children and the mother hid from Adam in another state. Within days of the Orders being made, further statements were made to the Police by Wendy in relation to a further harassing incident by Adam at the Police Station during handover; being told by Adam that she will regret the day she left him and after leaving the Court room being threatened that he would push her in front of a bus or truck.

The harassment and death threats continued throughout 2001 and 2002. Further Police reports were made by both Wendy and Sally. There were instances of flowers on Wendy's doorstep with a card stating "it's been nice knowing you"; Adam following Sally and banging

on the car stating “keep this up bitch and you’ll end up dead”; further breaches of the VRO with Adam being found guilty, him appealing and the verdict being upheld.

Adam’s stalking and harassment was witnessed by both Jacob and Tom. By mid-year Tom became clingy and did not want to go with Adam; Jacob was called derogatory names by his father and he was worried that his father was going to kill his mother; Adam attended Sally’s school and chased her across the ground, and on another occasion waited outside her school grounds and pretended to shoot both her and her mother by making a gun gesture with his hand.

Both boys were given medication for their anxiety and inability to sleep and Sally dyed her hair in an effort to make herself less recognisable to her father. Further VROs were made naming Wendy as the protected person with Adam spending a night in custody for breaching the VRO and being placed on a good behaviour bond for twelve months.

The boys continued to have contact with their father. Wendy attended counselling as per the Court Orders.

In August 2002, Tom, aged nearly four, was observed to have a cut on his chin which he told his mother was caused by his father placing his head in the toilet bowl and “weeing on him”. The following day at child care, Tom was observed with his head in the toilet bowl and told the child care worker that he was waiting for “someone to wee on him”, and that “my dad puts my head in the toilet”. He then began to display sexualised behaviours at both home and the child care centre. At the latter, putting a finger in one of the boy’s bottom, and asking the boys could he kiss their bottoms. Tom also began masturbating against toys and pillows, wetting the bed each night and having constant nightmares. Reports were made to the Child Protection Authority.

In the following month Tom was observed to have a cut on his arm, which he disclosed to his mother and day care was caused by “Daddy chasing me with a knife”. Wendy was told by the Child Protection Authority that they would follow up on the incidents and when she later contacted them she was told that they had not assigned a Caseworker as yet.

In January 2003, the mother along with the children fled the state and resided in a refuge for fear of her and her children’s lives. Wendy had also felt supported by the Police regarding her concerns for safety and by this time she had also been awarded victim’s compensation due to the nature of the violence perpetrated by Adam against her and her property. She stayed at the refuge for a number of months before moving to another state. In late 2003, Adam obtained a Recovery Order. The children were collected by the Federal Police pursuant to the Recovery Order, and Jacob and Tom were placed in Adam’s care.

The children were returned to Wendy’s care at the first Court date following the Recovery Order being executed, approximately two weeks later. During the time they were with Adam, Wendy was permitted to have telephone contact. Wendy returned to the state to show justification to the Court as to why she and the children left. The Magistrate commented on the Police documentation in support of Wendy, that they appeared to be hiding for safety. No breach was recorded.

Due to Adam now being aware of Wendy's address, she sought and obtained a Protection Order and she also filed a Notice of Risk of Child Abuse. In response, Adam filed an Application to have the children live with him. In December 2003, further Court Orders were made in the Family Court and contact with Adam and the children was suspended other than phone contact until further Orders were made.

In January 2004, Orders were made by consent in the Family Court providing for Adam to have telephone and written contact with the children and the matter be set down for a final hearing for six days commencing in July 2004.

A Court Expert was appointed to prepare a Family Report in relation to the children. To prepare the children for the interview with the psychiatrist, Wendy told Tom he would need to talk to the psychiatrist about his father. Tom then disclosed to his mother that his father "touched his willy, and made him kiss it". This appeared to be while the father was masturbating. Tom added "Dad did a wee and it shot out like a rocket" and "the wee went into my mouth and dad told me to swallow it. So I did, but then I spewed and some of it went onto dad. Dad cleaned up the mess and sent me to my room and told me to not come out". Tom further added he was told not to tell anyone or his father would hurt his mother or siblings.

Wendy reported this to the Police. Tom was interviewed by the Police and disclosed child sexual assault on access visits, including all of the details he had previously disclosed to his mother and the child care worker, but also added that his father had put his finger into his bottom. The Police noted that they believed these incidents occurred on a regular basis.

All children subsequently gave video recorded statements to the Police. Sally, aged 15 years, asked that her mother not hear her interview. Sally disclosed to the Police that she was sexually assaulted by her father from the ages of seven to eleven. This involved digital penetration, and forcing her to perform oral sex on her father causing her to choke. He would tell her that if she told anyone, he would "hurt her baby brother". Jacob did not disclose any instances of sexual assault by his father.

During the Family Court interview the children were asked if they wanted to see their father and be observed with him and "all three declined". Wendy says this report was not allowed to be submitted to the Family Court as the father lodged a complaint stating that the report was biased as the Family Report Writer did not observe the children with him. Therefore, the Family Report Writer was required to make a further report which included observing the children alone with the father and his current partner.

Wendy says the father brought "their favourite toys, sweets and food items". She also reports Sally "walked in and was able to walk straight out again", and "Jacob sat in a corner and looked at a wall before his father physically picked him up and made him turn around". The Family Report Writer submitted their report stating the children interacted well with the father and "perhaps the mother was alienating or even coaching the children to develop a dislike towards the father".

In April 2004, a two year Protection Order was made at the Magistrates Court protecting Wendy and naming Sally.

In July the final hearing was adjourned, and Orders were made by consent providing for supervised contact at a contact centre and phone contact with Jacob and Tom for "such a period of time as the contact centre will permit, including on two consecutive days, on the first weekend available and thereafter four weekly".

By this time Adam was aware of the disclosures of the children and the allegations they had made against him. Telephone contact was to occur in a room where the mother was not present.

Additionally the contact centre would not allow the contact due to their policy regarding not supervising visits where a person is facing criminal charges.

In August 2004, due to the children disclosing numerous offences relating to sexual and indecent assault, Adam was charged with numerous offences.

When Adam was interviewed by the Police, he declined to comment on the allegations. Although bail was refused by the Police, it was granted by the Court. His bail conditions were that he "was not to approach, contact, assault, molest, harass or otherwise interfere with the victims of the alleged sexual assault except as approved by the Family Court, which at this time was telephone contact".

The Police Child Protection team wrote to the Family Court and noted what whilst the Family Law Court conditions overrode the Local Court conditions, they were concerned that Adam was still able to have telephone contact with the children without his calls being monitored, and it was unclear as to whether threats are being made towards the children. The Senior Constable wrote that having met Adam, they had no doubt that Adam would pressure and intimidate the children into altering their original complaints.

The Constable sought that the Family Law Court decision be amended to prevent contact with the children to ensure the integrity of the brief, and that Adam's previous criminal history, numerous breaches of VROs, and false statement in regard to his address, showed Adam's lack of regard for law.

In December 2004 the Court sought a further Family Report to assist the Court in reaching a decision concerning contact issues prior to the conclusion of the criminal proceedings against Adam regarding alleged sexual assault.

The Family Report Writer recommended no contact whatsoever pending the outcome of the criminal proceedings, and that contact should be reviewed by the Court if considered appropriate once the criminal matters have concluded.

In 2005, Wendy and the children moved to another state as Adam began contacting the school that the children were attending. An Order was made in the Family Court in June 2005 suspending all contact between Adam and the children, pending the resolution of the criminal charges Adam was facing.

Following the statements by the children and subsequent Police investigations, Adam faced court on two occasions in 2006 and 2007 on respective charges of three counts of sexual intercourse with a person under 10, sexual intercourse with a person between 10 and 16 years and aggravated indecent assault; sexual intercourse with a person under 10; and two counts of indecent assault of a child under 10. On both occasions he was found not guilty.

The following year Adam remarried.

Wendy sought a protection order for herself and the children, which expired after the second criminal court hearings.

In September 2007, Wendy wrote an Affidavit outlining that she has had to face court at least 250 times since leaving Adam in the year 2000, which has placed enormous strain on the family both financially and mentally: "we may never feel safe again and are constantly looking over our shoulders waiting for him to turn up and try to kill us".

Her fears had been duly supported by a Police Constable who in an Affidavit wrote Adam *"fits the mould of a repeat domestic violence offender. The applicant is an intelligent man who is capable of ensuring that his behaviours are not witnessed. Through my observations I considered the applicant to be an extremely violent and dangerous man whose desire to control his wife and children had no limits. I held very real fears for Wendy and her children."*

In July 2008, Jacob was referred to a psychologist by the General Medical Practitioner for assessment and treatment of psychological difficulties. At the time Jacob had been aggressive towards his sister, and he was deeply ashamed of his behaviour and worried he "was going to turn out like his father". He was also worried that his younger brother would be forced to have access with his father again, and indicated that were this to happen, he would insist on accompanying his brother to any access visit to keep him safe from further harm.

At the time of the sessions, Jacob was also suffering from concentration problems, occasional sleep disturbance, recurrent distressing thoughts about incidents with his father, anxiety, reduced energy, and recurrent low mood. He did not relate any positive memories of his father, remembered feeling ill each time before he saw him, and that he would be commonly sent outside to ride his bike while his younger brother was forced to stay inside. If he returned early he was locked out and not allowed inside. His father was always critical of him, yelling at him a lot of the time and calling him lazy and fat. He stated he felt scared of his father and was always afraid of what his father may do to him.

The psychologist diagnosed Jacob with an Adjustment Disorder with Mixed Anxiety and Depressed mood, with a number of symptoms of post-traumatic stress disorder. The psychologist recommended that it would be *"inappropriate and potentially damaging for Jacob to be forced to have any contact with his father, and Jacob has made it clear that he does not wish to see his father, talk or have email or SMS contact with him now, or any point in the future".*

In November 2008, in the Family Court of Australia, a further Family Report was ordered to determine the dispute in regard to living and parenting arrangement for Jacob and Tom. It

was also determined that the matter of appointing an Independent Child Lawyer (ICL) was urgent.

Adam, having not been found guilty of charges, was able to lodge another application for custody of Jacob and Tom.

Wendy stated that Adam would consistently argue that she was a single unfit mother and was unable to support the children, whilst he had a new partner and family. Wendy noted that Adam was "fighting for the two boys only", never Sally, and "it was never mentioned that there were three children until a barrister pointed it out" to the Court in the hearing of the final matter. Several ICLs had been appointed over the years in this matter and the mother said "they were always in favour of the children having minimal or no contact with the father".

In January 2009, the Family Report recommended no contact between Adam and Jacob and Tom due to their fear and belief that Sally and Tom were sexually assaulted. The report stated that "*no matter whether it was true or not, they believed it and it would be too emotionally damaging to make them have contact. Further, they express clear desires not to see Adam and would run away if there."*

Subsequently, amended Court Orders were made which provided sole responsibility for the children to Wendy and no contact with Adam unless the children desired it. Adam was able to send letters and gifts to a nominated address no more than six times per year plus birthdays. Wendy was to provide an address or Post Office Box for this purpose. The children were to attend a Family Consultant to have the Orders explained to them.

CHLOE AND DAVID'S STORY

In 2001, Peter and Tina commenced their relationship. Prior to Tina meeting Peter he had multiple driving charges, including drink driving, and was subsequently charged with driving while disqualified leading to an extended period of disqualification. He also had a criminal record for assaulting a Police Officer and was a person of interest in domestic violence incidents.

Tina had a business and her own home and Peter resided with his family. Peter was said by Tina to be charming and affectionate but within six months he became violent and controlling throughout their relationship. Tina said that Peter sexually, physically and emotionally abused her and isolated her from her friends. Peter also used cannabis and alcohol which was said to have exacerbated his volatile and aggressive behaviours towards her.

Between 2001 and 2005, Peter's behaviours worsened as he continued to be violent towards Tina and her property. Tina feared for her safety, and after Chloe was born in 2002, and David in 2005, she feared for theirs. The parents rarely lived together during their relationship, except at times when Peter was reported by Tina as having returned with "the promise of responsible employment and good behaviour, after saying that he had done counselling to manage his anger". However whilst Tina was pregnant with Chloe, Peter

came home inebriated and angry and reportedly smashed down the door where Tina was hiding, and she was forced to flee. Police attended, however Tina reported that they did not speak to Peter, but left after being reassured that she was leaving. After Chloe was born, Tina reported that Peter fuelled with alcohol and agitated due to his marijuana use, would threaten to 'smash her in the face', which Chloe as a toddler witnessed. Peter also continued to have encounters with the Police, and was convicted of further driving offences, including having his licence revoked for a further two years and being given 200 hours of community service. Tina remained the primary carer of the children. In late 2004, in yet another attempt to reconcile and for financial reasons, the parents lived together as Tina was pregnant with David. After David's birth, Tina reported that Peter would tell her to "fucking shut him up". When David was about three weeks of age it was reported by Tina that Peter wrapped David tightly in a baby blanket over his head and tucked under. Tina found David blue from being unable to breathe and extremely distressed. She immediately organised to leave Peter due to safety and financial reasons and the parents did not reunite after this separation, although the violence continued.

One month after separation and whilst visiting the children, Tina reported that Peter grabbed her by the neck to hold her down, saying that she needed a "good slapping around". The children witnessed the violence, and Peter attempted to take Chloe with him when he left but she did not want to go. Police attended and they subsequently applied for a DVO on behalf of Tina, which was granted for two years. The Child Protection Authority became involved but subsequently closed the case as Tina was seen to be acting protectively and following through on the VRO.

One month after the domestic violence incident, Tina facilitated for Chloe to have contact visits with her father. Of the three that occurred, two were distressing for Chloe and Tina then ceased the contact. Throughout 2005, Tina received a number of threatening phone calls and messages from Peter, including that he would kill her with a gun. An AVO was issued by the Police. In October 2005 he spammed her phone and stated: "if I don't see the kids I'll come and put flowers on your grave every fuckin year". Tina notified the Police. The Police informed her that they were "genuinely concerned with her safety". Peter was convicted of breaching his VRO in November 2005 and placed on an 18 month bond. The Child Protection Authority was notified and closed the case. Tina temporarily moved to another state for several months for safety reasons.

At the end of 2005 through to 2009, Peter did not have contact with his children, although he made some attempts with his mother to gain access in unsupervised circumstances. These attempts were costly to both parents, particularly given it did not eventuate as Peter would not agree to the conditions.

In 2006, Peter was charged for intimidating an officer, placed on a bond and directed to attend counselling. In 2007, Peter commenced a new relationship with a woman who had children (primary and early teenager) to a previous relationship, who were living with her. In this year Chloe commenced school, settled in well and was happy. Peter provided his email address and Tina facilitated some email contact between Chloe and her father until Chloe began experiencing separation anxiety.

In 2008, Peter sent Tina a letter stating that he was getting married (same relationship) and there were new laws supporting him in having 50 percent access to the children. The following year, when Chloe was aged six years and David four years, and after not having face to face contact with the children for the past four years, Peter commenced proceedings in the Federal Magistrates Court in order to spend time with Chloe and David.

Tina was advised by her lawyer that she needed to be very cooperative and never say that she didn't want him to see the children or she would be seen as an unfriendly parent, which would be bad for her and the children. The lawyer further added that Peter would not hurt the children as he was their father.

Interim Orders were made in Family Court with the father to have supervised access at the contact centre, progressing to unsupervised fortnightly visits, to day visits then overnight and weekend access on a gradual basis. Once the children commenced access with their father, according to Tina their behaviour became problematic. Chloe was unsettled and David had separation anxiety from his mother. This progressed to the children wetting their bed after contact with their father.

Peter also filed an Application to the Federal Magistrates Court of Australia regarding the mother's and children's address. A Location Order was made, and Centrelink provided the Court with the details. The matter was subsequently adjourned for later in that year for a directions hearing and for trial directions.

In November 2009, Interim Orders were made by the Federal Magistrates Court that the parties and children of the relationship attend a Family Consultant nominated by the Manager, Child Dispute Services for the preparation of a Family Report. The Court matters were adjourned until after publication of the Family Report and subsequently adjourned a second time for a final hearing.

Up until the writing of the Family Report, the children had attended one visit at the contact centre with their father. The Family Report Writer noted that both children interacted positively with their father during the Family Report interviews, David referred to him as Dad and Chloe stated that she had some vague memory of her father. Chloe was also reported as having said that she "felt good" about seeing her father at the contact centre. The Family Report Writer noted that the father acknowledged there was some volatility in the parents' relationship but it appeared that he minimised his own violence within the relationship, stating that Tina was aggressive on occasion.

The Family Report Writer recommended that Peter should have supervised contact with the children for 2-3 hours at a contact centre for a further period of three months from that date. If there were no concerns this could progress to unsupervised time each alternate weekend for a period of six hours with this occurring for a further three month period. Contact time was then to be increased with weekend contacts each fortnight.

The Family Consultant also suggested that Peter was to participate in three occasions of drug urine testing, to occur each four week period from the date of the report, with the results being furnished to the mother's legal representative. This did not occur.

In July 2010, Consent Orders were made in the Federal Magistrates Court, after Tina had been told that she had to be a "friendly parent" otherwise things would go bad for her.

The Orders were for the children to live with their mother and for the parents to share parental responsibility for them. The children were to spend time with their father on alternate weekends from after school on the Friday until 5pm on the Sunday and for half of the school holidays. Peter by this time had married his new partner.

In accordance with the Consent Orders, Peter commenced spending unsupervised time with his children in the middle of 2010, with overnight weekend time commencing in October 2010 and block periods of holiday time commencing in December 2010. Prior to the year ending, Tina noted that the children's behaviour deteriorated from being happy and well-adjusted to David using bad language, being violent towards Chloe and both children fighting all the time. Tina confronted the children's stepmother about David's language (penis sucker, asshole, fuck you) and said that her children, who are older, should be careful what they said in front of him. The stepmother denied that David's bad language was due to being in their house and the issues were not resolved.

In 2011, Tina and other family members became increasingly concerned about the children's behaviour and contact with their father did not proceed smoothly. At the beginning of the year, David, aged five years, was observed by his mother and her family to remove his clothing to paint his nipples and penis. It was at this time that he commenced not wanting to have contact at his father's home. Tina approached her lawyer about David's behaviour and was told that she needed to tolerate it and there was nothing that she could do. On one occasion David was subsequently forced to go to his father's and on the next scheduled visit, refused to go. By June 2011, as well as David refusing to attend, Chloe returned from contact at her father's home crying, saying that she did not want to go back to her father's anymore. She informed her mother "you have no idea how bad it is there".

Following these incidents, several disclosures were made by the children in the same month. Chloe, aged eight years, advised her mother that when at her father's she was sleeping with her teenage male step-sibling and a younger male (less than ten years of age) step-sibling. Chloe subsequently emailed her father asking to reduce her time with him to one weekend a month. David, aged six years, disclosed to his mother that the younger male step-sibling rubs his penis up and down his back while they are in the shower and played with him in the morning when they were in bed. David was also displaying sexualised behaviours and escalating challenging behaviours at school. He commenced calling his friends "little penis suckers" and asked his sister to suck his penis. Tina sent an email to Peter advising him of her concerns with regards to the children's sleeping arrangements (Chloe sleeping with teenage male step-sibling), their current behavioural issues and the inappropriate behaviours of his wife's children. She informed him that she would be suspending his time with the children until her concerns had been investigated and resolved by appropriate bodies. Tina contacted the Child Protection Authority and they receive their first risk of significant harm report in relation to David and Chloe. Tina stated that they advised her that there were red flags (of concern) in relation to David. The Child Protection Authority also assisted in providing a list of suitable counsellors, following Tina's difficulty in

finding one and the school being unable to assist with one as it was not a school matter. The case was closed by Child Protection Authority as Tina was following up through the Family Law Court.

Chloe further disclosed to her mother that as well as having slept with her, her step-sibling is rough and “grabs her where he shouldn’t” whilst she is at her father’s. She also said that he sat on her head.

Tina reported the disclosures to the Child Protection Authority for a second time in the same month, and also reported the sexual assault allegations to the Police who referred the matter to the Police Child Protection team. The children were also seen by a doctor in regard to their disclosures. David who was distressed did not disclose, but Chloe informed the doctor that she had been touched “lots” in the genital region by her step-brother and that it happened “a couple of weeks ago”. David was reported to the doctor to be chasing Chloe up and down the hall and asking his sister to have sex with him. A third report was made to the Child Protection Authority and allegations were referred to the Police Child Protection team. The matter was rejected by the Police Child Protection team due to David’s alleged offender being under 10 years old, therefore too young to investigate or prosecute. The mother ceased the children’s contact with their father, and he responded with alternating emails of concern or abuse. She relocated again with the children due to fears for her safety.

By July 2011, Tina had filed an Initiating Application seeking to suspend the children’s time with their father and asked for supervised time at a contact centre. She also filed a Form 4 Notice (Child at risk of abuse or family violence) to the Court. At that time, David was continuing to have sexualised behaviours, including inserting his finger into his anus. The Notice was subsequently received by the Child Protection Authority from the Family Court and the case was referred to the Police Child Protection team. Upon application made to the Family Court of Australia by the mother, it was ordered that the proceedings were allocated into the Magellan Protocol and for a Magellan Report to be prepared. A further Order was made for an ICL to be appointed to represent the children and the matter was adjourned for a month. Tina attended before the Registrar to have the orders suspended but this was not done.

Chloe later disclosed to her mother that at her father’s the teenage step-sibling played a game where he lined them all up, told them to close their eyes and he then pulled someone’s pants down and touched their “rude bits”. Tina made another report to the Child Protection Authority helpline. The Child Protection Authority allegedly informed her that they have no further interest in the matter other than the Magellan case and referred the children to a counsellor for protective behaviours training. Tina then ceased sending the children to school on a Friday, so they were unable to attend access with their father on the weekend, as she thought that to be in their best interests.

Peter subsequently admitted that the children had been sharing beds inappropriately and advised that in the future the sleeping arrangements would be one bed, one child. Tina informed that Peter’s response to David’s complaints was that it was “just little boys

playing". Tina obtained a referral from the GP for the children to obtain counselling through the Mental Health Care Plan. The referral noted that David was exhibiting inappropriate adult sexual behaviours and also self-harming behaviours such as punching himself and stating that he hated himself.

Chloe was interviewed by the Police Child Protection team and disclosed allegations of sexual assault by her step-sibling. Tina reported that the abuse was initially substantiated in that the father's partner' son had caused risk of harm to Chloe and then changed to unsubstantiated. The Police Child Protection team report noted that there were "*a number of inconsistencies which raised serious issues with the credibility of the victim and evidence on the whole*". There was also no corroborating evidence, no medical and no forensic evidence. The Police Child Protection team strongly believed that it was not in the best interest of Chloe, "*given her tender age, maturity level, mental health and general family situation, to proceed with this matter through the court process".* The Child Protection Authority decided not to intervene in the proceedings at this time due to competing priorities due to issues of workload and staffing, which left them no capacity to respond.

In August 2011, the Child Protection Authority prepared a Magellan Report for the family. The Magellan Report set out the child protection history in relation to the children. Since July 2005 and up until the release of the report in August 2011, the Child Protection Authority had received seven risk of harm reports in relation to Chloe and David. These risk of harm reports related to the children's exposure to domestic violence between the parents (two reports in 2005), and in relation to risk of sexual harm/injury to the children by the sons of the father's partner (five reports). The Magellan Report was released, but the Child Protection Authority advised that they did not wish to intervene in the matter but would provide further assistance or information as required.

Both children commenced attending the counselling sessions separately in late July 2011. Their mother was not in the session with the children. Both David and Chloe reported to their counsellor, who had a child protection background, that they would not tell their father if they were worried. David stated, "Dad would just shrug his shoulders and you could tell by the look on his face that he doesn't care". He also stated that he didn't like to be hugged from his dad because he hugged him too hard, and he couldn't even get his breath to say no. David didn't want him on the list of people who he likes to get hugs from. Both didn't want to visit their father and "hated going there". Both stated that they did not feel safe there and Chloe identified a strong connection with her mother who she saw as safe and trustworthy.

Following release of the Magellan Report in July 2011, David disclosed to the counsellor that his father had also sexually assaulted him as well as the younger step-sibling that had allegedly been assaulting David in the shower. David reported to his mother that his father showed him, and his nine year old step-sibling, pictures and a movie on the computer of adults hurting children in their "rude parts"; and that his father made him and his step-sibling lean over and his father put his penis into both of their bums and also a stick into each of their bums and that his father was crazy. Subsequently reports were made to the Child Protection Authority and the Police. Due to these allegations, the Court was informed

by the ICL that David had been sexually assaulted by the father and that Chloe had been sexually assaulted by her step-sibling. The allegations were under investigation by the Police Child Protection team, and an adjournment in proceeding was requested.

In August of 2011, the Family Court of Australia, by consent and pending further order, ordered that previous Orders were suspended and that the children spend time with their father at a children's contact centre, such time being not less frequently than once per fortnight for two hours. Contact with the children did not occur at the centre when ordered due to a waiting list. David further disclosed to his mother that his father made him go to the bush with him, covers his tracks, and there is a type of camera present. David said he was screaming and was told to shut up by his father or he would kill him and that is how you get your throat cut. David further elaborated on his disclosure to his mother and told his counsellor that his father told his step-sibling to lean over and inserted a stick in his rectum that was like a skewer; he then stuck his penis into the child's rectum. David later informed his mother that this also happened to him. David continued to make a number of concerning disclosures to his counsellor regarding being sexually assaulted by his father and further reports to the Child Protection Authority were made.

In September 2011, David told his counsellor (mother not present) that his father touched him with a stick, into his bum, in the bush near his father's house, whilst Chloe stated that she was scared of her father because "he is so big". The following week Chloe told her counsellor that one of the things that helped her feel safe was not going to dads. Chloe further added that she was feeling really happy that week and when asked what she thinks made her so happy she replied "mostly not seeing dad". In ongoing counselling sessions, the children would repeat that they did not want to go to their fathers. David said to his counsellor: "I don't want to go to dads, I never want to go. I will never go there, no matter how much they tell me to. I don't want to go because he will do it all over again. I don't want to see dad because he is bad. He punches through walls. I don't miss dad one little bit. I think he's a jerk, even if they say to go I will keep saying no". Chloe also informed the counsellor that she did not want to see her dad or have any contact with him. She explained that when she told her friend this the friend said "but deep down you love him". Chloe responded: "No I do not, not one bit".

David made further disclosures to his mother of sexual assault perpetrated by his father. This included that he was made perform oral sex on his father and step-sibling and that he had also observed his father sexually abusing his step-siblings during contact with his father. The elder step-sibling had also assaulted him by sticking his finger into his bottom. A report was made to the Child Protection Authority. David, aged six years, was interviewed by the Police Child Protection team. David disclosed that his father touched him on the bottom with a stick and twice on his "doodle". David also disclosed that his father had touched him with his rude part. It was considered by the Police Child Protection team that there was minimal detail and no context. The conclusion reached by the Police Child Protection team was that David appeared not to have been sexually assaulted and it was recorded that "i*t is highly likely that David was prompted by the mother to fabricate allegations of sexual assault against his father"*. It was suggested that the version of events supplied by David

was 'scripted' as he was "unable to provide any contextual details surrounding the allegations". No further action was taken after having interviewed the father's new wife and her children.

Orders were made in the Family Court that the ICL inspect the documents of the Child Protection Authority and the psychologist and a Family Consultant shall prepare a Family Report concerning the children. The hearing of the matter was adjourned until the end of 2011. During this time, David further disclosed to his mother that his father drugged him with coke and tablets that fizzed and made him dizzy and did "stuff to him". David was interviewed by the Police Child Protection team at school. The Police Child Protection team believed that the mother coached and coerced the child to falsify his disclosures of sexual assault by the father. When he was at a later counselling session and asked by the counsellor to draw his two homes and what it would look like if someone walked past and the curtains blew open, David drew a picture of himself and his father standing behind him "doing bad things". When he drew his mother's house, it was of her giving him a hug.

In October 2011, the Family Report Writer/Family Consultant interviewed Tina, Peter, Chloe aged eight years and David aged six years, Peter's new wife and Tina's ex-partner. Tina had not had contact with her reportedly 'disgruntled' ex-partner for over one year. The Consultant did not interview the step-siblings in accordance with the wishes of their mother and Peter. Tina wrote a chronology of previous contact arrangements emanating from the previous Family Report which the Consultant would not accept. Tina felt that the Consultant already had preconceived ideas about the sexual assault allegations being fabricated by mothers to get at fathers in Family Court proceedings and that Peter's criminal record and incidents of domestic violence were minimised.[8] Tina reported that the ICL had also not organised the information from the children's counsellor in a timely manner, therefore the information provided by the counsellor to the Consultant was conveyed via a telephone conversation. The Consultant noted that Peter was quite distraught by the allegations, essentially describing himself as repulsed by them. The Consultant did not interview the children with the father as they had not spent the past three months with him and were reported to be terrified of him. The Consultant was unable to say for certain whether or not the children had been sexually assaulted or by whom, but *"the lack of physical evidence and the children's behaviour at forensic interviews and as reported by the school would not seem to indicate that this has occurred".* The report recommended that *"the mother undergo a full psychiatric assessment as soon as possible and that her report be provided to the Child*

[8] Tina had the consultant's report critiqued as she found it to be very biased and lacking expertise. It was found that the report did not meet professional standards, did not demonstrate or delineate the specific specialist expertise required of it, no assessment was made of the children, no forensic evaluation of the father's police record and disclosures of assaults and abuse, family violence and forensic evaluation of allegations of scripting by the mother. Nor did she consider the information herself obtained from the children during their own voluntary disclosures in their interviews. The example provided was that the consultant made no evaluation of the eldest child's disclosures of sexual assault by her step-sibling or the three rules Chloe had made in relation to going back to her father's house "don't be rough, keep your hands to yourself and don't swear or say rude things." Nor did she evaluate David's disclosure about his father "turns really mean and violent and he says (name of step-sibling) is an idiot." The report therefore failed to give adequate consideration to the best interests of the children.

Although Tina complained itself through the various bureaucratic channels about the consultant's approach and manner during her interview and the report, she was informed that the consultant had immunity by the Court from complaint.

Protection Authority and that they are again invited to intervene in this matter". A meeting in chambers was attended by the ICL and Registrar. The Family Court of Australia ordered that copies of the report were to be provided to the parties, lawyers and the Child Protection Authority and requested that the Director-General of the Child Protection Authority intervene in the proceedings.

Following receipt and consideration of the Family Report, the Child Protection Authority decided to accept the Court's invitation to intervene in the proceedings. The proceedings were listed before the Justice at the end of the year. The Child Protection Authority contacted Tina to inform her that Peter had said he was withdrawing from the proceedings and Tina reported that they indicated to her that she could lose the custody of her children. Options had been proposed that the children were placed with the father or in alternate care.

Late that year the Director-General was joined as Intervener in the proceedings. The hearing occurred in the Family Court of Australia. By consent it was ordered that the matter be adjourned for procedural directions and the response filed by the father is withdrawn and dismissed (the father withdrew from proceedings). Tina was interviewed by the Child Protection Authority and they also interviewed the Principal of the children's primary school, the children's counsellor, and the father. The hearing took place and it was ordered that a person be appointed as a Single Expert Witness for the purpose of preparation of a report in relation to the psychiatric condition of the mother. The matter was adjourned until the following year.

In early 2012, Peter was not having any contact with the children and the Child Protection Authority completed a safety assessment in relation to the children. The Child Protection Authority reviewed the case and it was noted that in total 13 risk of harm reports had been received. This included two reports in 2005 in relation to exposure to domestic violence perpetrated by the father on the mother, eleven in relation to the sexual assault of David by his father and step-sibling; and the sexual assault of Chloe by her step-sibling. It was noted on file that there is evidence from both the Consultant report and their own case notes that David "*may have formed these views (sexual assault by his father) because his mother has coached him to disclose as a means of securing custody of the children in the current Family Court proceedings. Information provided from the school reinforces the view that both children have experienced emotional/psychological harm and this will continue if they remain in the care of their mother*". The Child Protection Authority's key concern was *"the short and long term impacts of psychological harm to both children as a result of the mother prioritising her need to have sole custody of her children above her children's emotional and psychological wellbeing*. *There is a need for further assessment to determine if the harm caused by remaining in their mother's care is greater than the harm they will experience being removed from her care and living with their father or in alternate care".*

The expert witness interviewed Tina for over three hours and found that she did not suffer from a formal illness "*which in itself may have led to the creation of false allegations."* Following this there were proceedings adjournments. There was no appearance by or on behalf of the father who, had filed a Notice of Discontinuance and in the following month, it

was ordered that the proceedings be adjourned for another month for further procedural orders: *"In the event that the mother, Intervener (Child Protection Authority) and ICL do not reach agreement about the final Parenting Orders they mutually propose be made by the Court, then the applicant mother shall file and serve an amended application and the Intervener shall file and serve a response".* The ICL at no time had met with the children although was in agreement with the Child Protection Authority's different proposals, one of which included removal of the children from the mother's care. Although Peter had effectively removed himself from proceedings, the Child Protection Authority remained involved. It was indicated that Tina needed to attend counselling in order to retain the care of her children, although they allegedly were unable to tell her why she needed counselling. The parties requested a short adjournment of the proceedings in the expectation of reaching agreement about the Final Order that they would ask the court to make - albeit such an Order *"will not enjoy the consent of the father who has apparently withdrawn from the proceedings."* The mother's lawyer, on behalf of the mother, filed an Amended Initiating Application seeking Parenting Orders that allowed, in summary, that all previous Orders be discharged, that she have sole parental responsibility for the care, welfare and development of the children of their relationship and that they live with her. In relation she wanted that the children spend time with their father according to their wishes, and that the father spend supervised time with the children for a period of up to two hours at a contact centre and pay nominated fees.

This Application was written in the context of the mother remaining the friendly parent.

In late 2012, the trial commenced in the Family Court of Australia. In summary, it was ordered that all parenting Orders in relation to the children are discharged, that the mother shall have sole parental responsibility for the children and that the children live with the mother on the condition that the mother shall attend and participate in counselling, treatment and/or services with an appropriately qualified and experienced psychologist, counsellor, psychiatrist or other health professional as recommended by the Director of Child Dispute Services, Family Court and that the mother pay the fees nominated by the health professional, including accepting and complying with any referrals recommended.

In relation to the mother's counselling, the reports of the Family Consultant and the Single Expert Witness be provided to the particular counsellor and within 12 months of the Order the Director-General was authorised to contact the health professional and obtain from the health professional information, assessments and reports in relation to the mother's progress in counselling, treatment or other services. The health professional was authorised to provide such information and material as requested to the Director-General.

The ICL was to provide to the children's school, details of the father's last known address and telephone number. Thereafter the school was authorised to provide, and the father shall be entitled to receive at his own expense, such reports and advice on the children's educational progress as he may reasonably request. Each of the parents must notify the other within 7 days of any change to that parties' residential address and the mother was to notify the father immediately in relation to any medical emergency in relation to the children and was to advise the father of all major decisions in relation to the children's

health, education, welfare and any proposed overseas travel by or with the children and the mother shall consider, but not be bound by, any opinions expressed by the father in regard to such decisions. Additionally, that the mother facilitate the children receiving, by post from the father, such cards, letters and gifts as he may send to the children.

The mother was restrained from taking the children or permitting any other person to take the children to meetings, counsellors or camps relating to the alleged past child sexual assault of the children.

It was noted that there was no appearance by or on behalf of the respondent father before the Court; it being noted that he filed a Notice of Discontinuance. The orders made no provision for the children to spend time with their father nor any injunction precluding them from doing so. Whether and in what circumstances the children spend time in the future with the father will be determined by the mother as an incident of her sole parental responsibility for them.

Further disclosures were made by the children since the Court proceedings were finalised.

KATIE AND CONNIE'S STORY

> Michelle, the mother, reported *"serious allegations of sexual abuse made by her four year old daughter Connie against her father Trent and which included her older sister Katie, then aged nine. During the twelve months leading up to this disclosure, Connie had spent unsupervised weekends and holidays in Trent's home where he lived alone full time with her sister, Katie. In hindsight, there were many signs of Katie's distress and unusual behaviours during the marriage when aged between four and six years of age including stealing, repeated red and sore vagina, tantrums with suicidal rants, regularly wetting the bed at night and playing with fire. Katie had also displayed concerning sexualised behaviours with Connie (at ages seven and three respectively), such as when Katie coerced Connie to suck each other's nipples back and forth".*

Michelle and Trent married and in the year 2000, Katie was born and almost five years after that Connie. Michelle described Trent as psychologically and emotionally abusive. Michelle reported that although Katie was out of night time nappies by age four years, three months later she had begun to wet the bed again regularly, something that greatly angered her father. Michelle said he would "force Katie on many occasions to strip and make her own bed in the middle of the night. He would also punish her by locking her in the laundry when she cried". Trent made counterclaims of harm of Katie by her mother. At the ages of four and five years, Katie was said by her mother to regularly complain about a sore or itchy vagina. When aged six years, just before and continuing after the parents' separation, Katie was exhibiting severe tantrums and suicidal rants towards her mother, stating "kill me…kill me…I want to die…do it, now!" Michelle sought help for Katie from multiple services.

In early 2007, Michelle left the home with the children. There was an unofficial agreement that the children, Katie then aged seven years and Connie two years, spend time with their father on alternate weekends and every second weekday night. Katie's behaviour, which

became challenging when she was aged approximately four years of age, greatly escalated and she began to complain of recurrent physical ailments. Katie was witnessed acting out sexual behaviours with Connie in this first year. During rages, Katie told her mother that she had “all your problems before you met daddy…daddy said you can come back to him, it’s up to you”.

Later that year, Michelle stopped Trent from seeing the children for two months due to concerns regarding his care and supervision of them, including an allegation that Trent locked Katie out of the house at night and made the children eat cat food as punishment.

The Family Court process began in 2008 and took approximately two years. Trent filed a substantive Parenting Application in the Federal Magistrates Court. The Application sought Orders that he have sole responsibility for both children and they live with him, with a regular plan of contact with their mother. Court Orders were subsequently made that the children live with their mother and spend alternate weekends, alternate Monday evenings and half of the school holidays with their father. The proceedings were then adjourned until later that year.

Michelle reported that Katie’s behaviour steadily worsened and so she arranged for her to spend a few days with her father. When Michelle picked her up at the end of the agreed time, Katie became aggressive and violent towards her. Katie consequently did not return to her mother’s residence and lived only with her father who, Michelle reports, “sabotaged every attempted outreach she made to Katie”. Whilst no contact was facilitated by Trent for Katie and her mother, Connie continued to visit her father in line with the previous Court Order.

Three months later, a Single Expert was appointed by the Court. The Court-appointed Expert (Expert) interviewed the family. The Expert reported that Katie was oppositional and defiant to Michelle and alienated from her, and that Katie’s primary bond was with her father. Katie expressed a clear and consistent wish to reside with her father and spend little, if any time with her mother. The Expert recommended that Katie’s behaviour would be hard to manage if she was returned to her mother’s care and would likely require therapeutic intervention to support her behaviour. Interim Orders were made in the Federal Magistrates Court that Katie, aged 8 years, live with her father and spend time with her mother after school on a weekday , for a short term trial over six weeks.

The contact visits did not go well. On the first visit, Trent was said to disrupt it by arriving early to pick Katie up, saying he thought it was the correct time. On the second visit, Trent again wanted to pick Katie up early and when Katie wanted to speak to her father on the phone, her mother declined. Katie then suddenly began yelling, hitting, kicking and swearing at her mother. On the third contact visit, Katie did not want to go with her mother and went to the school office where her father was telephoned. Trent had not given the Court Orders to the school about the authorised contact visit. A staff member alleged that Michelle grabbed Katie forcibly to pull her out of the office, which Michelle denied. Katie was distressed, crying, and screaming that she was not going with her mother and began to kick and punch her. Trent took Katie to the Police, unbeknown to Michelle. He attempted to take

out an AVO on behalf of Katie in respect to her mother. It was subsequently not granted in Court but an undertaking was made from Michelle which lasted for three months. After the incident the Police arrived at her door a week later to investigate her alleged assault of Katie, and yet three days earlier the mother had withdrawn officially from the Orders made to facilitate her contact with Katie, by writing to all parties. For Katie's best interests, Michelle wanted contact to cease between her and Katie until Katie received "swift and serious help from appropriate professionals". From this date, despite the Orders that were made to encourage Katie to see her mother, no physical or verbal contact occurred and Katie did not receive the therapeutic support over the following years.

The Court Expert, when reviewing the incident at the school to write a last minute supplementary report, had been provided no information from the mother as to what had occurred. A parenting hearing commenced before the Federal Magistrate in late 2008. Consent Orders were made regarding Katie living with her father and Connie was to live with her mother. Connie was to spend time with her father on alternate weekends and a weekday night and half of the school holidays. The parents were required to use best endeavours to encourage/facilitate Katie to spend time with her mother. Michelle reported that the lawyers she engaged accepted nothing regarding the domestic violence and the alienation of the children despite information/evidence Michelle provided. Michelle was advised "let her (Katie) go, she is saying she doesn't want to be with you, she will come back to you when she is older".

In early 2009, Trent commenced cohabitation with Leanne and her young daughter, Olivia. Michelle was having trouble with Connie's behaviour and approached a family support service for assistance. On one occasion Michelle observed Connie, then aged four years, playing with her genitals whilst watching television. When her mother later asked her about the masturbation, Connie stated that she "sucked Katie's fanny and Katie did it to me and that they had done it a few times in Katie's bed". Michelle made a report to the Child Protection Authority, after speaking with her domestic violence counsellor. Michelle interpreted these disclosures as allegations of sexual assault of and by Katie and withheld Connie from spending time with her father. Michelle subsequently made a second report to the Child Protection Authority when Connie disclosed further allegations of sexual behaviour which involved her father, and this was referred to the Police Child Protection team. Connie said that "daddy sucked his grandfather's willy when he was a little boy and that's okay because he's an adult, and then daddy asked me to suck his willy and I did". Further, Connie said "when I stuck my tongue in the hole where the wee comes out there was milk... I saw it come out", and "I saw daddy sucking his grandfather's willy on daddy's laptop when he was a little boy". She also recounted the behaviour between Katie and herself, stating that she didn't like it. Her mother secretly recorded these allegations. Michelle also filed an application to the Court to suspend time between Connie and her father.

The Police Child Protection team telephoned Connie's preschool and was advised that "*Connie interacted well with both parents and no differences or issues of concern have arisen when considering how she interacts with each parent. Connie was thought to be*

developing well with no additional support needs identified." The Federal Magistrates Court made Interim Orders suspending time with Connie and her father until the following month on a "*without prejudice, without admission"* basis. The Orders also restrained the parents from recording children using any medium (due to the father also having videotaped Connie prior to her Police Child Protection team interview). Connie was interviewed by the Police Child Protection team but Connie, aged four years, did not disclose. However, Michelle reported that Connie did say "I hate my mum, I want to live with my dad, I love him*",* which Michelle believes the father trained her to say. This opinion was based on Trent having recorded a video with Connie, with his partner holding the camera, whereby Connie discusses "hating her mother" and saying "I want to live with you" (meaning her father) and also being smacked by her when she is naughty. Michelle noted that the Police Child Protection team stated that it was clear that Connie did not hate her mother; instead noting that they were close. There were no allegations or suggestions made by the Police Child Protection team that Michelle had coached Connie. The Police Child Protection team interviewed Trent who denied the allegations. The Police Child Protection team file notes stated: *"the n/father provided the above information without being advised of the specific nature of the allegations. He provided a number of Court documents, and the Police DVD recording of Katie re AVO. He did report to the (Police Child Protection team) Officers that his sister told him around September 2008, that she 'overheard Connie saying something about licking a penis."* The allegations of sexual assault by her father in relation to Connie were not substantiated although they stated that they "cannot say no abuse has occurred". Trent was informed that the Police Child Protection team would not be undertaking any further investigations of the matter. Following the Police Child Protection team investigation, various Orders were made regarding Trent and Katie spending supervised time with Connie. The supervision occurred through two different contact services.

In May 2009, when the Police Child Protection team closed and referred Connie's file back to the Child Protection Authority, a recommendation had been made by the Police Child Protection team for a case file review by a specialist caseworker be undertaken. When Michelle realised that Katie had not been interviewed and that the girls' files were closed by the Child Protection Authority, she wrote to the Child Protection Authority Internal Complaint Unit stating that Katie had not been interviewed by the Police Child Protection team or the Child Protection Authority, despite being named in Connie's disclosures, and that the Child Protection Authority were not going to follow up on the Police Child Protection team's "highly recommended specialist file review". It was some months later before she heard back in relation to her complaint and was told that they agreed with the complaint.

Michelle stated that when she chose to leave Trent in 2006, he directly threatened to undermine her image as a good mother and, went on to allege to the Child Protection Authority that she suffered mental issues and that the children were not safe with her. To refute and dispel the accusations of the father, in mid-2009 Michelle voluntarily underwent and paid for an extensive psychological assessment with a clinical psychologist. The psychologist acknowledged Michelle's use of anti-depressants and that she still showed some symptoms of major depressive disorder, but stated that given the distress she had

suffered over the past years, it would not be an unexpected consequence for her to experience such a psychological upset. The psychologist concluded that: "*Based on my observation in the interview and from the results of the comprehensive diagnostic and psychometric assessment, Michelle was not found to suffer from any psychological disorder. Her normal GSI score suggests that her psychological stability is in the normal range."*

The same month that Michelle underwent her assessment, Michelle paid for an independent Expert in child sexual assault to assess Connie's disclosures and the previously reported sexualised behaviours between Katie and Connie, from the recording that she had made. This independent expert noted that Connie initiated all conversation relating to sexual content in the recording. The Expert's conclusion was that "the *collective statements made by Connie, within the context of incidents of sexualised behaviour are extremely concerning in terms of potential for sexual abuse having occurred."* The Expert strongly recommended that: "a*n investigative interview take place to further assess her statements relating to sexual abuse; it is further recommended that Katie be afforded the same opportunity given the concerning nature of Connie's disclosure about her sister's participation in sexual activity with her father as well as Katie's reported coercion of her sister into sexual activity."* The expert called into question the origin of these behaviours for Katie, which implied some form of sexual exposure, assault or modelling of abusive behaviour. Michelle stated that the expert's report was not utilised or referred to by the Report Writer or the Judge in their Reasons for Judgement.

In September 2009, Michelle received an email from the Police Child Protection team stating: *"Our unit (Police Child Protection team) continue to state that a case review should be completed and my Manager has been actively following this up. During this meeting we hope to really highlight the issues in the girls' case."*

The following month, the Court ordered for Connie and Katie to spend time together at a contact centre once a week with their father and once a week supervised by the father's partner Leanne or other [name provided]. Orders were also made for the Child Protection Authority to intervene in proceedings and for the father to have phone communication with Connie two days a week.

The Child Protection Authority's Internal Complaints Unit subsequently informed the mother that a specialist file review would be undertaken and in late 2009, the Police Child Protection team interviewed Katie and the Principal of the school. Michelle reported that the Officers described Katie as "a walking emotional time bomb" and "more shut down than any child they have seen before under the circumstances", however they did not do any further investigation as Katie did not disclose any allegations of sexual assault.

In early 2010, the Child Protection Authority filed a notice formally intervening in proceedings and referred the family to an abuse and neglect support service for assessment. The abuse and neglect support service meeting occurred when Katie was nearly ten years of age. Each parent was assessed. The children were not involved in the interview process due to the *"frequency with which both girls have been formerly and covertly assessed or interviewed in the past, the uncertainty of the family remaining with the service, and the risk*

to their psychological wellbeing through the pressure that may be brought on them by the parents engaging in the assessment'. The abuse and neglect support service documented that they '*held grave concerns for Connie's physical and psychological wellbeing if she remained in the care of her mother. These concerns are based on reports of occurrence and severity of her mother's previous abuse of Katie, and our assessment of the ongoing lack of remorse or responsibility displayed by her in relation to the incidents'.* Of the father they wrote: '*an issue which held the greatest concern for the assessors, with Mr [name provided] attitude to Katie's intense rejection of her mother, and refusal to have any contact with her…Implicit in his behaviour is his own failure to take responsibility for Katie's emotional and psychological wellbeing through setting appropriate protective boundaries. The father appeared to have little insight into the current and long term effects on the girls as a result of the continued acrimony between himself and the mother. He was unmoved when informed by the assessors that a child taking such a determined position against a parent is highly unusual, even in cases of the most severe physical, psychological and sexual abuse in interfamilial situations."* Trent counterclaimed Michelle's allegations of sexual assault, by stating that she had sexually assaulted Katie, whilst the abuse and neglect support service assessed that Katie and Connie had engaged in sexualised behaviours with one another, however thought that it was due to the "*highly abusive and emotionally neglectful home environment that was created by their parents."*

In May 2010, the Court- appointed Expert's second report was released. This report mostly focused on the alienation of Katie from her mother, although Connie had made a disclosure of sexual assault involving Katie and her father. Trent assertively denied the sexual allegations of Connie as *"ramblings of a four year old".* In relation to the interview with Katie, the report stated: "*…Katie was noted to persistently refer to 'we', referring to herself and her father, in describing her experience. This extended to them both providing the same detailed description of an old incident involving the mother showering Katie. This was striking as it was a relatively innocuous experience graphically portrayed as abuse. There was also no particular context to explain why this particular experience should have been highlighted by them both*. *Katie was 'melodramatic' when she said she was scared of her mother. Katie was also seen to minimise her previous experience of her father's punitive parenting practices…"*. Of Connie's disclosure to the Court-appointed expert about Katie showering with the father with the door locked where Connie snuck to unlock the door with a knife and saw them in the shower "playing horsies", the expert wrote that it was "*a fantastical element to the description involving a knife."* The Court- appointed Expert asked Katie if she talked to her dad a lot. Katie agreed that they would do fun things together and talk about what they would do with dad the next day. The Expert then asked Katie if she talked to Michelle (Katie chose to call her Michelle), to which Katie replied *"*not very often. We try to get her out of our head when we can". Michelle noted that despite the Court-appointed expert reporting that Katie was '*melodramatic*' when referring to her fear of her mother, they did not persist in interviewing Katie with her mother for this report.

The Court- appointed expert's opinion was that:

"The escalation of alienation between Katie and her mother was highly concerning…

"There was much to suggest that the mother was correct in her assertion that the father had encouraged Katie's hostility to the mother, enabling her provocative and destructive behaviour. There was also evidence, as clearly depicted in the father's video tape of Connie, that the father now supported Connie forming a similar view of her mother. This was highly concerning. The fact that Ms [name provided] (the father's partner) was the camera operator highlights her level of collusion in this process.[9]

"*Similarly, the mother had obstructed Connie's relationship with her father and sister. She justified this as a response to the fathers' allegedly manipulative behaviour. Her views were seen to be substantiated in the observed interactions.*

"…It should however be recognised that the likely consequence of this (placing Connie in her father's care) would be a breakdown in the mother daughter relationship, similar to the experience with Katie. This is consistent with the mother's fear. There is little to suggest that the father would promote the mother daughter relationship with Connie in a more effective manner than he had with Katie."

In June 2010, Court Orders were made regarding a five day trial which was to commence in September. The abuse and neglect support service released the assessment report in regard to each parent. The recommendations included:

- *That Connie be placed initially in temporary foster care with a view to long term placement with her father on his compliance with ongoing counselling and the successful completion of outcome measures. His partner was to be included in the counselling.*
- *The outcome measures consisted of changing and improving communication patterns in relation to Katie and her mother; creating and fostering a framework of positive regard in relation to the relationship between both girls and their mother; addressing Trent's enmeshed relationship with Katie; understanding the difficulties faced by Connie entering the family dynamics and developing skills to integrate Connie in the family and reduce the potential for triangulation; enhance and strengthen the relationship between Katie and Connie.*
- *A regular contact schedule was to be developed between her mother which was to be supervised by an agency.*

[9] Trent had made a video of himself interviewing Connie which the mother notes 'demonstrated the alienation/grooming by the father'.

- *Michelle was to undertake long term psychotherapy and engage in counselling to ensure the purpose of contact remains child focused and her conduct during contact is safe and appropriate for the children.*

The Director- General of the Child Protection Authority sought Orders that "*parental responsibility for Connie be allocated to the state" (whereby it was proposed to place her with paternal grandparents short term and then to live with the father*). During an ex- parte hearing in August, the Child Protection Authority took extensive action to remove Connie, aged five, from her mother's care. The Court adjourned the hearing on the basis that the Judge noted the abuse and neglect support service report provided criticism of the mother and recommended Connie be put into care of the father as the mother was (apparently) not willing to undertake counselling regarding parenting and the father was. Michelle notes that she had sought, on her own accord, counselling as well as a mental health plan to see a psychologist for her grief at being completely cut off from Katie. The Judge noted this proposed change in residence was despite the concerns raised by the abuse and neglect support service in the report regarding the father (which in oral evidence the abuse and neglect support service said would be mitigated by counselling) and the seriousness of the allegations. The Judge also noted that same level of critique was not applied to the father as it was to the mother in the report and wrote of the abuse and neglect support service report "…*Serious matters were raised in that report in relation to the father's parenting capacity. They included, amongst other things, little insight into a variety of aspects of the care or potential care of both or either of these two children, abandoning his responsibility for guidance to the eldest child on important matters, parental alienation of the eldest child against the mother, an allegation of sexual abuse by the father of the eldest child in the shower some years ago and a lack of capacity to manage fragile and rivalrous sibling relationships*." The Judge's decision was that Connie reside with her mother, and there were a number of conditions relating to the mother's mental health, the involvement of the Child Protection Authority, supervised access for the father with Connie, access with the grandparents, and that neither parent were to use physical punishment with the children. A final hearing for parenting proceedings was fixed for five consecutive days commencing late 2010.

Prior to the hearing, Michelle was seen by the Court -appointed expert for a court ordered psychiatric assessment. The expert identified that she had a stable mental state. Michelle had a history of significant depressive and anxiety symptoms which *"had been appropriately managed with anti-depressants and counselling"*. The Court-appointed expert wrote that their assessment was inconsistent with the concern raised by the abuse and neglect support service and inconsistent with the service's view that the children were at acute risk in the care of their mother given her mental status. The Court-appointed Expert provided a supplementary report. A further hearing took place in September 2010 and it was ordered that Connie reside in the care of her mother.

At the end of 2010, the final trial occurred in the Family Court of Australia. The Judgement delivered in May 2011 was that the mother was to have sole parental responsibility for Connie and that she live with her mother. That a scheduled plan for Connie to spend time

with her sister and father for a period of 18 months. That the father have sole parental responsibility for Katie and that she live with her father. Katie was to have time with her sister. That Katie spend time with her mother in accordance with Katie's wishes. That the mother is not to make contact with Katie or her school, nor to send gifts, notes or letters to her at all. The Child Protection Authority involvement was for 12 of the 18 months. The first of eighteen months of supervised contact between Katie and Connie commenced in May 2011, held at the grandparents' home as they were the official court appointed contact supervisors, with the father attending on specified days with them. Michelle stated that the Final Orders required the father and Katie receive counselling, however this did not occur. The Final Orders also required both parties to be monitored by the Child Protection Authority for 12 months, but Michelle was aware only she and Connie were monitored.

Michelle reports that during the trial and its lead up, her lawyer wanted evidence of the domestic violence (which she says was emotional and psychological) and also "harassed me to take child sexual assault off the table because it couldn't be proven" and suggested repeatedly that the children weren't at risk of child sexual assault. Michelle spoke of being in Court on day five of the trial, when the lawyer asked the judge to give them a minute, where they turned around and whispered to her about taking child sexual assault off the table and, as she was embarrassed and exhausted, she relented. There had been little questioning regarding child sexual assault during the trial, and therefore the allegations of child sexual assault were not taken into account when the Orders were made. Further, Michelle notes that, in the reasons for judgement, the Judge referenced a number of times the fact that the father denied the allegations of child sexual assault.

In early 2012, nine months into the supervised contact, Connie's paternal grandmother found a note crumpled up in a waste paper basket in the bedroom where the children had been sleeping. The note stated sexual assault by her father. The paternal grandmother forwarded this to the Child Protection Authority caseworker, who determined that Connie had written the note. After having monitored Connie for one year, and noted some concerning behavioural patterns, and having receiving this (further disclosure from Connie), the caseworker formed an opinion that Connie required sexual assault counselling and wrote a referral for her. The caseworker during the referral to the sexual assault counsellor stated that the Service had "*formed a belief that Connie had likely been sexually assaulted by her father.*"

Connie attended the sexual assault service over a period of a year. The counsellor wrote in their report: "*In my professional opinion, I would be very concerned about Connie having unsupervised access with her father. I have been told that Connie has had little or no access with her father during the year, as he has not shown up to many arranged supervised access visits. During this time of no access, Connie's behaviour in counselling had been settled and focused. It is only on anticipation of unsupervised access at the home of her father during the school Christmas break that Connie has displayed authentic symptoms of anxiety, hyperarousal and regression. I am concerned that Connie's expressed hyper-sexualisation and curiosity would put her at risk in an unsupervised environment with her father.*"

The 2011 Orders for contact with her father were to begin with 18 months supervised access, graduating to unsupervised. November 2012 was the end of the Order for supervised contact. Trent only attended the first six months of the eighteen months. He did not see Connie in the following twelve months, with only Katie attending the second six months of access with Connie (held at the paternal grandparents' home). From May 2012, after one year of supervised access and court ordered monitoring, the Child Protection Authority were to end their service and write a report. As the paternal grandparents no longer had the Child Protection Authority caseworker as a support and mediator during the supervised access with their son, and because they were engaged in conflict with him, the paternal grandparents also withdrew from supervising the remaining six months contact. Other than the father demanding unsupervised access to Connie from Michelle during December of 2012, and December of 2013, he spent the remainder of those two years making no contact with her or Connie in any form. In December 2014, he began turning up at Connie's school sports events. Olivia (the child of Trent's partner) has since had periods of not living with Trent and her mother and it was reported that Katie, is said to be currently living elsewhere. Katie has still not had contact with her mother and younger sister.

HEIDI'S STORY

> "*After years of the same going on, the child gives up telling the story over again… Also, professionals don't like dealing with someone who might be upset and stressed - they want you (the protective parent) to be calm and to keep a level head otherwise they focus their assessment on you."*
> (Heidi's mother, Catherine).

In June 2000, Catherine and Greg commenced a relationship. During the relationship, Catherine found images of naked children on the computer and in 2004 found bookmarks/internet history containing incest chat rooms and adult pornography images (pictures of naked men and "shemales"). She also found nested folders sorted by pornographic content, including a folder of naked children, a picture of an erect penis and several pictures of clothed teenage girls including Greg's niece Isobel. Catherine made a report to the Police. Catherine said that the Police also found a camera under Greg's desk in the family home pointed at the chair/groin area when seated. Greg's niece Isobel was interviewed by the Police. She told them that she saw the images on Greg's computer when he logged her on to his profile, and she found the folders with the disturbing content. Subsequently, Catherine then provided a further two statements minimising Greg's behaviour and expressing guilt at reporting. She had reported in the subsequent Affidavit what Greg had told her had occurred, that is, that they were temporary internet folders. Greg was later charged and eventually pleaded guilty. He received a fine of $1000.

In 2003 Heidi was born.

In mid-2004, Catherine and Greg separated. Whilst separated, Catherine and Greg sorted out Consent Orders for joint care of Heidi, then aged under two. Catherine said that she wanted to 'keep the peace' and for them both to get on with their lives. Furthermore, she

believed that, whilst he had problems with pornography and some past sexual assault experiences, that he wouldn't harm their daughter and that the child pornography images had been a 'mistake'.

In late 2004, after Heidi returned from having contact with her father, Catherine found seminal fluid on Heidi's clothing. Catherine contacted the Police, who allegedly said that they were unable to act as a Parenting Agreement was in place. The following day, Catherine fled to another State within Australia with Heidi. After having filed a missing person report, Greg then sought a Recovery Order to bring Heidi back to the State in which they had been residing.

Subsequently, in December 2004, Orders were made in the Family Court for Greg to have contact with Heidi two hours a week with a family friend to supervise. Greg provided an undertaking to the Court during these proceedings that he would not behave in a manner which would amount to domestic violence.

Later in December 2004, Catherine reported her concerns to the Child Protection Authority, given the previous events, in relation to Greg having access with Heidi. The Child Protection Authority advised Catherine that Heidi should have a medical assessment. Catherine chose not to follow this advice due to her concerns as to the potential emotional impact on her daughter, but the Child Protection Authority worker was said to have insisted. The worker recorded the outcome in the case file that due to contact being supervised, the child was not at risk when having contact with the father. Heidi was also seen for a medical examination by a doctor at the hospital. The doctor reported that Heidi had a '*mild subclinical infection often seen in pre-pubescent girls'*.

In early 2005, Court Orders were made for Heidi to have supervised contact with her father for two hours on two weekdays and six hours on a weekend day, with a family friend or Greg's new partner Cheryl supervising. Undertakings were provided to the Court that Greg was not allowed to let Heidi see him in a state of undress nor was she to see the computer, and he was not to engage in toileting and bathing of her. Cheryl was to supervise and always be in the presence of Greg when he was with Heidi; and to be responsible for all toileting and bathing of her. However Heidi would often disclose to her mother that she was left alone with her father.

Within a couple of months of the Orders being made, Heidi, aged nearly two years, began disclosing to her family day carer of a "sore nappy" and said "sore" when she touched her genital area during nappy changes. The family day carer reported these disclosures to the Child Protection Authority and Heidi subsequently had a specialist medical assessment. Police were notified. Findings from the assessment were non-specific.

A Family Report was provided to the Court in early May, which recommended that Heidi had contact with her father but that it be supervised. The Family Report Writer also alluded to the fact that the risks to Heidi should be considered with the outcome of the Police investigation. Later that month, Court Orders were made continuing supervised contact, which had now increased to two by two hours contact each week and an overnight stay each fortnight from Saturday morning until Sunday evening. This level of contact remained

ongoing through future Family Court proceedings. The matter was also transferred from the Family Court jurisdiction to the Federal Magistrates Court. Orders were also made that Greg have counselling with a psychologist regarding his "addiction propensity/conduct" regarding use of pornography and issues of safety and welfare of children.

In September 2005, Heidi, extremely distressed, was reported as having screamed to her mother that her vagina was sore and resisted when Catherine tried to change her nappy. Catherine observed Heidi's vagina to be more moist, red and slightly swollen. Catherine did not take Heidi to the hospital due to both the long wait time and the outcome of the previous visit, but also because Heidi was "tired and cranky". Catherine said she was also more aware of how the Family Court of Australia and the Child Protection Authority negatively viewed medical examinations and was therefore more cautious in her approach to Heidi's disclosures.

In 2006, Catherine described Heidi (who was almost three years old) demonstrating further concerning behaviour. She had regressed in toilet training (wetting herself and being terrified of the toilet), regressed in her language skills (was, before this time, described as precocious), displayed difficult to manage and non-compliant behaviour and was crying much of the time. In addition, Heidi displayed problem sexual behaviour, where she put objects in her vagina whilst bathing.

Following this, Heidi again complained of having a sore vagina and disclosed to her mother that "Daddy touched her there". In May 2006, the Family Court Consultant provided the Court with a follow up Family Report. The Consultant noted that because Greg had finished counselling and there was no further Police involvement, Greg was therefore considered at low risk. The Consultant recommended "*quite regular and extensive contact"* with Heidi on the condition that Greg observes minimal restrictions on "*intimate activities"*. The Consultant was happy for Heidi to have overnight contact with Greg.

The psychologist seeing Greg for his pornography addiction also provided a report. The psychologist noted that Greg told them he only used legal adult pornography. The report stated that Greg posed a low risk of child sexual assault (noting absence of 'no risk' category) as; no charges laid, Greg did not disclose offending behaviour, and Greg was assessed to have successfully completed treatment for pornography dependency.

In June 2006, in the Federal Magistrates Court the final trial was adjourned as Police had advised that they would bring charges against Greg. At the hearing, Court Orders were made for Greg to keep the ICL informed of the criminal prosecution brought against him.

Throughout the year, Heidi continued to make further and ongoing disclosures to her mother including that her father was toileting (wiping her poos) and bathing her. Heidi also said to her day care provider that she had a "sore nappy". These disclosures continued occurring "every couple of months" and Heidi's difficult behaviour persisted. Heidi displayed "difficult and defiant behaviour" of being afraid of/resisting going to toilet, attempting to take her clothes off and masturbating while sitting on the toilet by placing fingers in her vagina and anus. Heidi also asked her mother to "touch my bottom" and relayed that she has a sore "gina" and that her father touches her. Catherine made ongoing reports to the

Child Protection Authority. Heidi was interviewed by the Child Protection Authority, however, she made no significant disclosures. The Child Protection Authority also contacted Heidi's day care, who reported nothing different in her toileting behaviour. The Child Protection Authority and the Police interviewed Greg, and he denied toileting and bathing Heidi.

The outcome of the investigation was recorded as "*substantiated - child not in need of protection"* and noted in the Child Protection Authority application to the Court. It was deemed that harm had occurred but Heidi was not in need of protection as she had a parent (her mother) willing and able to protect her.

At this time, Catherine noted that the Child Protection Authority assessed that Greg interacted well with Heidi. Catherine noted the Child Protection Authority worker told her that Heidi should be examined by a doctor, but changed this opinion at the next meeting. The Child Protection Authority worker cautioned Catherine from taking Heidi to be medically examined as the Child Protection Authority would view this as a "possible form of child abuse" by Catherine. Catherine said that the Child Protection Authority worker also refused to speak with Catherine's mother and aunt who had observed Heidi's concerning behaviours, and reported that she was told this was because "they are on your side". Catherine reports being looked upon as "hysterical", and that the Child Protection Authority focused more on her behaviour than on the allegations of harm against her child.

In mid-2006, Greg's solicitors wrote to Catherine's legal representatives asserting, among other things, that Greg was not a risk to Heidi and the Child Protection Authority were enquiring into any risk posed by Catherine to Heidi. Two months later, Police charged Greg with three counts of possessing a child abuse computer game (two charges included knowingly possessing).

Catherine sought a report from her own Expert, and paid for the expert to provide an assessment, so that she could submit this to Court with her Affidavit. In November 2006, the expert provided a report to Catherine's solicitors outlining the academic research position on accessing child pornography, and the potential for contact-based and incestual offences. The Expert was, however, unable to take a stance in relation to the risk Greg posed, and provided the opinion that this research holds no relevance as no charges of child pornography had been proven against Greg at that time.

In December 2006, Greg's niece provided a statement to Police regarding sexual assault perpetrated against her by Greg when she was 13 years old (2003-2004). Catherine also provided information that another child (half-sister to Isobel), may also have been harmed some years earlier. Although the evidence against Greg was becoming stronger in terms of the criminal nature of the sexual offences, and evidence provided by both Isobel and the Police regarding the pornography, and Heidi's persistent disclosures, Heidi's contact with her father remained unchanged throughout the Criminal and Family Court processes, except when Greg went to prison.

In January 2007, the Child Protection Authority received notification regarding charges laid against Greg and possible sexual assault of Isobel. The outcome of the investigation was marked *"substantiated - child not in need of protection"*.

Further reports to the Child Protection Authority were made, including that Heidi was hurt by Catherine at changeover. Police conducted a Safety Check regarding Heidi's welfare at Catherine's residence. The other report related to concerns regarding sexualised behaviour and increased bedwetting following a disclosure by Heidi, then aged three and a half years, to her mother, whilst she was having a bath. Heidi stated: "Mummy you're tricking me. Daddy can wipe my bottom. You're a tricky Mummy". Soon after, Heidi pulled at her vagina and said "look what I can do Mummy", followed by "Daddy showed me how to do that". Later, Catherine observed Heidi "constantly touching her genitalia", displaying concerning body language which seemed sexual, and Heidi further added "I won't like you any more if you're dead, Mummy".

In February 2007, Isobel's complaint was withdrawn.

The Child Protection Authority interviewed Heidi when she was at day care and Heidi stated she bathed with daddy.

Greg and Cheryl were also interviewed by the Child Protection Authority in relation to Heidi. The Child Protection Authority noted that Greg disclosed he had, on occasions, bathed Heidi since the birth of their younger daughter Kim. Greg expressed that he was concerned Heidi was being coached. The Child Protection Authority submitted an Application to Children's Court due to concerns regarding Greg bathing Heidi.

The Child Protection Authority sought that Police interview Heidi in light of the information provided in the Family Court and the information from the Police Child Protection team regarding Isobel's disclosures. The Child Protection Authority also sought that the Child Protection Authority staff supervise contact between Greg and Heidi.

The replacement ICL, submitted an Affidavit seeking suspension of current orders due to concerns raised by the Child Protection Authority (Greg's admissions of bathing Heidi) and that Interim Orders were to discharge previous Orders for Cheryl to supervise contact and that the ICL appoint a supervisor.

The Child Protection Authority provided concerns in an Affidavit to the Federal Magistrates Court. Greg then submitted an Affidavit to Court denying the disclosures to the Child Protection Authority.

In March 2007, the psychologist provided an updated report. The psychologist stated that Greg was still low risk of sexually offending against children.

In mid-2007, at the District Court committal hearing, Greg pleaded guilty to one charge of possession of child pornography (as a result of negotiation). No conviction was recorded and Greg was fined $1000.

In 2008, Heidi commenced school. Numerous behavioural observations (lack of focus, disobedience, stealing, hitting, kicking, and punching other students) and disclosures of

sexual assault were made by Heidi and recorded by Heidi's school and teachers. Heidi would also eat food from bins or off the ground and refuse to eat her own food. The school noted that Greg bought Heidi to school on his own and he was therefore unsupervised. Heidi's disclosures included that: "bad grandpa puts glass in her bottom and it bled and hurt" (which she had previously disclosed to her mother), "bad man does bad things", and that "bad man is at dad's place at night". Heidi's disclosures were sometimes accompanied by drawings. In one drawing Heidi depicts "bad man" as wearing a dress, having long eyelashes etc. The notes of teachers regarding Heidi's behaviours, disclosures and her pictures were subsequently supplied via subpoena to the Family Court.

In March 2008, Isobel became willing to proceed with charges for sexual assault. Greg declined to be interviewed. Police arranged to arrest Greg via appointment.

In April 2008, Heidi disclosed to Catherine, "I don't like bad man" because "bad man puts glass in my bottom and blood comes out, it hurts" and Heidi touched her vagina on the outside of her underwear. Heidi further added "it's bad man but it's not bad man…it happens all the time". "Bad man", although not identified by Heidi, was thought by Catherine to be either the paternal grandfather or (his son) Heidi's father, Greg.

The Police interviewed Heidi. Immediate disclosures were made by Heidi who described the glass as having a big point, sharp, really hurt, he put water on the glass to make it slippery and her bottom bleeds. Police noted insufficient particularisation of offender, location and number of times it occurred. Heidi was referred for a medical examination.

Catherine provided a statement to Police regarding Heidi's behaviours and disclosures. Greg subsequently signed an Undertaking to the Court saying he would not allow Heidi to come into contact with her paternal grandfather or anyone she refers to as "grandfather".

In the same month, the Family Report Writer provided their Family Report to the Court, stating that it was beyond the writer's scope to assess risk and relied on the psychologist's report of the father. The Family Report made findings that Catherine demonstrated *"high levels of control and grandiosity"* and reported psychometric testing showed Catherine was experiencing bipolar symptoms. Heidi was very reluctant to spend time with her father and his wife during the assessment with the Court-appointed Expert. During the assessment with her father, she sought to return to Catherine when she realised that Catherine was in another room nearby. Heidi was allowed to go to her mother by the Family Report Writer, but then she clung to her mother crying and did not want to return. Catherine stated that although Catherine scored similarly to Greg on various psychometric scales, no such negative comments were made of him.

The report supported Greg having more, and unsupervised, time with Heidi as Greg and Cheryl were noted to be stable, well-balanced parents posing no risk to Heidi, who could provide for her financially. The Family Report Writer made no reference to Catherine's concerns of risk to Heidi and her references to Greg's niece who she believed was harmed. The Consultant further recommended that Catherine be assessed by psychiatrist.

A follow-up Police interview of Heidi occurred. She provided consistent disclosures to the previous interview. Heidi was seen by a medical doctor at the hospital and she made disclosures of sexual assault. The findings of the genital examination were consistent with penetration and the doctor provided a report to the Police. The Child Protection Authority received a notification regarding disclosures and medical evidence. The Child Protection Authority recorded it as a child concern report with no further action taken.

The psychiatric report noted that the mother did not have a mental illness, however said she suffered from *"chronic parental alienation"*.

In May 2008, Police conducted a "drive around" with Heidi to see if she could identify places where "bad man" hurt her, as they were unable to identify the perpetrator and thought it may be more than one person. None were identified. There was a follow-up Police interview and Heidi provided consistent disclosures.

Heidi disclosed to Catherine, "bad man grabs her throat so she cannot breathe and squashes her face…bad man put fingers inside", looked at her vagina and asked "are there spots inside?" Heidi said this happened at "night time at Daddy's". Catherine took Heidi to the Police station and an interview was conducted. Heidi did not disclose. It is recorded on the Police notes that: "*the informant is well known to Police for bringing the child into the Police Station and wanting her to be interviewed about similar incidents. The informant is currently involved in a Family Law dispute involving the custody of the victim with the victim's father and Police believe she is using the child to assist her cause in the matter. Police believe it is highly unlikely that this occurrence has occurred*."

Heidi's disclosures to her mother regarding the "bad man" continued and further reports were made by Catherine to the Child Protection Authority. There was also one report to the Child Protection Authority stating that Heidi said to Greg that: "Mummy called you a f…n' c…" and "Mummy is trying to trick me to say bad things about you."

After one disclosure Heidi made to her mother about "glass being put into her anus and vagina", a medical examination occurred. Catherine had first contacted the Police, who recommended that she take her to the hospital and that they would contact the hospital. Catherine recalled the doctor walking into examination room saying in disgust, "this shouldn't take long. I hear you do this all the time". The doctor's hospital notes stated in summary: *"possible sexual abuse; long history, Mum and child well known to CP Unit and Police. Mum says child told her someone had touched her vaginally and anally; child not forthcoming. The medical examination revealed that there was some redness in the opening of the vagina and a prominent sore subcutaneous vein in a ring over top of anus? (new or old (may need to refer to old notes)); CP Unit will be made aware by nurse*."

Catherine reported that the Doctor was noticeably and increasingly distressed, as was the attending nurse, when they medically assessed Heidi, repeating "this is not right" whilst looking at the nurse. The doctor also had the nurse examine the injury. The doctor recommended follow-up in two days' time to determine if there was any difference in the vein over the anus; which on further examination was found to be less prominent, although the vaginal area remained red. Catherine stated that the doctor believed that Heidi was

sexually assaulted, but the doctor was of the opinion that the Court and Police would likely do nothing with this sort of evidence. The Child Protection Authority recorded concerns that the child had undergone another medical examination following contact with her father.

Catherine withheld Heidi from contract with Greg, due to the findings from the medical examination, Heidi's disclosures and Greg having assaulted his niece.

In mid- 2008, Greg was charged with three counts of indecent dealings with a child under the age of 16.

Greg's solicitors wrote to Catherine's advising Greg *"has now been charged in relation to an alleged incident with his niece on very flimsy grounds apparently orchestrated by the mother. In response we would suggest that the mother then be psychiatrically assessed and the father's time with the daughter resume"*. Greg's solicitors submitted an outline of the case saying Greg *"does not present any motivation to interfere with the child, especially after the favourable Family Report recommending increased time with the child to occur unsupervised. However, the mother presents every motivation to find a further allegation against the father. Further, we will submit that the alleged interference with the child has occurred in the mother's household given the contact restrictions placed on the father in his household."*

In October 2008, the Federal Magistrates Court made Orders for contact to resume as per previous Orders; Heidi was to spend every second weekend with Greg and have Greg's wife supervise this contact. Catherine was not to deny contact to Greg and, if she did, Greg would get custody; no further physical examination of Heidi without ICL or 'Court of competent jurisdiction' approval; and a Recovery Order and warrant issued for the Police to *"take possession of Heidi and deliver her to the care of the father*" to be on Registry's file to be uplifted upon request by Greg's solicitors or ICL if Greg's time with Heidi is not facilitated.

The Magistrate's Reasons for Judgement outlined that they saw no evidence to suggest any risk posed by Greg when he is supervised, and that they held as much, if not more, concern in relation to Catherine and her actions. The Magistrate also said, "*if care and parental responsibility is changed to the father per above no one but the mother will be responsible for any change, because the mother will be the one who instigates it through her actions".* Further, *"I could not emphasise more the concern I have in relation to the repeated physical examinations of this child. It is abuse in the extreme and in my view it should cease."*

Catherine reports instructing her solicitor to appeal this decision, however, Catherine says the lawyer made excuses saying that they was awaiting the judgement and could not appeal without it. Catherine says she found out six months later this was not correct and believes that the lawyer "did not want to appeal and was hoping (she) would get over (her) instructions to appeal". Catherine subsequently sacked her lawyer, obtained all materials held by the lawyer, and commenced acting for herself.

Shortly prior to taking over the matter herself, a hearing was held to transfer the case back to the Family Court of Australia. The case became part of the Magellan program.

In the first months of 2009, Heidi, aged six years, went missing from school (she ran away and hid). When teachers found her, Heidi disclosed, "you know there are naughty people" and "naughty AJ comes out at night and sticks glass in my bottom". Heidi was singing a song at school about not wanting to be there anymore and does not deserve to live because she was a naughty girl. Heidi said she "does not deserve to live and want to be burn (sic) into ashes".

Heidi was seen by a medical doctor. Heidi drew a picture and described it as depicting "two men standing at the end of her bed (one [bad man] and she didn't know the name of the other)". Heidi disclosed they push glass into her bottom and it wasn't nice and it hurt. The medical doctor noted content of the picture, Heidi's behaviour and circumstances around the event which lead them to suspect Heidi was a '*sexual abuse victim'.*

Heidi disclosed to her teacher about "bad man" and her psychologist; "bad man is putting glass in my bottom" when describing a picture she drew on a whiteboard. At school, Heidi was aggressive and unsettled so was sent to the office. Heidi said, "there are bad people in the world" and information about "bad man" as well as, "Mum takes me to the hospital because my bottom is red... because there's glass in it."

In March 2009, a psychiatrist submitted a psychiatric report regarding Catherine. The psychiatrist found nothing to suggest bipolar disorder or any other psychiatric disorder and nothing to suggest grandiosity in Catherine's view of herself as suggested by the Family Report Writer in their report. Regarding Greg, the psychiatrist discussed allegations relating to Isobel and child pornography. Greg denied or minimised this. He also denied paedophilic interest and outlined his sexual interests. The psychiatrist found Greg to be stable and not suffering from any disorders.

In June 2009, the Child Protection Authority received notification of the school's concerns for Heidi.

In September 2009, the Court-appointed Family Consultant prepared the Family Report.

Regarding Greg it found Greg minimised child pornography, provided alternate interpretations and denied specific knowledge of pornographic text documents. The Family Consultant described the contents of the 24 text documents as "*explicit and graphic documents that described scenarios of children as sexual beings who actively sought sex with an adult and enjoyed it despite the physical pain it caused".* Greg reacted with shock of being asked about them, and then said, "it's horrific, it's animalistic".

In relation to Cheryl, the Family Consultant discussed the charges against Greg and suggested that Cheryl was not aware of the full extent of charges regarding Isobel or child pornography charges.

Regarding Catherine, the Consultant was unhappy with Catherine's conduct as a parent and her lack of willingness to foster a meaningful relationship between Heidi and Greg. The Consultant further added that Catherine did not consider alternate explanations for Heidi's behaviours or medical results and suggested that Heidi's behaviour was *"seriously impacted by Catherine's anguish"* and found it *"disconcerting that four years later (Catherine) has now*

progressed from being concerned about possible abuse to feeling certain it is happening" based upon Heidi's 'repeated' and mainly unchanged statements.

The Family Consultant spoke with Heidi in her room at Greg's residence. She noted that Heidi retracted her disclosures saying what she said about "bad man was a lie" and "not real". The Family Consultant noted that there was little to suggest sexual assault was happening whilst Kim slept below Heidi and Cheryl was across the hall.

The Family Consultant then provided their opinion: *"it is possible that Heidi is not benefiting from exposure to protective behaviours information; rather it may be providing her with a strong expectation to disclose",* and, "*of significant concern is that (Heidi) may develop a strong and intractable belief that she is a victim who needs to be protected from a dangerous world"*.

The Child Protection Authority also submitted an updated Magellan Report saying no risk of harm during supervised contact and unsubstantiated harm. This report was despite 2006-2007 substantiations of harm by the Child Protection Authority and concern enough to prompt Applications to Children's Court.

The Family Court granted administrative adjournment due to Criminal Court proceedings. Catherine's new lawyer wrote to the Child Protection Authority regarding the serious nature of the material on file, outlining some excerpts from the sexual assault stories and asked whether the Child Protection Authority intended to act.

In May 2010, Greg was found guilty by Jury on all counts of sexual assault of Isobel. Greg was sentenced to 18 months imprisonment (suspended after 9 months). In early 2011, Greg was released from prison. He was recorded as a sex offender and required to report to the Police station for 15 years.

In the Family Court, the Judge/Registrar made comments that equal shared parenting was not likely under the circumstances. The Family Court ordered an adjournment as Greg did not attend hearing. The Family Court granted Greg leave to discontinue his Application for Final Orders. The ICL continued to support contact with the father.

In the middle of the year, Heidi disclosed to her teachers that when she was at her father's place in (the previous state) he left the door to her room open one night and two strange men came in and did things to her privates. There have been a number of disclosures since then, where Heidi has referred to her father assaulting her. Catherine noted that Heidi's Child Protection Authority file was left open for years and when closed marked "*unsubstantiated – child not in need of protection*".

Family Court proceedings ceased in 2011. Catherine noted that the matter never went to final trial as Family Court proceedings were put off due to the ongoing criminal matters. Catherine said the case was dismissed as Greg gave up all rights after he got out of jail. Catherine noted the Final Orders therefore granted her full parental responsibility and only required exchange of email and postal addresses.

MATTHEW AND GEORGIA'S STORY

> *"(The Child Protection Authority) advised me to leave the violent father for hitting our two year old son in the head, otherwise they could be taken from me; yet in Family Court, they threatened to take my children away from me for protecting them, and worse, giving them to him. The Family Court sees protecting children from harm as lying and alienating the father..."* (Matthew and Georgia's mother, Penny).

Penny and Kevin met in 1998. In March 2000 Matthew was born, followed by Georgia in 2002. During the relationship there were instances where Kevin was observed to be physically punitive of his son, who was a toddler at the time. Reports were made to both the Police and the Child Protection Authority by both his mother and a hospital professional in relation to Kevin's ill-treatment of Matthew. The parents subsequently separated in 2003 when the children were aged nearly three years and six months respectively.

An Interim AVO was granted for Domestic Violence perpetrated by Kevin towards Penny. In early 2003, the first Family Court hearing occurred and an Interim parenting agreement was made. Penny agreed to Orders written by Kevin, as she had no solicitor and had not sought any advice, so felt that she had to agree to what was requested. Matthew was to go to his father's every second Friday night until Saturday evening. Georgia had to go every second Saturday for two hours as she was still being breastfed. Access arrangements were also graduated to include half the school holidays, which was changed to include pre-school holidays (despite Matthew not attending pre-school).

There were ongoing, numerous and concerning issues and events after Kevin began having contact with his children. On one instance in 2004, Matthew was taken to the hospital with a head injury after falling down a flight of stairs and Georgia suffered burn injuries. When Matthew and Georgia were three and two years old respectively they began displaying problem sexual behaviour. Penny described Matthew as acting out sexual games called "wee kisses", which at that time he was observed as rubbing his penis into another little boy's bottom. Recovery Orders also had to be made for Georgia after her father had not returned her after a contact visit. The Federal Police recovered her and returned her to her mother. Georgia also disclosed to her mother that "daddy hit my head." After 2004, new Interim Orders were made in the Family Court prior to Final Orders in December 2005.

In 2005, Matthew, aged five years, continued acting out sexual acts with other children and Georgia, aged two and a half, was according to Penny, masturbating continuously after overnight contact with her father, Kevin. Penny reported to the Family Report Writer that she had serious concerns for both children as they were displaying sexual behaviours.

In the first proceedings in 2005, the Family Court ordered that the children have overnight contact with their father, and that there was to be no counselling for the children. Following overnight contact, the children returned to their mother crying and distressed. Georgia got into bed with her mother, pulled down her pants and asked her to tickle her "wee wee" like her daddy does, and further elaborated that she plays other games like "daddy puts his wee wee in my mouth", and demonstrated the action.

Subsequently Penny contravened the Order by not allowing the children contact with their father due to concerns for their safety and welfare. A report was made to the Child Protection Authority, and the children were interviewed by the Police Child Protection team. The children did not disclose during the interview. A second interview with the Police Child Protection team occurred after Penny rang them in July, stating that she needed help with counselling as she didn't know what to say to Georgia when she continued telling her about being sexually assaulted by her father. Georgia disclosed to the Police Child Protection team outside of the interview room, whilst sitting on her mother's knee, that "daddy tickles my wee wee" and pointed to her vagina. Although the Police Child Protection team were unable to proceed in pursuing criminal charges, Penny reported that after the Police Child Protection team had a discussion with their Manager about Georgia's spontaneous disclosure, she was reassured that all contact between the children and their father would be supervised.

In September 2005, the ICL ordered contact at a contact centre, and Matthew and Georgia commenced supervised access with their father. Following contact with her father, Penny reported that Georgia said in the car going home, "I told daddy it's his fault he tickled my wee wee". In the evening when Penny had run a bath and went to put Matthew in, he started screaming hysterically that he didn't want to get in the bath. Matthew was extremely distressed and reported to his mother that "I drowned in the bath". He went on to explain that it was at his "daddy's house, I drowned in the bath because it was too deep". He refused to bath and had to sleep with her. Penny rang the Police Child Protection team the next day as Matthew was still extremely distressed. The following month when Kevin rang to speak with the children, Penny alleged that during the conversation Georgia said, "I am not your Princess, you are naughty for tickling my wee wee".

For the second Family Court proceedings, an Expert Witness had been appointed by the Court and in December 2005, there was a five day Final Court hearing. Penny reported that the Judge said that they had no evidence and relied on the Expert Witness. Penny reported that she herself subpoenaed the Child Protection Authority to attend, however, she did not do this correctly so they did not attend.

Kevin insisted that the allegations were fabricated for revenge and also accused Penny of abuse, neglect, alcoholism, mental illness, coaching and parental alienation. Penny reported that Kevin "got his family members to write lies in Affidavits to support his story". Georgia, who was three years old, had been seen by the Expert Witness and disclosed to them "I have a very naughty Daddy 'cause he tickles my wee wees". However, during this Court process, Penny noted that the Expert Witness provided the opinion that Penny was telling Georgia what to say and therefore dismissed any risk that may have been associated with the children living with Kevin. Penny reported that during these proceedings her solicitor told her that it would have been better not to mention sexual assault, as it looked bad.

The Family Report was fully supportive of Kevin as a custodial parent, and negative about Penny, claiming that she was alienating the children. The Expert Witness and the child representatives were in favour of the children living with the father full-time, as they believed that the mother was certain that the children were at risk and would not keep to

any Court Orders. They proposed that the mother have supervised contact with the children every second weekend.

Penny reported that none of the evidence such as tapes of phone calls, Affidavits from friends, or information from the Police Child Protection team was used as evidence. Penny spoke of having tape recordings of phone calls between Georgia and Kevin where Georgia spoke about the assault. However, these were not accepted as evidence by the Family Court. Further, Penny also had the children's counselling books which included drawings of the alleged assault.

Penny spoke of giving evidence in the Family Court. She noted when she was questioned by the ICL asked if she strongly believed that the children were being sexually assaulted, would she stop contact. Penny replied that she would, and was told that she would be breaching the Court's Orders. The outcome of the hearing was that the children were to reside with the mother, and the father was to have contact every second weekend and half of school holidays.

In January 2006, the Court ordered that Matthew and Georgia spend seven days with their father, to make up time for when Penny contravened Court Orders. When back with their mother, Matthew held Georgia's head under the water in the bath. Matthew said, "I don't know why I did it". Penny reported that Matthew had bruising on his face following contact with his father and was seen by a medical practitioner, who sent him off for x-rays, however there were no broken bones.

At pre-school Georgia said to her friend, "my daddy is a naughty daddy, he tickles my wee wee". Matthew also exposed himself at school. By mid-year, Matthew disclosed to his mother that his "daddy had held his head under the water as a threat never to talk to the Police or anyone else about what happens at daddy's house". Matthew also said he did it to Georgia. The children's challenging behaviours continued throughout the year. Georgia was demonstrating anger and bad behaviour at pre-school on Mondays after contact with her father on weekends, with the teachers noting the extreme changes in her behaviour. At the end of 2006, Penny took the children to her counsellor. Matthew reported to the counsellor that "daddy holds his head under water in the bath as a threat not to talk". Georgia also reported her father causing her harm. A further report was made to the Child Protection Authority.

In January 2007, the children were handed over for 20 nights contact with their father in line with Court Orders. Penny rang the children often but was refused all phone contact by their father. During this time, Penny rang the Child Protection Authority with concerns for the children's well- being. Georgia also commenced having urinary problems and incontinence, requiring medical specialist follow-up. After the children returned to their mother, Georgia said to her mother "can you massage me like daddy does to help me go to sleep". While her mother was at an appointment with the domestic violence counsellor, Georgia reported to the domestic violence counsellor that "daddy massages me all over, even my wee wee". A further report was made to the Child Protection Authority.

After Penny's last appointment with her counsellor she contacted a solicitor to determine whether going back to Family Court was possible. Penny reports that the Solicitors advised her to start afresh and be happy with residency, as if she went back to Family Court she would lose residency to the father.

In 2007, Matthew continued to report that his father physically abused him, and Georgia, who was having urinary problems at home and school, told her mother that she "cannot feel the wee coming any more, 'cause daddy rubs my wee wee too hard". Due to these new allegations, a report was made to the Police, and Georgia was taken to the Children's Hospital, where the Police met her. The hospital referred the mother back to the paediatrician and no forensic examination was undertaken. Penny said it was because she didn't follow the correct procedure in taking her child to the hospital. No further action was said by Penny to be taken by the Police. When Georgia was seen by the paediatrician for her urinary incontinence, Georgia disclosed sexual assault by her father to the paediatrician. The paediatrician made a report to the Child Protection Authority, but the Child Protection Authority was said not to get back to the paediatrician.

In September 2007, Matthew reported to the school counsellor how his father had held his head under the water in the bath, and said, "this is what it feels like to drown and this is what I will do to you if you ever tell Police or anybody what I do to you". Matthew also disclosed that he wanted to cut his wrists with scissors. The counsellor made arrangements for Penny and Matthew to go to hospital and informed Penny of an emergency psychiatric ward if Matthew was still suicidal. Matthew was assessed as having depression by the hospital. Penny contravened the Court Orders due to Matthew being suicidal over abuse perpetrated by his father and due to Georgia's new allegations of sexual assault. Penny reported that Matthew would attempt to run in front of incoming traffic, requiring her to restrain him. Contact was ceased between the children and their father until August 2008. Penny reported that during the time of no contact, Kevin visited her property and was threatening towards herself and the children.

In August 2008, the Court ordered contact to be re-instated (as per 2005 Court Orders). Make-up contact was to occur six weeks over Christmas, December 2008 to January 2009 and extra weekends in 2009. After returning from contact with his father, Matthew stated to his mother that his "dad had asked him why I wanted to kill myself and I replied because I have a bad life". His father responded "do you want me to kill you now then". Matthew told his mother "I'm frightened that he is going to kill me". Four days later, the children went to their father's for six weeks to make up for missed contact.

In 2009, Georgia, aged six years, who was having trouble sleeping, told her mother that "at dad's house, dad comes in after Matthew is asleep and rubs lavender oil on my back and talks to me". Later that year, Georgia reported to her mother that "dad never touched me and I don't remember anything".

In 2010, contact with the children and their father continued to be problematic and concerning; with either Kevin failing to return the children or the children returning with injuries and disclosing physical abuse by their father. Both children commenced counselling

at a child psychology service. Sleep disorders were a significant problem for them. Georgia informed the service that “dad hits me in the head” and “dad put soap in my mouth for swearing”. Another report was made to the Child Protection Authority.

In 2011, Penny made a Police report that the children were not returned from holiday contact. The children were returned four days late and both children were very distressed. Georgia informed the psychologist that her dad made her get in his bed in the morning and rubbed his hard penis up and down on her. The psychologist gave Georgia a safety plan to not get into bed and to lock the bathroom door when changing. During the school holidays, Penny alleged that Matthew tried to strangle Georgia as he was angry at her for getting him in trouble at his dad’s. When she yelled at him, he ran into the bedroom, opened the window and said he wanted to die. Penny had to physically restrain him from jumping. Matthew told his mother that he was going to dads and getting in trouble because of Georgia. Matthew would also ring Kids Helpline when distressed in relation to incidents with his father, and further reports were made to the Child Protection Authority. At the counselling appointment, Matthew disclosed that he “never, ever wants to go back to dad’s house”. Penny rang the Child Protection Authority due to Matthew’s distress.

By late 2011, the children had been receiving psychological counselling for 18 months, with both disclosing incidents of harm from their father.

In 2012, the children witnessed family violence incidents between their father and his girlfriend. Police attended. The children reported the incidents to the GP. Penny also unknowingly contravened the Orders due to misreading the Orders in relation to particular weeks of school holidays, in even and odd years, and in April Kevin notified Police that the children were missing and in danger from their mother. Penny was ordered to present the children to the Police Station. Penny and the children, who were on school holidays, presented as ordered. Matthew, aged 12, reported to Police that he had been hit in the head for not having done his homework assignment and that he was “sick of being hit in the head by his father for his whole life”. An Interim violence restraining order (VRO) was granted in Matthew’s name. As a result of taking out the VRO, Matthew and Georgia told their mother (which was provided in an Affidavit by Penny) that they did not wish to spend any time with their father and moreover they did not wish to speak with him. The children advised Penny that they were scared that if they have any contact with the father, he would harm them physically, because they provided evidence against him, so he would be more angry than normal and they disclosed that striking them was not unusual.

The following month, both children refused to go to school as they knew it was their father’s weekend. Matthew said he was “frightened for his life” now that he had told the Police what his father did to him and his sister. Penny made another report to the Child Protection Authority.

The high school counsellor spoke with Matthew, now aged 12 years. Matthew spoke about his fears of going to dad’s house. Matthew said, “he will kill me now that he knows I have made a report to the Police”. Matthew retold his memories of his father holding his head under the water in the bath tub and said “this is how I am going to kill you if you ever tell

the Police or anyone what I have done to you". Matthew said "I do not want to ever go to my dad's house ever again". A report was made to the Child Protection Authority by the school.

In June 2012, Penny filed a 'Form 4 Notice of Child Abuse or Family Violence' and an 'Initiating Application' to the Family Court.

The VRO Hearing was scheduled with Penny and Matthew subpoenaed to attend. Penny notes that the VRO hearing didn't proceed, as Police were waiting on the outcome of the Family Court and, as Kevin was self-representing, the Police considered it would be too traumatic for Matthew, then aged 12 years, to testify and believed there was not enough evidence to win.

In September 2012, Penny reported that she was forced by the ICL to agree to any family member of Kevin's supervising contact with him every Saturday from 10am to 6pm, and changeover was to occur at a public restaurant. However, every Saturday the children refused to get out of the car, saying to the father's family that they were too frightened to be with their dad. Matthew also told his father's family that they have observed him being hit by his father, but they did not protect him.

In January 2013, the ICL ceased Kevin's contact with the children as it was to distressful for the children. By this time, the children had not seen/refused to see their father since May 2012. Georgia, who was now aged eleven years, informed the Single Expert Witness "I have been sexually abused by my father many times over the years of contact". However, the Expert Witness did not believe this disclosure to be genuine as "*she was not prepared to provide any details, there was no evident distress, embarrassment or self-consciousness, and this comment came up right at the end of the interview, when I had indicated it was about to finish."* Penny notes that during these 2013 Court proceedings, both children met with the ICL and said that they did not want to see their father ever again. Penny reported that the ICL said, "you don't have a choice, the Judge will decide and you will probably not be happy with the outcome". During the Final Hearing, the mother, father and extended relatives gave evidence. The Expert Witness gave two stark choices as follows:

a. *"That if the children remained living with the mother and did not see the father, the children would grow into adulthood believing they are victims of abuse and would in turn affect their sense of identity and could lead to depression. Matthew was opined to have an insecure attachment to his mother and would have difficulty in reaching emotional maturity. Alternatively, if the children did not see their father, the mother's anxiety may lessen and reflect in the children".*

b. *"If the children were to live with their father and not see their mother for some months/years, they may have an initial phase of grief however would grow to trust their father after which time they may recover. Matthew is particularly susceptible to being extremely upset and may become depressed and self-harm. The children could run back to their mother and the result of the transition to their father would be very negative for their mental well-being. Alternatively if the father is capable of handling*

the initial very difficult phase with sensitivity and patience the long term gains would be significant".

The ICL handed up two very different sets of proposed minutes of order, one whereby the children lived with their mother, the other with their father but ultimately recommended leaving the children with the mother if the Judge was to take a 'conservative' approach. The ICL submitted that *"if the children were to live with the father, that the children not see their mother for the first four months".* Penny then instructed counsel to seek Orders that she spend time with the children each alternate weekend, in the event the children are ordered to live with the father.

The Court ordered that Penny have full parental responsibility and the children spend no time with Kevin. Penny believed this was likely because of the children's ages and Matthew's mental state. Kevin was able to contact their schools for a report and photo. Penny was not required to tell him if they moved home, but would need to inform Kevin of what school they attended.

In 2014, Kevin contravened the Court Order by attending the children's school. The children have not seen him since.

SOPHIE'S STORY

"I was seen as a mother who wanted to alienate the child's father. At one of the later hearings the Magistrate told me that my daughter would become promiscuous if she didn't have a relationship with her father." (Sophie's mother, Claire).

Claire and Stuart met in 1992. In 1993, Claire said that Stuart was diagnosed with manic depressive disorder and medicated for this condition. She said he was up all night and had high energy, but was flat during the day. Further, there were days where Stuart did not talk, was agitated with friends, always seemed angry and if his father called he would be upset for days. Between 1995 and 1996, Stuart was treated in a psychiatric unit for a major depressive illness[10]. After Sophie was born in 1997, Stuart eventually disclosed to Claire that he had been raped by his father.

In 1998, on a day when Stuart was minding Sophie, when Claire returned she observed that Stuart was in the shower with Sophie and he had an erection. Claire removed Sophie from the shower. Claire then separated from Stuart, taking Sophie with her, but after some months he convinced her to return, saying it was an accident. Claire returned but she avoided allowing Sophie be alone with Stuart.

In 1999, Claire said that Stuart stopped taking his antidepressants, so his behaviour was on an "insidious decline" and he was distant and angry. She described incidents involving Stuart hitting Sophie because Claire bought her a toy, and other verbal domestic violence incidents. Claire stated that she put Sophie in the shower with the door open, and Stuart

[10] A doctor provided evidence of this in future Court proceedings.

went in, slammed the door and Claire heard Sophie say, “no Daddy, no.” When Claire went into the bathroom, Stuart was angry at Claire checking up on him. He lashed out with his arm, knocking Claire to the floor with her banging her head. After the blow to her head, Claire became progressively unwell and in 2001 required brain surgery for a hydrocephalus and a shunt was inserted. Neighbours cared for Sophie and told Claire they were worried for her welfare as when alone with her father, he shouted at her. Stuart left Claire and Sophie in early 2002, after Claire was told that she wouldn’t be able to work again. The separation was final. Stuart did not contact Sophie for almost a year.

In late 2002, Claire was contacted to say that Stuart was at a men’s shelter and had been there for some time. Claire and the workers found Stuart accommodation. Claire then facilitated contact between Stuart and Sophie by providing funds for activities. Stuart would have short weekly contact with Sophie, however there was instances of violence perpetrated on her, when she had him around for dinner, so contact in these circumstances ceased.

Some months later Stuart applied for Legal Aid, although Claire was refused. After mediation, Claire was told to allow Stuart to have supervised overnight contact. Claire agreed that Stuart’s new girlfriend would be suitable to supervise. After a few months, Stuart’s new girlfriend moved away from Stuart. The Family Report was provided to the Court, who decided that Stuart should not need supervised contact. Claire described incidents where Sophie returned from staying with Stuart with many bruises, jammed fingers, sore arms from being pulled and skinned limbs from falling from her bicycle. Stuart told her Sophie fell down the stairs. After contact with her father, Claire stated that Sophie would comment to her “you don’t say ‘no’ to Daddy,” and that her father made her feel it was her fault he left. Sophie would come home from contact hungry, dirty and extremely distressed, telling Claire that Stuart made her clean his messy flat. She also disclosed that her father would get into bed with her in the mornings in his “undies” and proceeded to describe to her mother what it felt like when he rubbed his private parts against her. In response, Claire says she taught Sophie about personal space.

Shortly before the relationship ended, Stuart was said to make inappropriate comments to Claire such as, he could understand why men should kill their children, as it was the only way to hurt the wife and men wanted to see women suffer. He was furious at reading a newspaper report regarding a woman who reported her husband for sexual assault of her daughter, resulting in the father being sent to jail. Claire explained that she had a conversation with Stuart regarding the news article and Stuart commented that the girl was “14 years old, his own daughter and she might have wanted it”.

Claire applied for a violence restraining order (VRO) because she was fearful that Stuart would kill Sophie and/or herself. Family Court Proceedings also commenced. At the VRO hearing Stuart was represented by two lawyers, however Claire was unrepresented. Claire said she fell apart and was unable to communicate.

Claire noted that the matter was in the Family Law System with three sets of proceedings, for approximately seven years. There were several hearings and mediation attempts and a

Family Report for each application. Early in the proceedings Claire attempted to get Stuart to have a mental health assessment as she was concerned for his depression and unusual behaviour. When she persisted and notified the Child Protection Authority, the Magistrate told her that he would remove Sophie from her care if she mentioned Stuart's mental health again.

Neighbours who cared for Sophie whilst Claire was having her first surgery wrote Affidavits regarding their concerns for Sophie in her father's care. The Affidavits noted Stuart's profanity laden attitude toward Sophie including: "fucking kid is just like her mother," "Claire doesn't believe in smacking but this kid needs a good flogging," "if I had her alone I'd soon belt the shit out of her," and yelling "you're a thief and a liar Sophie." Further, one of the neighbours wrote that Stuart bragged of Sophie urinating over him as a baby, calling it "virgin piss," and being amused at this. It was also written that Stuart commented that "getting rid of Sophie would be better than having to pay child support," and "if theres (sic) no child in the seen (sic) I get out of paying child support, makes sence (sic)." Claire says neighbours also heard Stuart say he would rape Sophie or kill her, but they did not tell her while she was having surgery as they did not want to upset her. Claire said that Stuart would constantly threaten to keep taking Claire to Court and leave her and Sophie broke and homeless. However, Claire says that she was advised by her lawyers not to raise the allegations as, although the father had made threats, it was doubted he would carry out these threats. She also said that the Affidavits were not heard in the Court.

In June 2004, there was a Federal Magistrates Court hearing. Orders subsequently provided for Sophie to have contact with Stuart alternate weekends supervised by Stuart's girlfriend. The Orders stated that proper meals must be provided for Sophie and Stuart was not to physically discipline Sophie. Undertakings were provided regarding supervision by Stuart's girlfriend. A Family Report was to be prepared. Stuart's solicitors wrote to Claire's saying that Stuart did not want his girlfriend involved in the Family Report interviews. Claire's solicitors advised her that the Family Report Writer requested that Stuart's girlfriend be interviewed as she was ordered to be the supervisor of contact. The Family Report Writer considered Stuart's position "unfortunate". During her interview with the Family Report Writer, Claire spoke of domestic violence incidents, concerns for Sophie and that Stuart told her he was sexually assaulted by his parent.

Sophie spoke of not feeling safe if she had to see her father on her own as he might hurt her. At a 2004 contact visit, Claire said Sophie was frightened and called Kids Helpline. Sophie had been forced to sleep in a tent in the backyard. Stuart was said to be angry, sharpening a knife and then walked toward Sophie yelling and holding the knife. Sophie later said she thought he was going to get a knife and stab her. Although Stuart wrote in one of his Affidavits that Claire called the Police on this occasion, Claire stated that she did not call Police and first become aware of the situation when she received a call from Police asking her to collect Sophie. The following day Claire was forced by Stuart's solicitor to return Sophie to her father.

Stuart spoke of concerns that Claire was alienating Sophie from him. When interviewing Sophie and Stuart together, the Family Report Writer commented that Sophie came in

quietly and sat on Stuart's lap, Sophie seemed happy with Stuart and Stuart was warm and affectionate with her. The Family Report Writer commented on an obvious bond between them and recommended that there was no need for contact to be supervised. Claire said Sophie later disclosed to her that when she was interviewed with Stuart, he had his hand under her dress on her private parts. But the Family Report Writer was unable to see this because of the desk between them.

In August 2004, Claire and Stuart had a conciliation conference with Relationships Australia. In later correspondence, Stuart's solicitors commented on making offers which would have allowed Claire to retain the matrimonial property; however, Claire was not amenable to settling on that basis. Clare said that Stuart had no assets or savings, having rarely worked. Claire believed that Stuart saw that by having custody of Sophie he would be granted a larger portion of the property settlement.

In the first week of September 2004, contact did not occur due to Claire's concerns of it not being supervised, and Sophie being medically unwell. The following contact Sophie attended but was sick and returned, saying that she was fearful of her father, as he would engage in risky outings with her, such as walking along a cliff. The Court Orders also required Stuart to pick Sophie up from school. Claire noted Sophie would refuse to go with Stuart and the school would call the Police who would attend, talk with Sophie and ultimately force Sophie to go with her father. Claire believed that Sophie was traumatised by this process. Subsequently, in October 2004, Claire sought a further Interim hearing to review/appeal the decision, based upon her concerns. The Application was dismissed with costs against Claire. In a letter to Claire's solicitors, Stuart's solicitors said the Federal Magistrate commented that if Claire did not provide the contact as per his Orders, then she may not like the result of a Final hearing very much and Stuart would be glad to obtain an Order that Sophie reside with him.

Due to a major road accident that had occurred blocking roads, Claire was unable to attend the Court and her lawyer sent a town representative to Court for Claire. The representative told Claire that her case was successful and Sophie would not be attending contact until Stuart had arranged for a supervisor. Claire did not send Sophie for contact that day. She was then immediately served with Court documents and appeared in Court the following week. Claire said that she was threatened by the Magistrate that she would have Sophie removed from her care. Claire was made to pays costs for Stuart of over $3,000, as well as her own private solicitor for that day. It was not until that day that Claire realised that she had been misled by her own legal representative. In late 2004, Claire changed lawyers due to the poor communication and misleading representation. Her former solicitor sent her a letter stating that there were communication issues and miscommunication over the findings of the Federal Magistrate which was "inexcusable and deeply embarrassing," and apologised for the "anguish that Sophie and (Claire) experienced as a result of those issues." This episode was said to have cost Claire a total of $30,000.

The matter did not proceed to a Final hearing as Stuart withdrew his Application.

In September 2005, Claire and Stuart engaged in mediation through the Federal Magistrates Court, but did not reach an agreement.

During 2006, Claire spoke of harassment by Stuart, including attempted damage to her car and ongoing telephone calls which involved threats to kill her, abuse and profanities. There were several mediation sessions about the telephone issue but it was never resolved.

In December 2006, when Sophie was aged ten years, Stuart filed an Application for Parenting Orders seeking alternate weekend and half school holiday contact with Sophie. Federal Magistrates Court Interim Orders provided for an appointment of an ICL. Further, by consent, Sophie was to have contact with Stuart on specific weekends and half of school holidays.

In 2007, there was a Magistrates Court VRO hearing. As part of the hearing Claire gave evidence. She was cross-examined by Stuart's solicitor who said: "has your solicitor pointed out cases to you about where mothers aren't fostering contact and they give the child to the father to see if the father can foster." The Judge struck out the VRO application as, whilst they was satisfied that the incidents amounted to intimidation and harassment, the Judge did not find that it would happen again. The final words from the Judge were: "I will not record the event as it may jeopardise (the father's) residency application". Claire's solicitors wrote to Stuart's offering to stop seeking child support if Stuart would stop Family Court action for residence and contact with Sophie.

In February the ICL was appointed and a second Family Report was prepared. Claire believed the ICL implied that Sophie was coached by Claire and that Claire was not the best mother. Further, she believed that the ICL's submissions in Court did not reflect her daughter's fears or needs and said that the ICL did not meet with Sophie. Claire spoke of concerns regarding Sophie's fearful behaviour to the Family Report Writer, but the Family Report Writer commented Claire was unable to describe this in detail. Claire says that when she attempted to raise her concerns about sexual assault, the Family Report Writer 'refused to go there.' Sophie spoke of not wanting to change the current arrangement and she did not want to see her father more. She also asked the Report Writer before the session with her father, not to ask her questions as she felt she had to respond in a manner which he would find favourable. The Family Report Writer commented that Sophie relaxed when told she would not be questioned and noted that they could see no deliberate attempt by Claire to disrupt Sophie's relationship with her father. The Family Report Writer recommended to keep the status quo, as changes would unnecessarily interrupt Sophie. Claire stated that the report suggested less overnight stays, however the Court did not follow these recommendations and continued with them.

The Federal Magistrates Court Orders provided for contact to remain as it was. The following month Stuart declined to attend mediation and Claire was provided with a certificate to this effect. In December the matter did not proceed to final hearing as Stuart withdrew his Application.

In 2008, Sophie now aged eleven, often asked to be returned home early from contact with her father as she was upset and/or wanted to return home. Her father would refuse and

never allowed her to return home. He also removed the mobile phone that Claire had provided for Sophie as he did not want Sophie calling Claire, Kids Help Line or the Police. On one occasion, Sophie packed her bag on Sunday morning and wanted to go home. Stuart questioned her if she was scared and she refused to answer. Claire and Stuart engaged in mediation, but did not reach an agreement.

In the beginning of 2009, Stuart's solicitors filed an Application of Contravention in the Federal Magistrates Court regarding Claire not adhering to the Orders. The Orders stated Sophie would be collected by Stuart every second Friday and Claire would pick Sophie up on Sunday evening. Sophie was refusing to go with her father when he arrived at her school.

A third Family Report was subsequently prepared. Claire spoke of her concerns for Sophie and issues of violence. The Family Report Writer was of the opinion that Stuart was trying to "establish commonalities and common worth in items through the contact activities that Stuart described". The report recommended that Stuart and his girlfriend would be good carers for Sophie should she spend time with Stuart. The Family Report Writer also noted that Sophie refused to participate in a joint interview with her father and was rude to him as she put earphones in after he arrived and didn't say goodbye. However, the Family Report Writer also noted that while Claire did not do anything to encourage Sophie to communicate or interact with her father, it could not be concluded that she was an alienating parent. Stuart spoke of the incident to the Family Report Writer where he put a tent in his backyard and Sophie "went hysterical," and she called Claire who rang the police.

The Family Report Writer further noted that Sophie was anxious about the parental conflict and, if given autonomy to establish and maintain a relationship with Stuart she may remain estranged to 'keep the peace'. The Family Report Writer also noted that Stuart denied any evidence of allegations of him being sexually inappropriate with Sophie and reported that the allegations of touching Sophie inappropriately began shortly after separation. The Family Report Writer commented that Stuart's opinion that the situation was affecting Sophie who blamed herself and coped by siding with her mother, was consistent with the Report Writer's idea that Sophie avoided time with her father as a way of minimising distress caused by parental conflict.

The Family Report Writer recommended that Sophie live with her mother and spend time with her father a minimum of one day per month and other times at her initiative. Further, he recommended telephone contact twice per week at Sophie's discretion. Claire said that this Family Report gave Stuart information about her personal situation and Stuart began to harass Claire and Sophie at home and killed their pets. The Court ordered Sophie spend two nights per fortnight with Stuart. Stuart at this time had a new partner. The Magistrate informed Stuart that his daughter did not like him.

The matter did not proceed to a Final hearing as Stuart withdrew his Application. Claire noted that the matter was never heard or tested in a final trial as Stuart filed three applications, but discontinued them before the final hearing. She explained that Legal Aid would not fund her to submit an Application, but would sometimes fund her when she was required to respond to Stuart's. Claire stated that she breached the final Orders and Sophie

has not seen her father since. Claire noted that the Orders had required Sophie to see her father with his new girlfriend. The girlfriend was said to be cruel to Sophie.

In 2010, Claire claimed that Stuart continued to be "resourceful, cruel and would use anyone to cause her distress". Claire was forced to sell her home and move again. Since this time, there had been no further issues with Stuart.

NATHAN'S STORY

> *"I was told countless times by legal representatives that my son had a right to have contact with his father (Stephen) regardless of him being a registered sex offender, and they threatened to have Nathan taken off me if I denied him contact. I was also told that 'the sexual assault offences were irrelevant to the custody case' and my concerns for Nathan's safety if he has contact with (Stephen) were unnecessary because they rarely offend against their own children; and also Nathan wasn't his type as he wasn't a fifteen year old girl, like I was".* (Lauren, Nathan's mother)

Lauren was born in November 1988. When she was aged ten years, Stephen and his partner moved into the property next to Lauren's family. Stephen was regularly invited for meals at Lauren's family home and on a camping trip with them. Lauren was aged 15 years and Stephen 30 years at the time the camping trip occurred in early 2004.

On this trip, Stephen sexually assaulted Lauren by kissing her and feeling her breasts. Stephen and his partner separated in April 2004. Grooming continued with Stephen buying Lauren a mobile and phone credit for her to keep in contact, telling her she was special, and stating that he wanted to have a family with her. Although Lauren's parents were worried regarding the contact, he was able to assure them that he wanted her to finish school and he "would not do anything wrong as far as sex goes". Following this, Lauren would perform oral sex on Stephen and within six months, they were having sexual intercourse, as Lauren felt she was "depriving him of a full relationship". Lauren said he told her to keep their relationship a secret given she was underage. She also said she idolised him.

In late December 2005, when Lauren was aged 17 years old and was eight months pregnant, she moved in with Stephen. Lauren said when pregnant, Stephen began to "change towards her" and he exerted further control. For example, she was not to tell her mother she was pregnant until he said so, nor would he take her for medical appointments.

Nathan was born in February 2006. Lauren said after Nathan's birth, Stephen became verbally abusive. In March 2008, when Nathan was two years of age and Lauren 19 years, Lauren left the relationship, taking Nathan with her.

A flexible parenting arrangement for access was made, which usually involved Stephen caring for Nathan over weekends. In 2010, when Nathan was four years of age, access changed to fortnightly. Lauren alleged there were problems with Stephen's general care (such as poor hygiene, dirty clothes, dirty house, Nathan contracting scabies, Stephen constantly working so no rest period for Nathan, and using others to look after him on the

weekends). Stephen's supervision of Nathan was also said by Lauren to be poor, particularly around farm machinery. As well as Nathan retuning to Lauren's with cuts and bruises, he also returned tired, hungry and thirsty, and distressed. There were problems of settling Nathan after access, who also regressed by wetting his pants. Nathan also became secretive towards his mother, although he informed his mother that he was sleeping in bed with his father and his father's new partner, which Lauren believed created a situation which was a risk to Nathan.

A parenting plan was subsequently created through mediation, which provided for equal shared parental responsibility. Nathan was to live with Lauren and spend time with Stephen on alternative weekends, and have two telephone calls with his father per week. In November 2010, the parenting plan was affirmed as Consent Orders in the Federal Magistrates Court.

In the same year, when Lauren was aged nearly 22 years, she made a statement to police regarding her relationship with Stephen. In her statement she said:

> *"I believe that, in the past, Stephen has taken advantage of my young age and inexperience to manipulate me and dictate to me how my life was going to be. I know that what Stephen has done to me and the hurt he has caused my parents is wrong. I now feel strong enough to be able to make a complaint about Stephen and what he has done to me and my family. Stephen took advantage of me to have sex with me while I was fifteen and he was thirty".*

Stephen communicated with the Police, but refused to answer questions regarding the allegations or make a statement. Only three counts were listed, as these were the times that Lauren had documented in her school diary. During the criminal proceedings, access between Nathan and his father ceased. This occurred five months after the parenting plan was affirmed.

In March 2011, Lauren made another statement to the Police after Stephen tried to run her and her new partner off the road. Lauren alleged he had Nathan in the car with him. Lauren believed that this was due to her having disclosed, as Stephen was due to make a Police statement a few days later. Police made an ex-parte application for a VRO on Lauren's behalf. The VRO was served on Stephen, his gun license was revoked and he was required to surrender his firearms.

In April 2011, Stephen was charged with a driving offence regarding the driving incident. He was also charged with three counts of aggravated sexual assault of a person 14-16 years, without consent. After the VRO was served and Stephen was charged regarding sexual assault and the driving incident, Lauren withheld Nathan from having physical contact with his father. Her solicitors wrote that given the circumstances it was not in Nathan's best interests. Stephen's solicitor responded saying that despite their advice to the contrary, Stephen would respect Lauren's wish for no physical contact to occur until the Court determined the matter.

In August 2011, the DPP downgraded the charges to three counts of having sexual intercourse with a person 14-16 years old. Later that year, Stephen pleaded guilty to charges of sexual assault. He was sentenced to 18 months imprisonment to be served concurrently, with a six month non-parole period. Stephen was listed on the state's Police Service offender register. Stephen appealed this decision immediately on the basis that the sentence was too harsh. He was released on bail.

Stephen was found not guilty of the driving offence by the Court. In November 2011, Nathan's telephone contact with his father ceased, and Lauren asked her solicitor to inform Stephen that she was ceasing contact as he was now on the state's offender register.

In February 2012, Stephen's appeal was successful. His sentence was changed to an 18 month suspended sentence. An appeal of the VRO was also successful and therefore removed. In June 2012, Lauren commenced counselling through the Victim Services department.

Legal Aid rejected Lauren's application for funding. Lauren said that her solicitor at the time "point blank refused to put forward her Application for no contact, saying that there had to be telephone contact if nothing else and would not appeal Legal Aid's decision. Instead the solicitor requested of her a further $10,000 to continue representing her". She then changed solicitors. A Family Report was subsequently ordered.

The Family Report was prepared by a psychologist, who provided a brief comment regarding Nathan's "change in disposition and wetting and soiling his pants after contact visits" as being, if accurate, "of concern". The psychologist then recommended that Nathan live with Lauren and see Stephen in school holidays, as per Stephen's proposal, as Nathan expressed desire to see his father. Further, the psychologist recommended that at the conclusion of the first two contact visits, Nathan see a counsellor to ensure that he was supported and not negatively impacted by the contact. Additionally, the report recommended that Stephen and Lauren seek individual counselling - for Lauren to address her ongoing anger and negative feelings towards Stephen, and for Stephen to develop insight and empathy around victim impacts.

However, the report went on to recommend that, due to Stephen's living circumstances, he should attempt to work on this individually through reading and contact with a counsellor during any visits to town.

Lauren had a conference with her solicitor and barrister regarding her matter and approach. Her solicitors sent a letter confirming the discussions, their advice and the agreed approach.

Lauren replied noting she did not believe the letter accurately reflected what they discussed and their approach (of agreeing to Stephen's proposal) was not what she agreed to. Lauren said "I was told countless times by legal representatives that my son had a right to have contact with (Stephen), regardless of him being a registered sex offender, and they threatened to have (Nathan) taken off me if I denied him contact". Further, she reported she was also told "the sexual assault offences were irrelevant to the custody case" and her concerns for Nathan's safety if he had contact with Stephen "were unnecessary because

‘they rarely offend against their own children’ and also (Nathan) wasn’t ‘his type’ as he wasn’t a 15 year old girl”, like Lauren was at the time Stephen had sex with her.

Lauren instructed her lawyers to proceed to trial rather than settle. She said “I think I would rather take my chances on the Magistrate allowing this to happen rather than give the other party everything they want just in case”. Lauren reported “I refused to change what I was asking for and told my representatives to put forward (an Application for) sole parental responsibility and for my son to have no contact with the offender”. And when her lawyers did, Lauren said, “even the ICL agreed that what I was asking for was best” for Nathan. Lauren reports “I had to push (my legal representatives) every step of the way and it was extremely traumatic”, and “I was accused of making allegations for the purpose of alienating the child and using it as a bargaining chip”.

In 2013, Lauren wrote to her lawyers advising she had been engaging in counselling. She said, among other things, “Despite the hours of counselling I have received, my attitude and feelings towards Stephen have not changed. I believe that I have not, and will not, obtain the desired effects of counselling until Stephen is removed as a factor from the lives of myself and Nathan. I still find Stephen’s ongoing presence through Family Law proceedings both traumatic and deeply upsetting. I have a heightened awareness of the severity of the injustices that Stephen has bestowed on me and find it incredibly unfair that my relationship with Nathan, and my life in general, should suffer any further negative effects in order for Stephen to have a relationship with Nathan”.

Stephen provided an Affidavit stating that he had not attended counselling but had engaged in some research around the impact of sexual assault on women and restorative justice. He listed five publications he read and said “from my reading, I have learnt (sic) that victims of sexual assault can experience a range of responses depending on their relationship with the perpetrator, the severity of the abuse, the length of time over which the abuse occurred and also the personal history of the victim herself. The impacts can last forever. I have read about ‘restorative justice’, which is about victims and the offender having a conference to discuss how the offender’s actions have not only harmed the victim themselves but can extend to other family members and the community”. Lauren responded to this Affidavit in her own, saying “I have downloaded the five publications listed as research Stephen has done online, instead of attending counselling. These documents total less than 100 pages. Not only has Stephen displayed how little he has learnt, in writing paragraph 65 and 66 of his Affidavit he’s also managed to further insult me as a victim and as a mother. Victim empathy is still a concept with which Stephen is not familiar and this is clearly demonstrated throughout his Affidavit”.

Lauren’s solicitors wrote to Stephen’s. They referred (for the first time) to Stephen’s conduct as amounting to family violence in order to rebut the presumption of equal shared parental responsibility. However, they noted throughout the correspondence that Lauren now accepted Nathan had a right to have a relationship with Stephen. Lauren said that she sought phone contact and no face-to-face contact. She proposed supervised time and psychiatric assessments to be completed before Orders were made.

In February 2013, the Family Court subsequently ordered Nathan to have contact with Stephen one week over the school holidays and exchange to occur at a contact centre. Lauren said this was despite “the fact that (Nathan) hadn’t had any physical contact with (Stephen) since he was charged in 2011”. Lauren added “they did not consider this at all” as “they were making me send my son with a registered sex offender who had offended against me”. Lauren felt the Family Court “completely disregarded the fact that the offender was convicted of sexual assault offences against me and was on the [state’s offender register]”.

The contact centre would not allow the use of the service because Stephen was on the state's Police Service offender register, and it was thought not to be safe situation for anyone to be in, especially Lauren, given he had committed sex crimes against her. Lauren told her solicitors “As previously discussed I have never felt, and will never feel, comfortable about Nathan having contact with him either and only agreed due to yourself and (the barrister) threatening me with having my son taken off me if I didn't go along with the Family Report recommendations, in the weeks before Court. It is very refreshing to know that an organisation such as the contact centre, that deals with children and bad family situations all the time, can appreciate how concerning the arrangements being asked of me really are and do not see fit for him to be allowed to use the services, which so far is the only repercussion he appears to have suffered as a result of his conviction”.

The Order was then varied for changeover to occur at the Police Station, with Stephen’s new partner accompanying him for changeover. Lauren said Nathan “cried for days, and said repeatedly that he didn’t want to go” when he was attending this contact visit with Stephen. She further added it was a “terribly traumatic and emotional time” for Nathan and he returned with a withdrawn demeanour and secretive behaviours after visits to Stephen’s place, which Lauren said was behaviour Nathan displayed when there was prior shared custody.

Lauren and Nathan sought counselling. The counsellor noted Lauren’s relationship as being violent and that Lauren suffered physical and psychological abuse. The counsellor provided a letter to state that in their opinion Lauren should not have to participate in a co-parenting relationship as this would have a significant impact on her wellbeing and ability to care for Nathan. Further, the counsellor noted that Stephen had groomed Lauren prior to perpetrating sexual assault when she was a minor.

Stephen refuted the report and that there was any form of sexual assault or abuse other than “the relationship was ‘illegal for three months’”. Although Stephen had pleaded guilty to having sexual intercourse with a person who was under age during the Criminal Court proceedings, throughout the Family Court process, Stephen asserted through Affidavits and his lawyer’s submissions that he was not guilty of crimes against Lauren, as he had met her at a later date than when he actually had.

The Federal Circuit Court made orders requesting that an ICL be appointed, a new Family Report be prepared, and that all contact be suspended until a final hearing.

In October 2013, Stephen filed a notice of discontinuance. This was after 18 months of constant adjournment. Therefore, the Family Report was not prepared.

Lauren noted "in the end they ruled in my favour, but I think it was more because it was undisputed by the other party and agreed on by the ICL". Nathan was seven years of age at this time. Lauren further added:

> *"During the court proceedings Stephen provided many Affidavits, all of which contained conflicting information, dates etc. Not once did a solicitor or a Magistrate mention the inconsistencies nor ask for clarification from Stephen, which to me is illogical and consequently, it's the reason why proceedings are dragged out for so long. Why did no one pick up on it even when I pointed it out in my Affidavits as well? You're meant to tell the truth in Affidavits and if the Courts can have so many conflicting Affidavits written by the same person in front of them and not question it, why would pathological liars stop there? This, and the opportunity to get an adjournment every time the Magistrate gets close to having a more thorough look at the case, is just adding to the stress and time it takes to get an outcome".*

WILLIAM AND HAYLEY'S STORY

> *"The Honourable Judge wrote in their Reasons for Judgement, 'I hope that the effect of what [the father] is courageously undertaking today will be that in due course Hayley will want to resume a relationship with him…and that she will in due course appreciate the difficulties that [the father] has had today in coming to the decision that he did'.*
>
> *What does this 'character reference' say to the children? That sexual abuse and violence doesn't matter and didn't happen, and what does it say to every other person he showed? That he was a safe person to be around children and what did it say about us?"* (Hayley's mother, Jane).

Jane and Ian met overseas and in late 1997, Hayley was born. Jane already had a son, William, to a previous relationship. Jane said that Ian subjected her and the children to his unprovoked violent outbursts. Jane became terrified of him. After one particularly violent episode, where Ian threatened to kill Jane and chased her with a knife, the police were called. In 2001, the parents separated.

Jane reported that Hayley was four and William was nine when they were sexually assaulted by their father/stepfather. The assault occurred over a period of approximately two years. Hayley visited her father's home in 2002 and 2003, including some unsupervised contact, following the parents' separation. In 2002, there was some incidents of sexualised behaviour towards Hayley from her father, including one incident when Hayley, who was crying, reported to her mother that her father kissed her on the mouth using his tongue and touched her on the genitals. From late 2002 to 2004, Jane noted that Hayley's learning and

behaviour significantly deteriorated. She was also observed by her preschool teacher to swear, was disobedient, had a short attention span and speech problems. Hayley was referred for speech therapy and a cognitive assessment regarding her lack of educational progress. Hayley was found to be in the range of mild intellectual disability. Hayley also displayed masturbation whilst in public.

Hayley last had contact with her father in January 2004, after having witnessed a fight between adults including her father at her mother's home, after her father had attended. Police were subsequently called after Ian made threats to kill Jane. Jane applied for a VRO and an Interim Order was made. Ian consented to a Final Order lasting two years without admission. The protection extended to Hayley due to her witnessing her mother being physically assaulted by her father, property damage, and her father using offensive language. After Hayley ceased seeing her father, it was noted that there was a dramatic improvement in her behaviour and school performance.

In 2004, Hayley again disclosed to her mother that her father had "stuck his tongue in my mouth" and "tried to make me like a big woman". She also demonstrated how her father had run his hands between her legs and up her genitals. Jane made a report to the Child Protection Authority. One month later, the Police interviewed Hayley, aged six years. Jane reported there was over 200 questions and responses recorded on the Police transcript. Hayley mentioned that her mum and dad fought and her dad hit her sometimes and was mean to her. She reported that her dad kissed her in a "terrible way". The Child Protection Authority noted that the report was unsubstantiated and closed the case as the mother was acting protectively (had a VRO) and had also sought support services. The Child Protection Authority Appraisal Outcome Report stated that Hayley had disclosed that her father had "put his tongue on my tongue and kissed me in a yucky way…he tricked me and said he was giving me a drink of water but it was his wee wee same with his penis he made me drink out of his penis, he smacks me when I don't do anything". The Police noted that the disclosure was uncertain and no dates or times could be determined. Hayley continued to make further disclosures to her mother about her father sexually assaulting her, and Jane again reported to the Child Protection Authority. This matter was not appraised as the same allegations had been previously assessed by the Child Protection Authority and the Police.

In July 2004, disclosures were made by both Hayley and William about their father/stepfather to their mother and a report was made to the Child Protection Authority. William disclosed that his stepfather in the past had taken his penis out of his pants and exposed himself to him and then got him to hold his penis. The matter was not appraised by the Child Protection Authority as the young person (William) was aged 17 years. Police were advised of this disclosure and interviewed William, who disclosed that the assault had occurred in another country, where he and his mother had met his future stepfather. Hayley had disclosed to her mother that: "I don't have a 'gina" (vagina), and went on to say, "Ian (her father) broke it" and "he pulled at it like this" and it happened "when you weren't looking". When Jane's lawyer was informed, she urged her that Hayley undertake play therapy, which Hayley commenced at a sexual assault support service. Hayley was interviewed a second time by the Police. Jane reported that Hayley was initially very

nervous and she did not make any disclosures on the first tape, however according to the notes taken by the Police of the rest of the interview, she made substantial disclosures of sexual assault by her father. The other tape was, however, unable to be transcribed. The following month, Ian applied for contact with Hayley in the Federal Magistrates Court. At the end of the month, a Federal Magistrate made Orders that the matter be transferred to the Family Court of Australia and for it to be treated as a Magellan matter. The Magistrate declined to make any interim contact orders. The Family Court ordered that a Family Report be prepared.

In September 2004, the forensic clinical psychologist appointed by the Family Court as the Single Expert interviewed William and Hayley as part of the family assessment. William disclosed physical abuse from his stepfather and that he was scared of him as a child but not scared now (aged 17 years and living with his biological father). William stated that as well as hitting him, on one occasion Ian grabbed him around the throat to threaten and shake him. William also stated that Ian: "used to slap Hayley and she used to cry a lot" and that he would "just belt the shit out of her (his mother)". Hayley disclosed to the single expert that she was hit by her father, forced to drink his urine and he kissed her with his mouth open and used his tongue. The psychologist assessed Hayley with her father as part of the family assessment. During the observation with her father, Hayley appeared uncomfortable and wary. Whilst she became more confident as the visit proceeded, she retained her caution. When the contact had concluded and her father had left, Hayley expressed her concerns regarding contact with her father. She mentioned that he did bad things to her and hurt her mum. Hayley said she would like to see him again but *"would like to have two ladies with her so he didn't hurt her".* The psychologist recommended that *"contact between Hayley and her father should be encouraged in the near future and unnecessary delays in this process should be avoided. Given the possibility that Hayley has been subjected to inappropriate sexual behaviour in her father's care, and Hayley's ambivalence and anxiety regarding her father at this time, supervised contact is indicated."*

In October 2004, Hayley disclosed to her mother that her father *"*made me drink his wee wee, he made me hold his penis and put it in my mouth". Jane reported the allegations to the Child Protection Authority and informed the Child Protection Authority that she believed that Hayley was afraid of her father. The report proceeded to investigation. In the same month, Hayley made disclosures about the sexual assault to her play therapist from the sexual assault support service. She told the therapist that her father touched her genital region, made her drink his urine out of his penis by tricking her into believing it was water; inserting his penis in her mouth, and inserting his finger in her vagina. She also asserted that *"*he touched my tongue and kissed me. I was very scared*".*

William, aged 17 years, was interviewed by Police in relation to disclosures made about his stepfather. William was unable to recall enough detail for charges to be laid against his stepfather, as it had been some eight years since the alleged offence occurred. The Child Protection Authority interviewed the mother to seek clarity around reports received. The mother advised that Hayley had disclosed to her that her father "*got my hand and made me touch his penis and then he put it in my mouth, it smelt like pooh…and wee wee fell down my*

throat and I holded (sic) his arm and got it out of my mouth. Then he touched my vagina and put his second finger up it". Hayley was interviewed by the Child Protection Authority, who described her as happy, curious and intelligent child. Hayley stated that her "*father kissed her in a yucky way, he tricked me and said he was giving me a glass of water but it was wee wee…same with penis…he made me drink out of his penis".* When asked when this occurred Hayley said *"last year when I was five and he was doing some things when I was in preschool"*. Hayley was asked how many times these things had happened and she responded "*hundreds of times but they don't happen anymore".* Hayley also stated that she did not want to see her father as it made her "*feel very scared inside"*. Hayley was seen by medical staff at a specialised child abuse assessment unit. The doctor examined and interviewed Hayley and stated that "*genital examination findings were entirely normal".* The doctor added that Hayley's poor school performance was "*consistent with impaired cognitive functioning secondary to the impact of severe emotional distress"* and further stated that "*Hayley's behaviour during the assessment was consistent with heightened anxiety."* Hayley disclosed to the doctor that her "*wee wee is broken"* because of "*what her father has done"*. The doctor reported that the hymen of a pre-pubertal girl is very painful when touched which "probably accounts for Hayley's statements about her wee wee being broken". The doctor recommended counselling for Hayley.

The Child Protection Authority substantiated the report received based on the disclosures by Hayley and reports from the specialist medical unit. The report stated that "*based on the balance of probability, it is considered that Hayley is telling the truth and the allegations in the report will be substantiated*." Furthermore, the "*child is considered safe with the mother, however it is considered that the child will be at considerable risk of future harm should the father be allowed contact visits*." The Child Protection Authority were unable to locate the father as no contact details were provided. The case was then closed as the mother was acting protectively and had supports in place for Hayley. However, the Child Protection Authority worker who interviewed Hayley told Jane that if she were ever to resume a relationship with the father, then they would consider that she was putting the child at serious risk and would remove the child from her care.

In December 2004, the Judge made interim contact orders between Hayley and her father after a defended hearing. The Single Court expert gave oral evidence and stated that: '*despite the lack of previous diagnosis, I formed the opinion that the mother has features of a histrionic and borderline personality styles*'. Jane stated that at the hearing the expert backed away from these comments. The Judge ordered interim supervised contact for two hours, once each month, at a contact centre. The father had not seen Hayley since January 2004. Orders were also made for a separate child representative to be appointed for Hayley. The first supervised contact with Hayley and her father occurred that month.

In early 2005, a report was prepared regarding the family's involvement with the Child Protection Authority. The Single Expert supervised contact between Hayley and her father and interviewed Hayley following contact. A person from the contact centre was also present at the supervised contact between Hayley and her father. Hayley was initially cautious and did not initiate eye contact or conversation with her father, however over time

she became less guarded and began to enjoy the play including the involvement of her father. After the contact, Hayley made negative comments to the Single Expert about her father and was assessed as not having a good relationship with her father. Jane was restrained by the Court from permitting Hayley to continue with play therapy from the sexual assault support service. In March 2005, a second Family Assessment Report by the Single Expert was prepared. It was recommended by the Single Expert that "*it was appropriate to continue Hayley's contact with her father in a supervised setting, but it would not be appropriate to increase the frequency of contact at this time.*"

In April 2005, Hayley, aged seven years, was interviewed a third time by the Police. Hayley reported similar information that she had in the second interview. This included her father touching her vagina, putting his tongue on hers and kissing her in a yucky way. She reported drinking from his penis and/or out of a jug. Hayley had detailed knowledge of a man's penis. She also brought notes for the Police. The interview went for two hours, with a fifteen minute break. The transcript of the interview noted that there was 533 questions and responses. The DPP had asked for a third interview because the tapes of the second interview were not able to be transcribed. Jane stated that she was informed by the DPP that it had been decided that due to the number of interviews, Hayley's age, and a recent similar case in which the young witness had been determined to be an incompetent witness to the crimes perpetrated on them due to their age, that the chances of a successful prosecution was too low to proceed to trial. Jane was also told that this outcome did not mean that they did not believe Hayley, but that it was to do with the probability of a successful conviction.

The first of the three Court Cases was heard in June 2005. The parties involved negotiated Orders by consent which were provided to the Judge for approval, however the Judge did not endorse these Orders after making comments that indicated they believed Hayley's sexual assault allegations. At this point the parties were given a choice as to whether to continue, but the father's lawyers said they needed time to investigate further, without which time their client would be severely prejudiced. The father's lawyers also indicated their client's interest had been further prejudiced by the Judge's comments and acceptance of Hayley's account. The child's representative (ICL) also agreed with the father's lawyer's view. The Judge then disqualified themselves from further hearing of the matter. The Judge made orders that the Single Expert review further material relating to the case, in particular the Police interviews with Hayley and consideration of the disclosures made in these interviews in context with other information. An Affidavit was filed with the Family Court by the Child Protection Authority, with an attached ongoing risk assessment and appraisal outcome report. An updated report was provided to the Family Court by the Single Expert. Jane reported that she was of the belief that the ICL appointed "formed an adverse view of me almost immediately", and supposed that could have been due to "learning that the case was about child sexual assault". She further added that most of the ICL's "efforts were spent in discrediting her" and later, when they met with Hayley, the ICL was trying to "persuade Hayley that she should see her father". Jane notes that the ICL consistently argued for Hayley to see her father in the Family Court.

By November 2005, Hayley had been having supervised contact since late December 2004.The mother was seeking no contact between Hayley and her father, or if there is, it should be limited to telephone, letter and the like or, if it must be face to face, it should be supervised.

The father denied all sexual assault allegations and was seeking a gradual introduction of unsupervised overnight contact with Hayley each second weekend, during half of the school holidays and on special days. There was an eight day hearing in the Family Court of Australia. In December 2005, Final Orders were made. The Judge indicated that these Orders were made "to protect Hayley and the husband from the otherwise likely prospect that the wife will continue to have Hayley believe and make fresh allegations about sexual assaults of her by the husband". The Judge gave leave to the parties to able to appeal the decision at that time, when they receive the Reasons for Judgement (released in 2007).

It was ordered that:

- *Hayley to have 2 hours contact each fortnight with her father, supervised by a contact centre, until she reaches 9 years of age.*
- *Supervised contact continue for another year until Hayley's 10th birthday, but at places and in circumstances of the father's choosing between 10am and 3pm each alternate Sunday, supervised by a professional from a contact centre.*
- *Once Hayley turned 10 years of age she should have unsupervised contact with her father between 9am and 5pm each alternate Sunday.*
- *Once Hayley turned 11 years of age she should have unsupervised contact with her father from 9am on Saturday to 5pm on Sunday in each alternate week during school term and for the whole of the first half of each school holiday period.*

The parties were also restrained from having Hayley counselled for sexual assault "*because she has not been so abused and such counselling is likely to reinforce in Hayley the belief that the husband (her father) has abused her"*. The Judge claimed that *"the clear evidence is that she suffers from intellectual disability. This disability is demonstrated by the examples of her writings which are in evidence"*. Jane stated that this was based on the school counsellor's report after Hayley did her IQ test. Of the disclosure made by William, the Judge stated "*It is highly likely that the abuse he allegedly suffered did not amount to abuse or any wrongdoing. It is likely to have been no more than relatively harmless fun or male game playing".*

In the Reasons for Judgement the Judge stated "*...There is no evidence to suggest that Hayley has shown any symptoms which indicate that she has been sexually abused from any expert who has been available for cross-examination. There is some documentary material which suggests she has. This is semi-informed and uncritical opinion of a non-expert or non-experts usually employed by government or semi-government bodies to provide services to women. I do not accept this evidence".*

After December 2005, the supervised contact regime was put in place according to the Orders. Jane stated that Hayley became progressively more scared, angry and resistant and it was difficult getting her to attend the visits. In 2006, the ICL sent a letter to the parents' lawyers saying that they had been advised that the contact centre had concerns about Hayley's behaviour, and considered that she should attend a therapeutic counsellor. The ICL chose a counsellor to do the therapeutic intervention. Later in 2006, the father filed an Application for Final Orders setting aside the Judge's Orders, and requested that the Parenting Orders be discharged, that the child live with the applicant father and that Hayley spend time with her mother at times as ordered by the Court and to be supervised. There was a hearing in relation to this in the Family Court in the same year before the Registrar, when it was decided to put the father's Application on hold and that all parties attend counselling. It was decided that the aim of this counselling would be to assist Hayley with her relationship with her father. The counsellor was not to discuss the past issues of sexual assault with Hayley, and if Hayley tried, the counsellor was to direct her away from that.

In January 2007, Ian cancelled contact visits with Hayley. Later that year, there was another trial to be heard. It was decided that another Expert Report would be prepared. The Expert Report recommended that Hayley continue to reside with her mother due to their closeness. At the conclusion of the trial in early 2008, Final Orders were made after the father's and partner's medical records were subpoenaed. Jane said this caused the ICL to change their attitude towards the mother, and subsequently Consent Orders were made which provided for Hayley to continue to live with the mother and the reintroduction of Hayley into her father's life in accordance with Hayley's own timetable. The Orders allowed for Hayley to have counselling first with one of the Family Consultants at the Family Court, whom Hayley had already seen on various occasions. The Orders set out that she would not spend time with her father until that was recommended by the counsellor. Once allowed and if desired by Hayley, the time she spent with her father was then to take place in the presence of a supervisor. The parents were also appointed a counsellor. Jane stated that the counsellor told her on one occasion that: "you do realise…that sometimes children like it (sexual activity between themselves and an adult)".

In early 2009, Ian filed an Initiating Application in the Federal Magistrates Court requesting that the Family Consultant be substituted for another Family Consultant as nominated by the Manager of Child Dispute Services. The father had a new lawyer representing him. The last day of Court occurred in May 2009. Jane reports that it was at this hearing that the ICL asked for the matter to be finalised, the ICL indicated that it was their view that Hayley was not going to agree to any contact with the father; they did not agree that making a change to the Family Consultant would alter that situation and they felt that she had already seen enough people in relation to this matter and that to keep prolonging these proceedings was to put her at risk of "Systems Abuse". Jane was ordered sole parental responsibility for Hayley and a meeting was to be arranged for the purpose of Hayley to say goodbye to her father in the presence of the ICL, after having the meeting's purpose explained to her. Jane said that Hayley was not happy about the meeting but imposed some conditions of her own; principally that she didn't have to talk to him and that this would be the last time. Hayley has not seen her father since, nor has there been any gifts or cards.

BRENDAN, JENNIFER AND BROOKE'S STORY

> Lyn (mother of Brendan, Jennifer and Brooke) reports that her daughters were sexually assaulted by their father over a period of approximately six months in the early 1980s, when Carl had sole custody for a period after separation. She says the assaults were mainly focussed on Jennifer, but also involved Brooke and her 10 year old son. The assaults involved: examination of the female children's genitalia, stimulation of their genital areas and digital and other object penetration. Further, Lyn notes her daughters and son were also exposed to sexualised language, pornography and sexual activity of Carl and his female partner.

In 1975 Brendan was born to Carl and Lyn, followed in 1978 by Jennifer, and in 1980, Brooke was born. In 1985 the couple separated, when the children were aged ten, seven and five years respectively. Immediately after the parents' separation, proceedings commenced in the Family Court. These proceedings were brought about by the father, who was reported by Lyn as having physically assaulted her over an argument about her wanting to have the children. There was an appearance before the Registrar and later that year Orders were made for counselling in relation to the children. Undertakings were made by both parents, which included that Lyn undertook to return the children at the conclusion of each agreed access visit, and that Carl undertook to make the children available to their mother for liberal access. At counselling the parents were unable to reach agreement and a report was recommended. Lyn filed her cross-application seeking custody of the three children with reasonable access to the husband.

In late 1985, Orders were made by Consent, which included amongst other things, that the parties have joint guardianship of the three children, that the husband have custody until the commencement of 1986, and thereafter the wife have custody of the three children and the father pay maintenance for each child. Both parents were to have a liberal plan of access. Undertakings were also given by Carl that he would keep his guns unloaded at all times when the children were in his company, to keep all ammunition in a locked secure place, and not to view unsuitable movies in the presence of the children, such as horror or pornographic movies. As per the Consent Orders, the children remained with their father and then went to live with their mother and began regular access with their father.

In May 1986, Lyn became worried about the way in which Carl was caring for the children after they had been with him on access over a holiday period. This included Jennifer's periods of depression, and the father's inappropriate sexual boundaries with the children such as allowing them to view unsuitable movies of a sexual kind as disclosed by the children, using sexually explicit descriptors about animals, and being exposed to the sexual activity between Carl and a woman who was having an extra-marital affair. Lyn raised this inappropriate behaviour with Carl and suggested counselling, however this did not resolve matters. Subsequently she filed an Application to the Court that the Consent Orders made in 1985 granting defined access by the husband to the three children be either suspended or supervised. Carl opposed such suspension and filed two Applications, the first seeking that

the Order be varied to provide that he have custody of the three children and that the wife (Lyn) have reasonable access, and for Lyn to be dealt with pursuant to Section 70 for refusing to make the children available for access on a particular date. Both parties attended confidential counselling with no resolution as to access, however the memo written by the counsellor to the Court indicated a Family Report with priority, with the added words "*the children may be at risk".*[11] Notwithstanding this, a period of supervised access was arranged via the solicitors.

In July, the matter came before a Judge. Carl had filed an Affidavit requesting control of the children's passports and Lyn sought an Order for a Family Report. The Judge made an Order for the Family Report and also determined that until further Order, Carl was to have access to the children for a period not exceeding five hours each weekend, to be supervised by a retired professional or any other person nominated by the wife. Lyn gave an undertaking to the Court not to remove herself and the children from the jurisdiction without an Order of the Court. The Judge stressed that this was a temporary arrangement pending the report and the hearing. Supervised access proceeded largely until the end of the year. By September 1986, the Family Report had been prepared by the Court Counsellor involving interviews with both parents, the children, and Lyn's new partner. Although Carl was in a relationship, it was not a substantial one. Recommendations were made that Lyn retained custody, with a period where the children did not see their father may be in the best interests of the children; or alternatively, Lyn be granted sole custody and the question of access left in her hands, as "s*he did not appear to be motivated by a desire to cut the father out of the children's lives, and is able to focus well on what is best for the children."* In November, Lyn filed an Application for sole guardianship of the children. Carl filed at least three Applications alleging contempt of the July Orders of the Judge.

The matter came before the Judge, who found that the access arrangements had not worked because of the prohibitive expense, considerable turnover of agents and some disputation between the husband and some of those agents. For those reasons, the Judge suspended the access of the father until further Order, and commented that pending the full hearing it was best for all parties concerned if there was some relaxation in the matter.

In early 1987, Carl filed an Appeal to the Full Court, against the Judge's Order, an Application against Lyn for contempt under Section 108 of the Family Law Act (Obligations if proceedings for the making of certain Parenting Orders are pending). In April 1987, a second Family Report was completed by the Court Counsellor. There was a six day hearing in the Family Court of Australia in relation to Lyn's Application of 1986 to suspend access, and Carl's cross-application of the same date for custody with reasonable access. Evidence was given by Lyn, Carl, Lyn's partner and others. The Court Counsellor gave evidence in regard to the two reports that they had prepared.

In May 1987, Brooke made a disclosure to her mother in relation to sexual assault by her father, stating that he had removed "carpet hairs" from her genitalia with tweezers. Lyn contacted the Child Protection Authority who conducted a series of interviews with both

[11] The counsellor was concerned about Carl having the children unsupervised.

girls. The girls did not disclose to them, however indicated there were some things they could not remember. The Child Protection Authority advised to let the girls disclose when ready.

In June 1987, the Judgement was delivered. The Judge expressed concerns in respect to Lyn "*at whether her career and work…comes first ahead of the welfare of her children*". The Judge indicated that *being a professional [profession named], driving, flying and gun licences attested to the father's good character*, and that Lyn's case *"was conducted on the basis that she does not intend to live at her present address indefinitely and sooner rather than later wishes to proceed overseas".* The Judge reasoned that the sum total of all of the incidents (the children being exposed to their father's inappropriate conduct and behaviour, a disturbing picture that Jennifer drew following this, allegations of guns, drinking, pornographic magazines and lewd language) may present a scenario "*that would prevent a caring mother leaving the home without the children".* The Judge preferred Carl's *"open and frank"* manner as a witness to Lyn's, who they found "*less direct"*. In relation to the Family Report, the Judge commented that it did not go into the facts or history pre-separation and up to December 1985, and also Lyn's career priorities which in the Judge's opinion were of great significance and also would provide important insight into the current difficulties. The Judge disagreed with the Counsellor's comment that Carl "*had no insight into his effect on other people"* and preferred the view that he was not concerned being "*an independent person with a mind of his own".* The Judge did accept the Counsellor's report of the children's desire to remain with their mother and their assessment that the mother retain custody. However, the Judge did not agree with the Counsellor's assessment that there was a risk Carl would not return the children, nor did the Judge agree that his behaviour was inappropriate enough to have ill effects on the children. The Judge did not agree with the Counsellor's assessment of a cooling off period of no access, and stated that despite Lyn's complaints and the Counsellor's report, that Carl be given a chance to prove himself, and that he would now be more aware of the need to avoid the children being exposed to potential dangers. The Judge stated that "*the children's best interests would be served by them remaining in the custody of Lyn whilst she remains in Australia and that joint guardianship be retained"*. A plan of both supervised leading to unsupervised access was drawn up, and changeover conditions were listed. Conditions specifically relating to Carl were that, without any admission or prejudice, regarding not exposing the children to materials or movies of a violent, pornographic or inappropriate nature, not to speak to the children or any of them in relation to or by reference to matters of a sexual nature or of an inappropriate anatomical nature, the securing of firearms, and not drinking alcohol during the periods of access. Both parties were restrained from removing the children or any of them from the State within which they resided without the prior written consent of the other or the Order of the Court.

Shortly after the judgement, Lyn filed a Notice of Appeal against the Judge's decision and sought that she have the sole guardianship of the children, that all Orders for access be discharged, and that the father's Applications for access be dismissed. The following day, Carl filed an Application to the Court seeking a warrant.

In the same month Carl filed an Application for Custody of the children, followed by an Application alleging contempt. The Judge heard the Contempt Application filed by Carl against Lyn prior to her appeal and she was found guilty of contempt and fined $3,000. Lyn then appealed the finding and the fine.

In November 1987, Jennifer complained of an extremely itchy vulva, and she was prescribed antibiotic cream by the doctor. The doctor asked Jennifer if anyone had ever touched her there. Jennifer said yes, but did not want to talk about it and wanted to talk to the worker from the Child Protection Authority. The doctor made a referral. The mother was advised to talk to the Child Protection Authority. In December 1987, the Full Court allowed Lyn's appeal and varied the Orders made by the Judge. The mother was to have sole guardianship and custody of the children and the father was to have access to the children each alternate Sunday from 10am to 6pm at his mother's house.

In January 1988, as a result of the referral in November 1987, Jennifer was interviewed by the Child Protection Authority but did not disclose during the interview. The Child Protection Authority recommended that Jennifer have long term counselling and referred her a specialist child psychiatry service. Carl continued to file Applications alleging contempt by Lyn as the children had not seen their father since access in December 1986.

During the course of 1988, Carl continued to file numerous Applications alleging contempt. In October 1988, there was a series of interviews and visits to the Counsellor of the Family Court. The Counsellor observed the children on their own and with their father, paternal grandparents, mother and her partner. The parents were individually interviewed. Brooke, aged eight years, made a disclosure to the Counsellor of the Family Court alleging sexual assault by her father. It was the same disclosure that she had made to her mother in May 1987 but had not disclosed to the Child Protection Authority. The following month, Jennifer, aged ten years, then disclosed to her mother that her father had examined her "*itchy wee wee for a long time, with tweezers, some sticks and a magnifying glass"*. Jennifer said she *"went all tingly and went stiff, it felt disgusting, but I couldn't do anything about it".* She further added that her father "*had touched her on her 'wee wee' on other occasions as well in his bed, during access".* The Family Court Counsellor noted that *from Carl's statements, it would appear that Lyn's fears of his potential for killing her may be reality-based*. The Court Counsellor's Family Report was provided to the Judge. The conclusion was that:

- *The outcome of the investigation by the Child Protection Authority will have some bearing on a final decision.*
- *Brendan, Jennifer and Brooke are troubled children, and need protecting from the continuing distress of their parents' conflict.*
- *The least catastrophic option for the children may be to allow them to live with their mother, in a stable environment of her choosing away from the pressures and disruptions occasioned by frequent and protected litigation.*

Jennifer made a Police Statement. It reiterated what she had told her mother, but on questioning, Jennifer revealed also that her dad had spoken to her at the time [of the

assault] and informed her of her 'G-spot'. She said that she was really scared because he said it was a secret and gave her a threatening look.

In December 1988, the substantive proceedings were listed for hearing in the Family Court. The Child Protection Authority appeared with their own barrister and took over the representation of the children from Lyn. Before the hearing could take place, Carl's barrister approached Lyn's legal representative to propose an end to the proceedings and Consent Orders were then drawn up. By consent it was ordered that "the Husband's application for Custody filed August 1987 is dismissed with no order as to costs. That the following applications [dates listed] alleging contempt or seeking warrants filed by the husband are dismissed with no order as to costs". The children were to remain in the custody of their mother, and Lyn was granted leave to remove the three children from the Commonwealth of Australia and for that purpose to apply for passports for each of the children without their father's consent. Lyn's passport was returned to her. Lyn consented not to enforce maintenance arrears or any future maintenance.

There was now no Order for access with their father and that he would not initiate any proceedings as to access or otherwise seek access to any of the children unless and until one or more of the children manifest a desire to have access with him.

JULIA'S STORY

Margaret is the maternal grandparent who was involved in the Family Court proceedings regarding her granddaughter Julia, born premature in 2007. Julia was born to Margaret's daughter Nicole and her partner Andrew.

Whilst pregnant, Nicole found child pornography on Andrew's computer, after being suspicious that he was having a sexual relationship with his underage male relative. She also found a number of movies in the form of men sexually abusing and raping young boys, as well as a program saved on Messenger of an instant chat of a sexual nature between Andrew (mid-twenties) and his then 15 year old male relative.

Nicole said she spoke to the relative who confirmed to her that Andrew had been "doing things" to him since he was a young child, when Andrew would often babysit him.

When she confronted Andrew, he tried to convince her the movies were there by accident when he bought the computer, however she knew this to be untrue as they were 'hidden' in his files on Andrew's own computer server. He denied any impropriety with his relative.

The couple then separated just prior to the birth of Julia. Just prior to her birth Nicole alleged that Andrew had punched her in the stomach. Nicole also haemorrhaged following the birth, requiring an extended stay in hospital. Although the parents were separated at the time, Andrew was present at the birth. Nicole did not disclose to hospital staff (nor her mother) about the domestic violence, although Margaret reported that she was suspicious.

When Julia was discharged home, the parents resumed living together and the domestic violence continued. Nicole reported to her mother that Andrew had shaken and spoke

derogatorily to Julia. On another occasion Andrew pushed Nicole to the floor then began to punch and kick her, removed the telephone and then forcibly tried to take Julia from the premises. The Police were called. The Police took out a violence restraining order (VRO) against Andrew. Julia was aged six weeks at this time, and subsequently there was very little to no contact with Nicole or the infant by Andrew for the next ten months.

After separating, Nicole provided her mother with a floppy disc with the saved Logs (transcript) of the chats which had occurred between Andrew and his underage male relative, including a screenshot of the sexually explicit names and thumbnail (small) pictures of a number of child sex movies. Nicole's mother Margaret also contacted the email address of the apparent young relative, and the young relative reportedly emailed back confirming some assaults by Andrew towards him had occurred, but that he did not want to take the matter further. The matter was reported to the Police, along with the disc and the emails. The Police examined the disc and took a Statement, and no further action occurred.

The maternal grandmother also reported Andrew having what appeared to be child pornography on his computer. In 2008, Police Officers searched Andrew's home with a search warrant and seized computer equipment. On a hard drive was a number of video files that depicted male children and men engaged in sexual activities. Andrew was interviewed by the Police and charged in the Supreme Court with the offence of possessing child exploitation material. He was convicted and sentenced to six month's imprisonment, which was suspended on good behaviour. He was placed on the state's offender register for two years.

At a Legal Aid conference in 2008, Nicole and Andrew signed an agreement allowing Andrew supervised contact with Julia at a contact centre, although Nicole said she signed it under duress. Nicole disclosed at the Legal Aid conference that Andrew had previously been violent towards her and the baby, and she disclosed the information about the child rape material she had found on his computer. Nicole stated that this was dismissed by the lawyers and the mediator. Contact commenced immediately. Nicole reported that she was told at the Conference that if she did not allow contact she would be refused a Legal Aid funded lawyer. Andrew had already been appointed a Legal Aid lawyer. Contact commenced at the contact centre albeit limited and inconsistent. Nicole and Andrew both commenced new relationships.

In 2009, Andrew continued having sporadic supervised access with Julia at the contact centre for a few hours, as he did not always appear for contact. Julia, aged two years, did not call her father 'daddy', instead referring to him as 'the man' who played with her at the contact centre, although he also engaged in care tasks such as changing Julia's nappy.

In 2010, Andrew successfully appealed his child pornography possession charge and was removed from the state's offender register. The conviction was overturned as Andrew claimed that the child pornography was found on a second hand hard drive, and he was not aware that it was there. He also stated that the Police had not explored/considered this in their inquiry.

He immediately then demanded unsupervised and overnight access with Julia.

In September 2010, a risk assessment was undertaken by the Child Protection Authority pursuant to an Order made under s 91B of the Family Law Act 1975 (Cth). The Child Protection Authority practitioner spoke to both parents and observed Julia. After speaking with both parties, making their own inquiries of the contact centre, and reviewing the various criminal proceedings judgements relating to Julia's father, the practitioner formed the view that "*the history of family violence in the father's family, together with the father's interest in child pornography, placed Julia at risk of harm if unsupervised visits were to occur."* About the mother, the practitioner had no apparent concerns and all of the reports suggested that she was coping appropriately as a parent. Subsequently, the file was closed.

Julia was now three years of age and had bonded with her stepfather Simon.

In November 2010, a Judge of the Family Court granted the contact visits (and overnight) between the father and Julia that the father had sought. Andrew's young partner Paula was to supervise, and to pick up and drop off Julia from and to the contact centre. The Judge believed the girlfriend would be a competent supervisor. The ICL fully supported this Order. This was despite Julia not knowing her father nor his girlfriend, and that except for the few hours contact with her father at the contact centre, she had never been away from her family.

In early 2011, a temporary separation occurred between Andrew and his new partner Paula, who was now pregnant to Andrew. There had been a domestic violence incident perpetrated on her by Andrew, and she had concerns about his relationship with a gay male friend. The Police instigated a violence restraining order against Andrew on her behalf. Andrew allegedly then threatened suicide, and Paula returned to live with him despite the Intervention Order. In the signed Police Statement Paula gave Police, Andrew had been making a number of threats of suicide via text message and had threatened to kill himself in their home if she left him. Paula's Statement stated that she had shown the texts to the Police, and she described controlling obsessive behaviour of Andrew towards her.

In January 2011, Julia had a contact visit with her father at his home, with Paula as the supervisor. After this visit, Julia was said to be quiet upon being collected from the contact centre by her mother and her stepfather. Julia informed them and two other relatives that "her bum hurts real bad*"* and "a man had put a screwdriver in her bum*".* Following this incident, the maternal family began telling Julia that the man she saw at the contact centre, and who collected her, was named "daddy Andrew". Julia was by then calling her stepfather Simon, 'daddy Simon'. After the incident with the 'screwdriver', Julia was said to have identified Andrew in a photograph as "the man who hurt my bottom". She also identified a screwdriver as the implement which had been used on her.

The Child Protection Authority were notified regarding Julia's disclosure and Julia was taken to the hospital by her mother and stepfather. Her vulva was photographed by a hospital Registrar. The Registrar was foreign speaking with poor English, and was reported as appearing to misinterpret the child saying "bum" as meaning her vulva, when she meant her anus. Although the family was informed by the Police that a forensic paediatric examination would take place the following morning, Margaret stated that this did not occur, once it was

mentioned to hospital staff that there was Family Court custody proceedings in progress. Subsequently Julia was discharged home without being seen or examined by a paediatrician.

Julia was observed by Nicole, Simon and Margaret to still be in pain, so she was then immediately taken to the family doctor (GP) by Nicole and Simon. The GP noted on examination that Julia had anal and vulval excoriation. Margaret reported that Julia was interviewed three days later by the Child Protection Authority and Police in the Police Station, but *"*said nothing and was very scared sitting in a Police Station in a room full of strangers and nothing else*".*

Approximately one month later, Margaret collected Julia from the contact centre (place of changeover) after an unsupervised day of contact with her father. Julia was said to be very quiet and appeared 'spaced out'. During the car trip, Julia complained to her grandmother that her bottom was sore. She was continually complaining that she had a "prickle in her bum". When checked by the grandmother, Julia was observed to have a very red, excoriated anal and vulval area and discharge.

On arrival at her mother's home, Julia continued to complain about the 'prickle' in her bum. The grandmother and family members did not question Julia as the GP had previously advised them to say nothing to the child and just take her to the hospital Emergency Department as there was nothing that the GP could do.

Margaret rang the Police, and the Police subsequently called Nicole and Simon and told them to attend the Police Station the following day with Julia. When Police were asked if she needed to attend that night, the Police reportedly said no medical attention was to be sought for the child. A second interview was conducted at the Police Station with Police and the Child Protection Authority. Julia again did not disclose. Police stated that Julia was repeatedly asking for her mother whilst in the interview room. Margaret reports that the Police and Child Protection Authority took her and Nicole into a room and "loudly abused" them for "emotionally abusing" Julia and "threatened she would be taken from her mother and given to the (biological) father" if the notifications did not cease. She said they were told not to make any more notifications.

Julia was taken to the GP by the mother, stepfather and maternal grandmother. Nicole and Simon waited outside the clinic as Nicole was said to be "terrified that the child would be taken from her if she said anything to the GP". The GP noted on a "no touching" examination that Julia had a bruised anus, after allegedly telling Margaret that the Child Protection Authority had told the GP not to touch the child and only look from a distance. The GP notified the Child Protection Authority of the anal injury that they observed, and requested that the Child Protection Authority send them an official letter.[12] The GP explained to the maternal grandmother their reticence about a diagnosis and advised that Julia should be examined by a consultant paediatrician. The GP said there was nothing that they could do and that the next time she must be taken to the hospital.

[12] The GP stated they never received this letter, although the Child Protection Authority later claimed during Court proceedings that they sent it to the GP but that they did not respond. There was conflict in opinions in relation to calls and the sending of letters and responding between the GP and the Child Protection Authority at the trial in Family Court. There was also conflict with dates of notifications.

Julia had further visits with the GP, mostly in relation to urinary symptoms/infection and an offensive vaginal discharge. Julia also had both bowel and urinary incontinence, although for over a year she had previously been fully toilet trained. A referral to a paediatrician was made for investigation.

Nicole was terrified that she was violating Family Court Orders made in 2011, which had been sought by the father Andrew, fully supported by the ICL and granted by the Judge. The Judge had made Orders precluding medical assessments of Julia being undertaken for evidence of sexual assault. The maternal grandmother and the mother were prevented from taking Julia to the GP for anything to do with 'below her waist'. It was also ordered that Julia was not to have counselling of any type. The paediatrician was subsequently unable to find a cause for the urinary tract pain and infections; they diagnosed vulvovaginitis[13] and recommended that the parents take care with Julia's hygiene.

In August 2011, Julia disclosed to her stepfather that Daddy Andrew *"*put a knife in her bottom". Simon told her to seek assistance from her father's partner Paula if it happened again. Simon did not notify the Child Protection Authority or the Police as he was very worried that Nicole may lose custody of Julia if he did. Julia was reported to have a continual vaginal discharge and a recurrent sore and excoriated vaginal and anal area, but she was not taken to the GP for the same reason. She continued to suffer and be distressed by her incontinence.

Margaret wrote a confidential email to a number of people including a Commonwealth Senator, a State Parliamentarian and an Academic expert. This was said by Margaret to be on recommendation of the GP, after it was noted by the GPs at the clinic that in conjunction with the information provided by the paediatrician, as well as their own information, there was enough evidence to show that Julia's allegations were truthful and that Julia had most likely been sexually assaulted.

In November 2011, there was a five day trial in the Family Court. A number of people, including professionals and family, gave evidence as well as a Single Expert Witness, who was a psychologist and an ICL. There was significant information provided, which included:

- *In the trial Affidavit for the hearing, Andrew said that he had never been violent or abusive to Paula who he loved very much. In her trial Affidavit, Paula said that she and Andrew had worked through issues and they had a strong and stable relationship. However, a few days before the trial began in November, a violent episode of domestic violence between Andrew and Paula occurred, whereby Paula was punched up to multiple times in the face by a very drunk Andrew in the presence of their newborn child. Andrew was attempting to remove their baby from Paula and from the home. The Police were called by Paula and Andrew was placed in the cells overnight. This was a breach of the previous AVO taken out by the Police on behalf of Paula in 2011. Andrew had no recollection of the event.*

[13] Vulvovagininits is an inflammation or infection of the vulva and vagina which results in an offensive discharge.

- *The Single Expert's consideration of the father's profile indicated no propensity towards violence. When questioned about the incident of Andrew pushing Paula to the ground and punching her in the face multiple times, the Single Expert described it as "situational violence" and that research shows that "there are categories of violence".*
- *The Single Expert claimed that they observed depression in the mother and said that it, along with what they had themselves diagnosed in the mother (borderline personality disorder/BPD), was likely to adversely impact on the mother's capacity to provide for Julia. The Judge, however, found that Julia did not have BPD as claimed and Julia was not at emotional risk in the care of her mother.*
- *Andrew denied any impropriety on his behalf in relation to the transcript of the chat between he and his relative, although he admitted that some of these conversations occurred. The relative also had no knowledge of the controversial parts of the conversation and emphatically denied that there was any sexually implicit impropriety involved between him and Andrew. Andrew however admitted that he was having male to male sexual relations with men, but was not bisexual.*
- *A Child Protection Authority Team Leader was called as a witness by the ICL. The Team Leader's view was that there had been too many attendances of Julia's upon doctors for examination. The evidence of the GP did not bear that out, and although there were monthly visits, it was only with the maternal grandmother that the subject of sexual assault was discussed. The GP stated that at no time did the child see the doctor unnecessarily. The Team Leader did not have any concerns about Nicole.*
- *In relation to Julia's anal bruising, the GP informed that they and most GPs were not qualified to diagnose such things as sexual assault or abuse. The GP said bruises could be from a variety of things, including a blunt instrument.*
- *Simon (Julia's stepfather) stated at the trial that although the maternal grandmother interpreted all of the events with sexual assault by the father, he and Nicole did not (Nicole and Simon were said to be strongly advised by their Legal Representation at the Final Trial not to allege sexual assault by the father or the mother would risk loss of custody of Julia).*
- *The ICL urged that the child live with the mother, but have unsupervised and regular contact with the father, on alternate weekends, school holidays, special days etc.*

In January 2012, when Julia was four years of age, Judgment was provided by the Judge:

- *That the mother and father have equal shared responsibility*
- *That the child live with the mother at all times other than those with the father as set out hereafter (plan provided for unsupervised contact, alternate weekends, half of school holidays, special days, etc.)*

- *That the ICL be discharged from proceedings later that year*
- *That the mother is restrained by injunction from taking Julia (or permitting any other person in her place) to any health professional associated with or concerned about issues of sexual assault of Julia without first giving notice to the father and the Child Protection Authority*
- *That until December 2012, the mother is hereby restrained by injunction from leaving the child alone in the care of the maternal grandparents or either of them.*

After the Case was heard and in their Final Judgements and Reasons, the Judge stated they found the child had been sexually assaulted but could not prove it was the father. The child during litigation was aged one to four years and was too young to give verbal evidence.

During the year of 2012, Julia then aged five years of age, on a number of occasions confided with her teachers at the school. She also confided in her stepfather Simon that her father Andrew had been showing her explicit material of naked big people and children on his computer. Simon then made a notification to the Police. Nothing further was heard on the matter.

The last time the child made a disclosure of sexual assault by her father, later that year, Andrew abruptly ceased all contact with her and there has been no contact since.

JOANNA'S STORY

> *"I will never forget that one line that the Single Expert wrote 'that Joanna should remain living with her mother, however if the mother continues to make spurious allegations of sexual assault by the father, a change of residence may be necessary'. The Judge then ordered that Joanna be placed in the care of her father".* (Joanna's mother, Karen).

Karen and Brian met in 2006 and commenced living together. Karen subsequently became the victim of family violence perpetrated on her by Brian, which commenced early in their relationship and continued throughout her pregnancy and following their separation. Police were called and responded on numerous occasions. When pregnant, Karen contacted a domestic violence pregnancy support group. The group advised her to leave Brian, however he would threaten her if she obtained a VRO and would leave notices around the house suggesting that he would purchase firearms. At one stage when she was pregnant and after Brian assaulted her, Karen stated that he said that he hoped the baby would die. She subsequently went to her family for one week to escape the violence. After the birth of Joanna in 2007, and when the baby was two months of age, the Police attended and Karen was advised to leave the premises with Joanna and stay with her family. The following month the Police again were called[14] after Karen was physically assaulted. Karen moved out of the house with Joanna. Karen was subsequently contacted by the Child Protection

[14] Reference numbers from all of the police call outs, bail applications for Brian and seizing of firearms from Brian were provided by the mother.

Authority. Karen was told by the Child Protection Authority to leave Brian and to obtain a VRO due to the negative impact of his violence on Joanna's safety and wellbeing. Karen followed this advice and separated from Brian in 2008. Consequently, each month for the next few months, Police were called out due to Brian stalking and threatening Karen, trying to break into her house, yelling out profanities following her from home and attempting to dangerously and recklessly side swipe her car as she was driving with Joanna in the car. This latter incident occurred for over an hour, during which Karen was speaking to the Police on the phone. After the first occasion of violence, the Police applied for a temporary VRO on Karen's behalf. On the second, they asked her whether she wanted him charged for the breach to which she responded negatively, and on the third occasion, Brian advised Police in his 'defence' that he has been following Karen in his car and attempting to get into her car when she stops at lights because he 'misses his daughter'.

From March 2008 and for the following couple of months, Brian's contact with Joanna was brief and intermittent and occurred in the presence of Karen. From mid-2008 until mid-2009, Brian had contact with Joanna at a contact centre, two days per week for four hours each access.

In June 2008, the VRO was granted for the previous violent incidents. Brian was not to approach or contact Karen by any means whatsoever, except through the defendant's legal representative or as authorised by a Parenting Order. The Magistrate noted that the incident whereby Brian tried to side swipe Karen's car was, at the very least, an act of stalking and dangerous driving placing Karen and accompanying persons (Joanna) at great risk. After separating from Brian, Karen discovered that Brian had an VRO in place in regard to his previous partner, who he had continued to stalk and intimidate after separating. He also breached that VRO and was placed on a two year good behaviour bond and was to move away from the town he lived in. Brian's good behaviour bond was still current when Karen was experiencing domestic violence prior to the birth of Joanna. Brian continued to stalk Karen, and a neighbour observed him on Karen's premises and made a report to the Police. Brian was subsequently charged with seven offences of contravening the Order, convicted, sentenced and placed on a suspended jail sentence. The Police made a Statutory Declaration as Brian continued to deny his offending and criminal behaviour. Further reports were made to the Police from Karen's work clients, employer, and herself, including her fears of Brian purchasing a firearm. Police subsequently seize seven firearms. There were further intimidating and attempted violence incidents and damage of property perpetrated against Karen by Brian, and a number of Statutory Declarations were provided from Karen's neighbours and family members.

In late 2009, Family Court Orders were made by consent of the parents. Karen reported that she was told by her lawyers that if she didn't agree to the Orders she risked losing custody of Joanna. Orders were made for shared parental responsibility; Joanna was ordered to live with her mother, and there was to be gradual increasing unsupervised contact between Joanna, aged nearly two years, and her father. Contact commenced and Joanna spent unsupervised time with her father every second weekend, including overnight, plus a

weekday evening. This was then to lead to shared care from when Joanna was aged five years.

In early 2010, Joanna was having unsupervised contact with her father as per the Court Orders. On one occasion when changeover occurred at a public place, Karen said that Brian, when leaving, attempted to drive his car threateningly towards her and her family whilst she was holding Joanna, and this was also witnessed by others at the restaurant. Later that year, Joanna disclosed to her mother and a health professional that her father was touching and kissing her in the genital region. She was also observed by the GP as having an unusual rash on her genitalia, who photographed the unusual rash and determined it could be caused through trauma or wearing dirty nappies. Joanna was already toilet trained at this time. Joanna made further disclosures to her mother such as "*daddy lick bum*", "*daddy hurt me*", "*daddy peed on me*". She also commenced soiling herself and she complained of genital soreness and was taken by her mother to the GP a second time. Karen also noted that Joanna had regressed developmentally in that she was wanting a dummy, demanding to be breastfed, and was afraid to sleep on her own.

In early 2011, Joanna continued to complain of soreness in the vaginal area after a visit with her father and she made a partial disclosure to her mother. Karen attended the GP with her and Joanna disclosed to the GP, "Daddy hurt me, little finger first then big finger", and showed him her little finger and then her middle fingers as a demonstration. When the GP further asked what happened, she said daddy kissed there (indicating her genital region) and began making a sucking sound and indicated that's what her father did when he kissed her there. Joanna also disclosed to the GP that the father had peed on her and pointed to her genital region. The GP believed, after talking to Joanna, that they were genuine disclosures of a child who had been sexually assaulted. The GP then advised the mother that they suspected that Joanna had been sexually assaulted, and a report to the Child Protection Authority was made. Joanna continued to make ongoing disclosures to her mother that her father had been inserting his fingers into her vagina. Joanna was observed to have a swollen and red vagina and genital region. After the report was made to the Child Protection Authority, Joanna was interviewed by the Police Child Protection team. A partial disclosure was made by Joanna, aged three years, on a video recorded interview. She was able to tell them that it happened at her daddy's and circle a diagram where she had been touched. The Police Child Protection team obtained the medical photographs from the medical centre and forwarded them to a Child Protection Authority medical specialist, who stated that the rash was unusual and definitely plausible to be stubble rash from a man's face. Although the Police Child Protection team was initially going to substantiate the matter and charge the father with aggravated sexual assault, they were subsequently unable to substantiate on a criminal basis. Joanna was referred to a sexual assault service. Karen was advised to attend the Family Court for new Orders.

Karen applied to the Family Court as directed by the Child Protection Authority and sought orders that Joanna live with her, that she be granted sole responsibility and that Joanna have supervised contact with her father at a contact centre, at the discretion of the Court. Brian sought in his Application that Joanna live with him and have contact with the mother

as determined by the ICL and the Court. Contact between Joanna and her father was suspended in the context that Joanna had disclosed sexual assault by her father. Joanna was seen by the child psychologist at a sexual assault service. The psychologist reported that the Police Child Protection Team had informed them that: "*they (the Police Child Protection team) were of the opinion that Brian had sexually abused Joanna and that unsupervised contact is not recommended - however in the absence of a direct disclosure from Joanna and the limitation of [the Police Child Protection team] means that they would be unable to take this matter further into the criminal realm as the Court would be well aware."* The psychologist in their report (2011) further stated: "*As the matter currently stands, it is my opinion that there is an unacceptable high risk that Joanna is being exposed to sexual abuse by her father and this possibility must be further assessed. Until such time, my opinion is consistent with that of [the Police Child Protection team] professionals - that contact with her father must be supervised and that this supervision must be carried out by an independent party rather than the father's girlfriend and mother."* Subsequently there was a Family Court Interim hearing. Orders were made that Joanna spend a weekday and each Sunday for the duration of six hours each time supervised by the father's partner and the father's mother. Joanna continued to make further disclosures that year to her mother and maternal grandmother, stating: *"Daddy's doodle is long here (held her hand in grip position) and then goes up and down. It then goes shshs then wees over this eye (pointing to her right eye), then over this eye (pointing to her left eye) daddy's eyes while he was lying down in bed".*

In 2012, Joanna commenced preschool. Brian and his new partner attended the preschool denigrating Karen and stating he soon will have full custody of Joanna. At preschool Joanna was demonstrating sexualised behaviours and disclosed to the preschool teachers. She also stated to the teacher: "*I'm scared mummy won't come back and daddy will take me away".* At preschool she attempted to put a funnel, whilst in the sandpit, inside of her genital region, and was overhead by teachers telling another child that her dad hurts her. Further reports were made to the Child Protection Authority.

Later that year, Affidavits from the Child Protection Authority, Psychiatrists, Medical staff and the Expert Court Writer concurred that Joanna should reside in the full time care of the mother and that the child is at unacceptable and serious risk of sexual assault in the care of her father. Karen noted an expert report was prepared regarding the effect of child sexual assault on children and families by a psychiatrist who specialised in family violence. She said this report stated that Joanna was at risk of harm in Brian's care and he should have minimal supervised contact with her until Joanna was 13 years old. Further, the psychiatrist said, "under no circumstance should the child be removed from the mother". However, Karen reported that the Judge stated that this Report Writer was biased.

The Child Protection Authority filed a Magellan Report within the Family Court which recommended that Joanna engage in therapy and that the father have supervised contact as Joanna was at heightened risk.

The Family Court hearings occupied over a week, as a number of lay and one expert witness gave evidence in that time. Karen reported that information regarding Brian's prior criminal

history was presented to the Family Court. She explained Brian has a history of firearm offences including shooting near children and animals where unlicensed. She also noted Brian was subject to an AVO with a former girlfriend which he breached and was placed on a two year good behaviour bond; and later was ordered to move from town due to domestic violence and stalking. Karen reported that the Judge stated that there was nothing sinister about Brian's criminal history and Karen felt that this opinion minimised the violence she and other people experienced.

The Judge subsequently ordered that Joanna, now aged four years, "*reside full time with her father and that after one month, if the mother complied with therapeutic support to assist her in dealing with the outcome of the trial, she would be able to have contact with the child. It was concluded, based also on the ICL…that the mother still believes the father abused the child. Therefore if the child resides with the mother she may limit the contact and by placing the child with the father, she will be able to have the benefit of both parents participating in her life".* The trial Judge stated: "*that if the child were to live with the mother, the mother would poison the child with hatred towards the father*". The trial Judge then made a Recovery Order to have the child placed in the father's care. The mother had an arrest without warrant if she was to go anywhere near the child.

The following day, Karen filed a Notice of Appeal in which she sought Orders setting aside the trial Judge's Orders. She then sought a stay of the trial Judge's Orders pending appeal to the Full Court.

The Application was heard and dismissed by the trial Judge one week later. The following month, an Amended Notice of Appeal was filed by Karen seeking provision of transcripts at the Court's expense, or access to audio recordings of the trial as it related to the Order made in October in parenting proceedings between her and Brian. During this appeal time, Joanna was not delivered to her father. At the end of November, Police located Joanna in another state and secured her return to her father.

From November 2012 until August 2013, Brian restricted all contact between Joanna and her mother. Karen then had access with Joanna at the Family Court, supervised by three Police Officers. In December 2012, Karen commenced counselling as ordered by the Family Court in October 2012. The psychiatrist assessed Karen as having no mental health condition or personality disorders and that she was protective of her daughter's best interests during any contact with the daughter that she had. The psychiatrist further recommended that restoration of Joanna to her mother's care occur immediately due to signs that Joanna was suffering from severe psychological harm and required specialised therapy. The psychiatrist was of the opinion that the Family Court Orders had placed the child at significant risk.

The father also had previously made an Application to vary the commencement date of the one month period that Joanna was not to spend time with the mother. The Judge stated that there was no evidence to suggest that the mother had any involvement in the removal of Joanna and the father was to continue to follow the Orders of the Court. Karen sought to disqualify the presiding Judicial Officer from further hearing the matter. The Judicial Officer

disqualified themselves, "*not due to any apprehended or actual bias but because Karen did not have any faith that [they] would properly discharge their judicial obligations and duties"*.

In February 2013, Karen filed a second amended Notice of Appeal on the grounds that *"[The Judge] failed to give proper weight to the relevant factors enumerated in S60cc of the Act, thus failing to make orders in the best interests of the child (Paragraph 6, Page 12-Judgements). [The Judge] disregarded evidence before the Court."*

In September 2013, Orders were made by Consent that rather than Karen having Police-supervised access with Joanna at the Court, that she could commence having supervised access outside of the Court, monthly, for three hours at her house. Karen was liable for the monthly cost of $330 for the supervision.

In June 2014, the Appeal was heard. Orders by Consent whereby the appeal and cross appeal were allowed. This meant that the matter was further delayed, so the mother consented that both appeals would be allowed and the matter would be heard by the Family Court. In March 2015, Karen filed an Application for Final Orders (Retrial). The matter was remitted for retrial.

The trial has been set for hearing later in 2016. It is nearly four years since Joanna, now eight, has been ordered to live with and continues to reside with her father. Karen pays $900 per month to see her daughter and is supervised by a supervision company for three hours for three days each month. Joanna has not seen her maternal family or friends since 2012.

TARA, JAMES AND ANGELA'S STORY

Donna had Tara from a previous relationship when she met and married Jeremy. In 2001 James was born, followed three years later by Angela. According to Donna, the children frequently witnessed and were targets of physical abuse perpetrated by Jeremy. In 2004 Donna and Jeremy separated and subsequently divorced. After the time of separation and up until February 2008 the children spent regular time with their father.

In early 2006, Tara, aged eight years, reported to her aunt that Jeremy came into her room naked and tried to hug her. Tara reportedly screamed at Jeremy and told him to get out. On a separate occasion James, aged four years, allegedly disclosed to his mother that his father *"touched his wee-wee"*. A report was made to the Child Protection Authority. James also disclosed to the Police Child Protection team and the Child Protection Authority. Tara reported to the Child Protection Authority that discipline from the father involved being yelled at and smacked, and that all children received the same discipline, except she was not smacked on the bottom. James also disclosed he was smacked if naughty.

In April 2007, Final Orders were made in the Family Court concerning James and Angela that they live with their mother and spend time with their father each alternate weekend from Friday to Sunday, one weekday night, half the holidays and on special occasions. After spending time with his father, James told his mother that his father kicked him in the groin area.

In January 2008, the regular contact as per the Orders ceased between the father and his children and they spent very little time with him, as the Judge suspended the 2007 Orders. James, in Grade 2, was suspended from school numerous times due to his aggressive and sexualised behaviours. A report to the Child Protection Authority was made concerning the sexual assault allegations that had been made in relation to Tara and James whilst in the father's care. The report proceeded to investigation and the children and parents were interviewed by the Child Protection Authority. It was assessed by the Child Protection Authority that all three children had experienced harm of a detrimental nature to their physical and emotional wellbeing. Tara and James disclosed to the Child Protection Authority Officers that Jeremy had displayed inappropriate sexual behaviour towards them. Tara disclosed that Jeremy entered her bedroom and tried to hug her while he was naked. Both Tara and James also disclosed that Jeremy touches James' penis with his hand and that this has occurred multiple times. It was assessed by the Child Protection Authority that this constituted sexual assault, and as such negatively impacted on the children's emotional stability, as James had been displaying sexualised behaviours at school and towards his younger sister Angela. Both Tara and James reported that they did not wish to go to Jeremy's due to the harm that they experience, including physical harm. Although Angela did not make any disclosures of harm, based on the information gathered through investigation and assessment, Angela was also assessed at risk of physical and emotional harm and physical and emotional harm caused by sexual assault. Outcome of the assessment was substantiated for all three children, and the Child Protection Authority subsequently closed with community referral to a child sexual assault counselling services, as Donna was considered a protective parent.

The following month, the three children were also interviewed by the Police. James told the Police Officer that his father hits him for no reason. Tara informed the Police Officer that James was not allowed into Angela's room when she and Tara are playing and if he did he got smacked and sent to his bedroom, and was also slapped when he would not go to bed. James informed the Police that his father "*touches him where he shouldn't be"* but did not respond to the Police when asked when was the last time his father touched "it" or when he last saw his dad. Later that month, Donna commenced proceedings in the Family Court of Australia by filing a Notice of Child Abuse or Family Violence alleging as Part E:

1. *The respondent (father) entered her 10 year old daughter's room naked and tried to hug her*
2. *Her son disclosed that "daddy touched him on the penis and rubs himself while naked on him"*
3. *Her son and daughters have told the Child Protection Authority that their dad is touching them and exposing himself to them.*

It was also noted by Donna that "if visitation was to continue unsupervised there was a high risk to the children that the abuse will continue; that she (Donna) currently has a violence restraining order on the respondent which is the second one that has been needed" (another two were taken out in later years following this). "The respondent has been violent

towards the children and myself since we became a couple and always gets worse during the Court process. There is a high risk that after the Court, the violence will continue".

In March 2008, the children were not having contact with their father and Tara and James were referred to the child sexual assault counselling service, by their caseworker from the Child Protection Authority. An intake interview was completed with the mother. During the interview, Donna advised the child sexual assault counselling service, that James was having anger issues, swearing, nightmares and suffering from anxiety and self-esteem issues. Donna also reported James as having sexualised behaviours, such as touching Angela's vagina. James' performance at school was poor and there was physical and verbal aggression towards other children including his siblings, teachers and peers. An Interagency meeting occurred between the child sexual assault counselling service, the Education Department and a parenting agency. In April 2008, James attended sexual assault counselling and play therapy. It was assessed that James was displaying behaviours symptomatic of emotional distress and anxiety and that these symptoms were causing impairment in his everyday life.

In the middle of 2008, a Family Report was prepared by a Social Worker. The Social Worker stated that James and Angela had a very loving relationship with the father. James' counselling report from the child sexual assault counselling service reported that James was found to be within the clinically significant range on a number of trauma symptom scales. The counsellor's professional opinion was that *"James behaviours could be a result of anxiety in relation to his father, and that further contact could adversely affect James' emotional wellbeing…Given James' previous allegations of sexual assault and physical violence by his father, I recommend that any contact should be supervised to ensure his physical and emotional wellbeing."*

There was a hearing in the Court and Orders were made stating that the father should have supervised visitation with the children at a contact centre as soon as a place was found. It was also requested that the matter be moved to the Magellan list.

In September 2008, the children commenced having supervised contact with their father at a contact centre for two hours fortnightly and it abruptly ended in October 2008. Contact was terminated by the centre staff due to the father allegedly having an erection while playing with Angela, and with the current sexual assault allegations it was their policy to not allow the children attend. Three visits had occurred, one by James and three by Angela. James refused to get out of the car at the centre to have contact with his father on two occasions and attended the medical centre with his mother due to anxiety related to seeing his father. The doctor wrote a sick certificate stating that James was, and would be, unfit to attend contact with his father until he had further psychological assessment due to panic attacks. James' anxiety attacks extended to the school classroom and grounds, where when anxious, he became violent and lashed out indiscriminately at children and adults. He also frequently used sexual gestures and vulgar inappropriate language towards others without provocation, and absconded from situations where he did not feel safe. As a result, James was only attending school for short periods.

In January 2009, James was continuing counselling with the child sexual assault counselling service, who submitted an Affidavit to the Court stating amongst other things, that *"based on James presenting behaviours, assessments and statements made during counselling sessions, it appears that James does not want any contact with his father at this stage…I would also recommend that if contact was reinstated that it be fully supervised by an independent third party."* An assessment showed a reduction in trauma symptoms thought to be due to the therapeutic intervention during the preceding period, and a consistent stable home environment. James was not having any contact with his father during this time.

In March 2009, Jeremy had facilitated time with the children at the Court. This also occurred on another four occasions in the following two months. Following this access, James' behaviour was noted by his mother and counsellor as deteriorating, and he was again suspended from school. The counsellor determined that the only significant change in James' life during this time was that contact with his father had resumed. In May 2009, the children ceased spending time with their father, other than in relation to interviews for various Court reports. A report was prepared by a Registered Psychologist and the Family Consultant appointed to the matter. The report stated that for the most part Angela engaged well with her father, however that contact should cease until more assessments could be carried out due to James' behaviour having escalated. James further reported to his counsellor that he didn't like Jeremy because he "is mean and stuff and he hits me". He further elaborated that "there are other things Jeremy did to me, I don't want to talk about it". In early 2010, Angela indicated to her mother that her father had sexually assaulted her. Counselling commenced for Angela, and she was assessed by the child sexual assault counsellor as suffering from stress and anxiety.

The counselling service submitted an Affidavit to the Family Court. In part it stated*: "In my experience, children of James' age most commonly wish to have contact with parents even in cases of extreme abuse and neglect. They often still love the person but want the behaviour to stop. In James' case, he has expressed anger and fear regarding his father and has repeatedly stated that he does not want to see him. It is my professional opinion that physical contact with his father, at this time, would be detrimental to James' emotional wellbeing and would result in an increase in trauma symptoms and behaviour management issues."* In relation to Angela, the counsellor wrote: *"Angela has expressed sadness and anger regarding her father, and has expressed that she would feel happy if she did not have to see him again. It is my professional opinion that physical contact with her father at this time could be detrimental to Angela's emotional wellbeing. I base this opinion on information and statements Angela gave in counselling sessions and her escalated trauma symptoms."*

In February 2010, Donna filed an Affidavit to say that the father inappropriately touched Angela. The report was finalised by a psychiatrist. It read: *"James denied anyone touching him inappropriately, and specifically denied that his father had ever touched his genitals or that he'd even seen his father's penis'*. The psychiatrist further added *'certainly James is aware of the negative views of his mother and tries to get approval and attention from her*

by mimicking her views. Given her very strongly held paranoid views the inclusion of James into her belief system would be described as a Folie a Deux or Shared Psychotic Disorder if the beliefs were of delusional intensity."

The psychiatrist also recommended psychiatric treatment for the mother's *"anxiety and paranoid belief structure*." Further to this: *"If the mother is unable to support a relationship between her children and the father then consideration may need to be given to alternative residency arrangements."*

In March 2010, the Child Protection Authority completed their Magellan report. A second report was finalised by the Family Consultant. The report stated that the children's relationship with their mother was one of primary parental attachment. The Family Consultant indicated that "*the children should continue to live with their mother due to their inability to cope with a new situation and the negative impact it would have on their sense of stability. Angela had a particularly strong emotional attachment to her mother and a very tenuous bond with her father. James was described as an eight year old boy with emotional, behavioural and educational problems. He was said to be aggressive at home and school to the point where he was only allowed to attend for half days and even then he was often taken home early by his mother. His academic behaviour was poor as a consequence. He was said to have sleep problems, anxiety, low self-esteem and sexual behaviours said to be due to his alleged abusive relationship with this father. Angela was said to be prone to James' reactions, such that if, for example, there would be a change of residence to the father's household, if James did not cope nor would she. Tara, James and Angela were said to have a close relationship".*

In May, the second report by the Registered Psychologist was completed and first report completed by a different Psychologist. This second Psychologist stated "*that ideally the children would stay living with their mother given the severity of the emotional and behavioural problems that the children are exhibiting…that they could not see that the children could spend time with the father if they lived with the mother and that they did not consider the mother capable of facilitating a relationship between the children and the father or at least facilitating one that did not distress the children greatly. It appears that the father is a parent who will facilitate a relationship between the children and the mother should they live with him."*

Donna sought Family Court Orders that she have sole responsibility for the children and that they live with her, and if the Judge found that they had not been sexually assaulted, physically or emotionally abused in the father's household, that they spend the whole holidays with their father during the year, and two weeks of the December school holidays. Jeremy sought the same terms as proposed by the ICL. The ICL proposed that *"Jeremy have sole parental responsibility, the children live with him and not spend time with or communicate with the mother for the period of six weeks, following this time the children spend time with the mother for two hours each week at a contact centre and have telephone communication with the mother on no more than two occasions in each, with the father to be permitted to monitor the telephone calls. The father was to take all necessary steps to attend the [child Mental Health service] to assist the children by undertaking all necessary*

therapy and counselling to adjust to the change from the mother's household to the father's household and to follow such further directions and or recommendations made by that organisation".

It was further proposed that *"The mother was to attend the [child Mental Health centre], and in the future was only able to spend unsupervised and holiday time with the children when she is considered 'ready' to spend time with the children and 'will not expose the children to her beliefs about the father in relation to any allegations of abuse'."*

The Family Consultant very strongly cautioned that "*if there was to be a change for the children to live in the father's household they may not adjust to that, in particular, because of behavioural and psychological problems suffered by James, and that any change for the children from their primary residence with the mother will significantly destabilise the children's sense of emotional security. James would be prone to indulge in extreme limit-testing behaviour if a change of residence were to occur and is likely to consider defiance and running away' and that Angela is 'to be significantly distressed behind a façade of acceptance' and a change of residence for the children should be considered only as an option of last resort."*

An eight day hearing occurred before Judge A in the Family Court (Magellan Court). Final Orders were made in September. In summary it was ordered that the parties have equal shared responsibility for James and Angela for decisions in relation to the major long-term issues concerning them, including their education both current and future, religious and cultural upbringing, health and any changes to their living arrangements that may make it significantly more difficult for the children to spend time with the parties or either of them. The children were to live with the mother and were to spend the whole holiday periods with the father, and half of the Christmas period. The father was able to give them gifts, and if the children wished to telephone the father, the mother was to facilitate the calls. Although the mother must ensure the children attend the paediatrician and follow through with any recommendations or referrals; she must not take the children to any counselling or services of any kind with any person associated with the organisation known as Z organisation or any other organisation specialising in or purporting to specialise in sexual assault of children.

The reasons for Judgement were delivered. The Judge concluded that "*the father had not sexually assaulted, physically or emotionally abused Tara, James or Angela. There was no finding of unacceptable risk to the children in the father's care. It was thought by the Judge that James' conflicted relationship with his father was possibly caused by the mother's belief system in regard to the sexual assault having occurred."*

When access commenced between the children and their father at the home where he resided with his new wife and newborn child, it was problematic. On one access the children left his home during contact without their father's knowledge and on another, the father returned James home to his mother due to his behaviour. James, then aged nine years, ceased spending time with his father following this occasion. James complained to his mother about his father's behaviour, whilst he and Angela were having contact with him

during the school holidays. Although a report was made to the Child Protection Authority, it was unsubstantiated.

In June 2011, Jeremy filed a Contravention Application against Donna in relation to the Final Orders made on in September 2010, which included taking James to a Mental Health service without a paediatric referral and not making Angela available to him for the holidays. The Mental Health service stated that the nature of James' illness or medical condition was "*complex trauma/post-traumatic stress disorder/anxiety"*. James was having weekly psychotherapy and counselling to help him with his problems. The father's Contravention Application against the mother was heard before Judge B. Donna asserted that she did so with a reasonable excuse. The Judge found that the mother had contravened without reasonable excuse.

In summary, it was ordered that the mother attend and complete a post-separation Parenting Orders program within six months of the date of these Orders and provide evidence in writing of the completion of such a program to the father and that Angela should spend time with her father each second weekend until she spent holiday time with her father in the Christmas school holidays. The mother was not to take the children to any therapy or counselling other than in respect to James, who could attend the Mental Health service, without the prior written approval of the father. In particular, the mother must not take the children to any counselling or services of any kind with any person associated with the organisation known as Organisation Z or any other organisation specialising in or purporting to specialise in sexual assault of children. The father was able to communicate directly with James' Mental Health service to discuss James' counselling and treatment, staff were to provide him with all such information that he may request, and all such staff were hereby authorised, at their absolute discretion, to involve the father to any extent they consider appropriate in any such counselling and psychotherapy. Furthermore, should the father decide that he wants to again have the benefit of the Orders of Judge A, that the child James spend time with him pursuant to those Orders, he shall notify the mother of same in writing no less than two weeks prior to commencement of such time and the mother shall ensure that James attend at his father's.

In the following six months, there were a number of Initiating Application's filed by the mother, that Angela only spend time with the father supervised at a contact centre on a monthly basis, and interim orders that the existing orders be suspended and that the father spend no time with the children. The father filed contravention orders, alleging that the mother had not enrolled in the post-separation program and that she had prevented Angela from spending time with him in particular school holiday periods. Jeremy also filed an amended response to the mother's Initiating Application. In it he sought Final Orders for their daughter to live with him, for him to have 'full parental responsibility' and for the child to have no contact with her mother for at least six months after coming into his care before commencing supervised time with her. He sought no Interim Orders.

In October 2012, Donna said in her Affidavit that she did not send Angela to her father for the school holidays because when she returned on a holiday visit with her father she complained that her father had been rough with her and she had a sprain as a consequence.

The mother had taken her to the doctor but the examination was normal. At the conclusion of the Contravention hearing, the father referred to a document that he had tendered into evidence. That document was a letter written to the Court by him in which he asserted that he could not continue in proceedings in the Family Court in respect of the two children he shared with the respondent mother. He asked the Court to make a 'No contact' (in which he was to have no contact) order for the sake of the children being protected from the ongoing conflict.

In October 2012 and March 2013, there was a hearing before Judge B. Both parents were unrepresented. This was the second occasion on which Donna had been found to have contravened Orders. The Judge found the contravention allegations proven. It was ordered that the mother enter into a bond to be of good behaviour for a period of two years subject to these further conditions:

- *To comply fully with the Orders made for James and Angela to spend time with and communicate with the father, save as otherwise agreed with the father,*
- *To attend appointments with a Family Consultant for counselling, supervision and assistance in compliance with the Court's Orders.*

It was also ordered that the children spend time with the father, as may be agreed between the mother and the father, but in default of agreement, every alternate weekend during school term, commencing March 2013 from 9am on the Saturday until 5pm on the Sunday.

In October 2013, Jeremy filed a Notice of Discontinuance in the Family Court. He wanted all existing Orders to be discharged.

FRANCES AND ANNA'S STORY

> *"I feel the thing missing [from the story] is being able to express the traumatic experience that my children and I went through in terms of constantly being denied natural justice and human rights…by the very people who are being paid to do this job but instead were abusing us even more by proxy".* (Frances and Anna's mother, Sandra).

In 2003 Sandra and Rick married. Following Frances's birth in 2004, the parents attended relationship counselling. Sandra stated that Rick had a controlling personality particularly in regard to her seeing her parents, limiting her social activities and accessing finances.

In 2005, Anna was born and in 2007, the parents separated. Sandra and Rick attended a Family Relationships Centre, and a parenting plan was made. This plan remained in place until 2009 when Court Orders were made. During these years the children lived with their mother and saw their father every weekend, three nights per fortnight.

In 2008, a Family Report was prepared which, in summary, concluded that the mother demonstrated excellent skills with the children (aged four and three years). While the father was warm and appropriate with the children during the observation, he was assessed as not as physically nurturing as was the mother. Later that year, the matter came before the Court

in relation to parenting arrangements. Sandra was, at that time, seeking to relocate with the children near her parents for support in relation to her chronic illness.

In early 2009, Final Orders were made in the Federal Magistrates Court. The Orders provided, in summary, that the parents have equal shared responsibility, that the children live with their mother and spend time with their father six nights every fortnight, being alternate weekends, every Wednesday night, alternate Tuesday nights and half the school holidays. The Orders provided, amongst other things, that Rick and Sandra were required to attend mediation if issues arose relating to the children.

Rick and Sandra attended several sessions of mediation in relation to the children. Sandra had concerns about the children and their distress in seeing their father. Frances appeared very anxious and was often complaining of a sore tummy, and Anna was crying a lot before and after visits with their father. After the children returned home from Rick's house, the mother observed Anna to hold her crotch and rock back and forth. On other occasions Anna would say words to the effect of "my bottom hurts". When Sandra picked up Frances from sick bay at school, Frances would say "do I have to go to Daddy's". The mediator referred the children to a children's psychologist, and they began attending in 2010. The psychologist reported to the mother that Frances liked most things except for "going to her dad's". Anna was distressed and would not talk to the psychologist.

Frances was seen by the family GP, who diagnosed Frances as having anxiety. The school also noted Frances as complaining of abdominal pain. Sandra reported that the children continued to not want to visit their father. Later that year, Sandra observed the children playing with each other on a number of occasions in an inappropriate sexual manner, and at times Frances was sexually inappropriate in her behaviour towards her mother. Frances would lie behind Anna, thrusting her pelvis and poking Anna's bottom with her finger. Sandra said that this would occur after the children returned from spending time with their father. Frances began to engage in risky acts, stating that it would be good if she hurt herself as she "won't have to go to Daddy's". Frances had also told her mother that she would give her "a doodle kiss", and attempted to put her head into her mother's crotch, and that she wanted to suck on her mother's bottom. Frances named her father as having made comments about "sucking bottoms", and also referred to her father on the phone as a "bottom man". Sandra reported Frances's behaviour to the GP.

In November 2010, when the children were aged six and five, after again being observed lying on each other and Frances trying to poke and touch Anna's bottom, Frances disclosed to her mother when explaining the behaviour that "daddy does it to us".

In the bath, when the mother was further questioning and video recording the children about their father, Frances further elaborated that her daddy puts his finger in here (pointing to her vagina), saying it felt like "an inside tickle". Sandra reported that Anna alleged "daddy tells me not to put my clothes on and takes photos of me with my legs open".

Sandra phoned the Police, who she reported as being particularly concerned about what Anna had said, and they were going to interview Rick. The Police also advised the mother that she should not video the children.

Later, the Police rang Sandra back and she reported that their disposition had changed. Sandra states that they advised that they were more concerned with her (than with what the children had said) and they knew she wanted to move locations. The Police also advised Sandra that the children had to return to Rick's care for contact the following day. The Police Child Protection team were also organised to interview the children that same month.

During the interview, Frances identified body parts and stated that her daddy pokes his finger in her front bottom, but didn't take photos of her naked, only when Anna is naked, because she told her. Anna disclosed that no-one had touched her private parts, although stated her father takes photos of her standing on the couch naked.

Rick was interviewed by the Police Child Protection team. He denied the allegations in relation to both girls and stated that the allegations were the latest chapter in the mother's ongoing hostility towards him and his relationship with his children. He recounted that there was some concerning behaviour, particularly Anna's masturbation and a discharge.

The children subsequently attended the child psychologist. In the presence of the psychologist and Sandra, Frances said, "Daddy takes naked photos on the black camera and normal photos on his phone".

Following this, when Frances was seen by the GP for an illness, Frances disclosed to the GP in the presence of the nurse and Frances's mother that, "I don't like going to dad's house because he touches my private parts and yells at us". The GP recorded Frances's conversation and contacted the Police. The Police called the Police Child Protection team, and the caseworker called Sandra on the telephone. After a meeting with the nurse and Sandra, the caseworker informed the mother that the children have not been sexually assaulted, and when the nurse spoke about Sandra being a caring a mother, the caseworker alleged that Sandra had a "general anxiety disorder". The paediatric consultant of the Children's Hospital advised against a medical examination for Frances, unless there was said to be a valid disclosure.

In January 2011, Rick voluntarily met with the Police Child Protection team for an electronic recorded interview of suspected persons. The Police were impressed with his "openness and he appeared very honest and trustworthy." The Police Child Protection team had concerns that the allegations were a malicious attempt by the mother to vary the Court Orders that granted shared custody amongst the parents, because she wanted to move to be closer to her parents.

Following this, Frances continued to disclose her father touching her "private parts" to her psychologist, including drawing pictures of the same. To her mother, she disclosed that "daddy said I have a bruise on my private part and made me lie down on the bed, pulled her pants down and put cream on it".

In March 2011, the children ceased their sessions with the child psychologist and the psychologist referred them to a protective behaviours counsellor as it was thought that it would be more beneficial. The children commenced seeing the counsellor and in the worksheet statement provided by the counsellor, which read "this is someone I don't like have touch me", Anna wrote "my dad".

The following month, Anna reported to the counsellor that after showering, when the father was naked, he touched both her and Frances on the vagina. Anna then checked with her counsellor whether her "father was going to find out that she told the secret and she would be in trouble". A further report was made to the Child Protection Authority Hotline.

The disclosures from the children continued throughout the year, including Anna alleging that the father gave her sloppy kisses on her mouth, with his mouth open, and with his hand on her bottom. Sandra made a report regarding the sexual assault allegations. During this time, Rick continued to have contact with the children.

On one occasion, after contact with their father, the children were distressed with soreness in their vulval area. On examination Frances was found to have left labial swelling, redness and a small internal vaginal graze. Anna was found to have a very red and swollen urethral opening with a graze to the inner part of her vagina. The GP's opinion was "*inappropriate interference in the genital region or self-inflicted harm; though having known the children for all of their lives, doubt the latter."* The GP advised that the girls be taken for a formal examination, however at the hospital, Sandra was told that "since there is no disclosure and the children won't talk, we are not going to do an examination and put the children through anymore distress". Sandra said that the hospital had been advised by the Police Child Protection team not to examine the children. Sandra reported the incident to the Child Protection Authority Hotline.

The GP noted, after having spoken to the Child Protection Authority that *"the past history of reporting to [the Child Protection Authority] by the child psychologist due to raising concerns of the wellbeing of these two girls have similarly been dismissed by various authorities and agencies. I have been questioned by [the Child Protection Authority] agents in the past and given what help I can but it does not seem to be considered."*

Ten days following the initial examination of the girls by the GP, Sandra reports that after contact Anna was crying, stating she had a sore bottom. Anna was again examined by the GP, who found her to have a red, swollen vagina but no graze. Given the previous outcome, the GP gave the mother the hospital's number and told her to call them. The hospital's response was that the children would have needed to make a disclosure to the Police Child Protection team before they could examine them. Sandra sought legal advice regarding this incident.

In June 2011, the counsellor decided that the protective behaviours program, which had been occurring since March that same year, would be ceased as the children were too distressed. The counsellor wrote a letter to the Police Child Protection team outlining the children's distress and concerns.

Sandra reports that she continued to observe the children to have red and swollen vaginas and Anna was observed by her mother to hold her crotch, rock and cry. Frances disclosed to her mother that she woke in her father's bed with a sore bottom. She was seen again by the GP and no conclusive diagnosis made. Frances was upset after returning from seeing her father and told her mother that her "daddy knows we are talking to people and that he is going to go to the doctor to find out". She further added that "while he was holding his phone, he made us say that he didn't ever touch our private parts". When the mother asked, "And what did you say?" Frances replied, "I did say that because I'm scared of him".

In mid-year, Rick commenced a new relationship. Sandra reports that she noticed that although the children still return home at various times distressed, the incidents of genital soreness become less frequent.

In October 2011, five months after the children were examined by the GP, the children were interviewed by the Child Protection Authority at their office. Frances spoke about good things about her father but also about him hitting her and yelling at her. When asked about people touching her vagina and her bottom she basically stated that no-one touches them. Frances does indicate that she slept in her father's bed and woke up and her bottom was stinging. Anna was distressed, crying and did not want to draw her father, nor talk about any events. The interview was terminated and noted as failing to substantiate a risk of sexual harm. No further action was taken. The interview was not recorded, and when the children spoke to their mother following the interview, each informed her that she had spoken about what their father did to them. Later that year, Rick and his new partner Melanie lived together.

In 2012, Sandra reported that the children continued to make disclosures about their father, and Sandra reported that Frances said she only liked being at her father's when Melanie got home from work. Sandra then made a complaint to the Child Protection Authority. She reported that the head of the Division told her to stop ringing the Child Protection Authority Hotline, perhaps re-engage the children with a psychologist and get the school on board.

Following this, Frances informed her mother that her father gave her a massage and put his hand inside her underpants and touched her bottom and it really hurt. Sandra made a further report. Frances was interviewed at school by the Child Protection Authority. Sandra said that Frances disclosed the sexual assault.

After the interview, Frances returned home with her mother. Sandra reported that when crossing the road and telling Frances to be careful of the traffic, Frances stated "I don't care if I get hit by a car, then I won't have to go to Daddy's". Similarly, when Anna and her mother were playing on a trampoline, and Anna fell, she told her mother, "I wish I fell through and died and then I wouldn't have to go to Daddy's house". Anna also began wetting more often.

Following Frances's interview with the Child Protection Authority, and when it was then time for the children to go to their father's, Frances appeared particularly distressed and said "I'm going to be in big trouble with daddy". The mother felt worried about this and decided to record the children's time with their father on two occasions. Frances told her

teacher and the Principal that afternoon that she did not want to go with her father for his time of contact. The children were made to go. Their contact with the father was recorded. Sandra later had this recording transcribed. In summary:

- The father demanded that the children repeat the allegations that they have made against him.
- He suggested the mother had made false allegations about him and the Police considered charging her, that the Police don't believe them and that the government can take them away.
- He constantly demanded that they tell him that they love him. Other than distress and crying by the children, there is little said by them, as he does not give them an opportunity to respond.
- At one point, Frances said that she wanted an apology, which her father refused saying: "Can't apologise when there is no problem; Frances look me in the eyes will you. Look me in the eyes ok, so what are you saying? No, no, what are you saying? What's the serious issues? So how can you say such bad things about me? Do you think you might have got it wrong darling? Is it possible? You're wrong mate". This caused distress and the child cried. There was no attempt to comfort her. Later he went on to say "Why are you looking at each other? You look scared?".
- "And that's why the Police spoke to you both…I'm sorry to say they did not believe you both, they're not stupid…they know when kids have been put up to say things…".
- "Now you can't tell me what I'm guilty of Frances, ok? I got to hear it. What am I supposed to be guilty of? Anna you know what I'm guilty of? You heard the same bullshit? What is it? What am I supposed to have done? What am I supposed to have done? Tell me. Tell me. You don't know? I don't know either. What is it? A load of rubbish. Hurtful rubbish. Hurts you and it hurts me".
- The father then spoke about 'rubbing' Frances as a "completely normal thing for a dad to do for his daughter. Okay? It's completely normal, okay? You know, parents, adults look after children they can touch their children".

This recording was later heard by a Professor/expert in child abuse and child protection at the request of the mother. The expert commented: *"the CD and the transcript clearly shows that over a prolonged period of time, the father consistently psychologically abuses, harasses, badgers and endeavours to manipulate and brainwash his children aged six and eight years."* The expert then concluded; *"Listening to the recording was one of the most harrowing experiences that I have had because of the prolonged and continuous ranting."*

Anna's incontinence became problematic and she continued to assert that her father puts his finger in her vagina. The mother re-engaged the children with a psychologist and an appointment was made for Anna to see a paediatrician in relation to her incontinence. The paediatrician diagnosed that it is anxiety related.

Later that year, when seeing their separate psychologists for play therapy, the children began drawing pictures depicting genitalia and breasts. Frances informed her psychologist that her father draws rude things. Both children subsequently disclosed statements of sexual assault by their father to their respective therapists. Anna commented on where it happened and that she was touched in "both holes". Frances told her psychologist that her father made her scared and that he "touches my private parts". She also said "dad denies it and says it is mum's fault". When asked if she had three wishes, her first was to not go to her father's place anymore.

Further notifications were made to the Child Protection Authority Hotline to be investigated by the Police Child Protection team.

The detective from the Police Child Protection team with a Child Protection Authority worker interviewed Anna aged 7 years. The interview was suspended after approximately five minutes as Anna became distressed and commenced crying. She was comforted by her mother and then Police Child Protection team Officers spoke again to Anna alone in the interview room for another 25 minutes.

During this unrecorded time, Anna disclosed three incidences of sexual assault whereby her father asked her to lie on the bed with him and inserted his finger into her vagina, she was crying and "he did not stop". Another occasion was in the bathroom and one was in the living room. Anna disclosed that the last time she spoke to the Police Child Protection team Officers she got into trouble from her dad.

It was decided that due to the fact that Anna was not willing to participate in the formal interview and the fact that there was no supporting evidence, the matter was closed. The Police Child Protection team and Child Protection Authority advised Sandra that their professional view was that Anna's presentation *"was relating to a fear that she hold (sic) that her mother would get in trouble if she told the truth*." The Police Child Protection team described Anna's disclosures as appearing rehearsed and mechanical, with no or convoluted detail surrounding the disclosure. The Police Child Protection team Officers contacted the father and informed him of the Police Child Protection team investigation and the fact that the matter would not be substantiated and now closed. Sandra covertly recorded this interview. On the recording Anna had been told by the Police Child Protection team she was lying when disclosing the sexual assault by her father. The mother, with the support of a qualified academic with sexual assault expertise, after having analysed their own recording of the interview, made a complaint to the Ombudsman in relation to dishonesty, Police misconduct and unprofessional behaviour when interviewing a child.

In September 2012, Sandra filed a Form 4 Notice of Child Abuse, Family Violence or Risk of Family Violence. She also filed an Application with the Family Court seeking Orders which would have the effect of suspending the father's time with the children.

The father also filed an Application seeking in summary that the children live with him and spend time with the mother under supervision. Given the conclusion by the Child Protection Authority that Anna was at risk from the mother's continuing hostility towards the father, and her pursuit of allegations which the Child Protection Authority found unsubstantiated,

led them to conclude that the real danger to these children emanated from the mother; they sought consent of a safety plan on the mother.

Sandra had to execute this plan by not taking the children to any doctor or hospital to be examined. In the following month Frances's psychologist reported Frances as suffering from Post-traumatic Stress Disorder. The psychologist recommended therapy for one year and having no contact with her father.

In October 2012, the matter came before a Judge and Interim Orders were made in the Family Court reinstating, for the most part, the arrangements as provided for in the previous Orders. Arrangements for the children's living basically remained the same, with the children living with the mother but also living with the father one weeknight each alternate week, which included overnight, alternate weekends and for half of the school holidays and special occasions.

The mother was restrained from causing the children to attend any counsellor, psychiatrist, therapist and/or social worker or doctor (save in the case of emergency) without the written consent of the father or Order of the Court.

It was further ordered that a Children and Family Psychiatrist be appointed as a Single Expert Witness to enquire into and report upon matters relating to the welfare of the children. An ICL was also appointed for the children.

The Judge's Interim comment regarding the mother was very severe, having stated: *"On the material, in particular the reports of the [Child Protection Authority] and its failure to find substance in those reports, the Court is of the view that abuse in the father's household is less likely than in the mother's household."*

Sandra reported that she was advised by two high profile barristers that she would lose her children. The matter was listed for final hearing early 2013 but was adjourned until July 2013. During this time, the father's partner was also due to give birth to their child.

The father had described to the Police Child Protection team Anna's bed wetting as either due to the water noises in the home, deliberate or due to the number of interviews she has undergone. The graze on her vagina he believed was either caused due to her masturbating, or from a fall. Both children disclosed accounts of sexual assault episodes by their father to the Consultant Psychiatrist during the Psychiatrist's assessment of them.

The matter went to Court. The mother was on the stand for two days. The father represented himself. Based on the legal advice, the Consultant Psychiatrist's report supporting that no sexual assault had occurred and the Judges harsh criticism of her, Sandra asked if the parties could reach an agreement.

The mother and father reached final Consent Orders whereby:

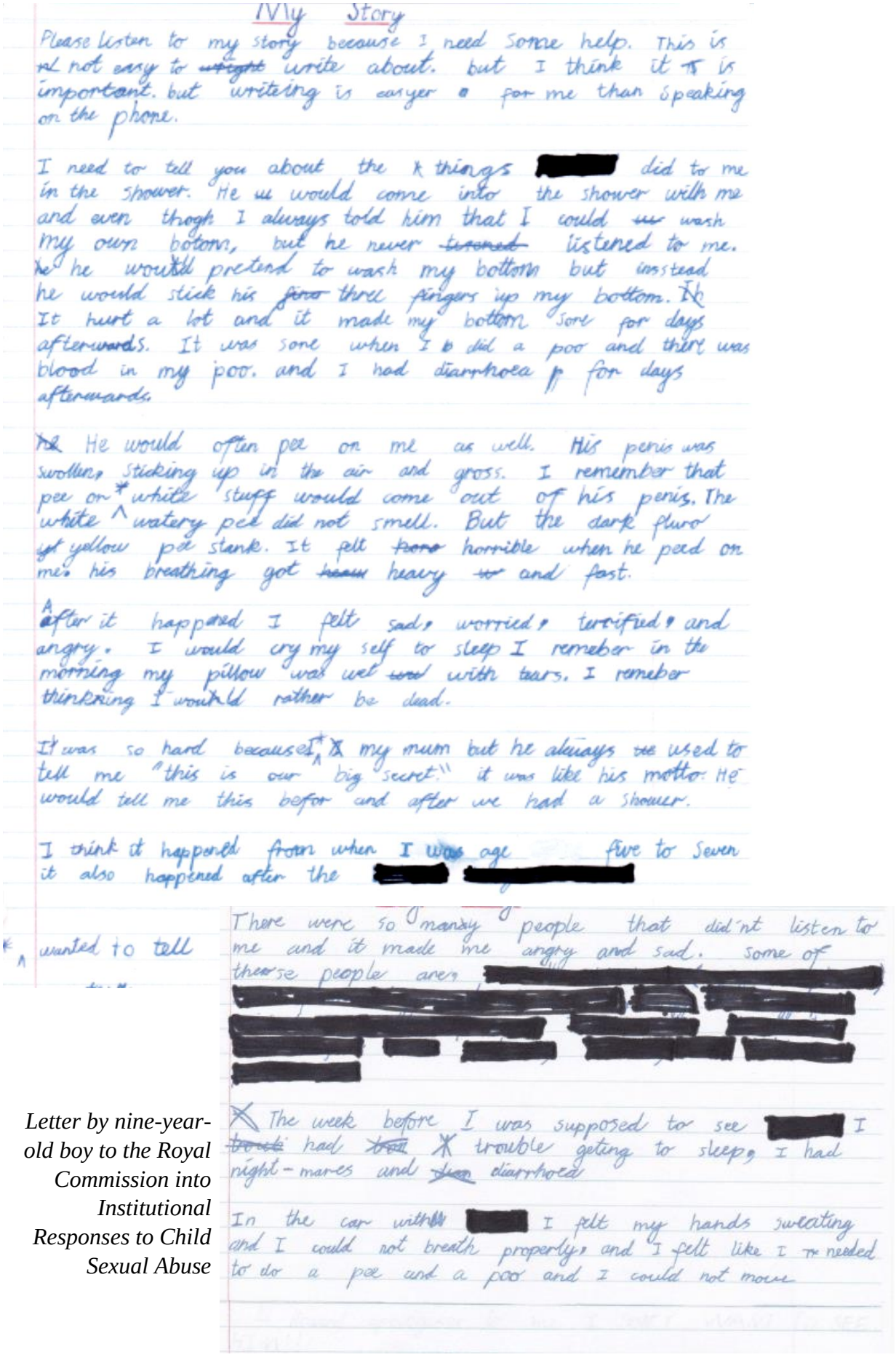
- *The parents have equal parental responsibility except as otherwise provided by these Orders*

- *The children live with the mother*
- *The children spend alternate weeks with the father and seven nights in the holidays*
- *The mother has sole parental responsibility for the children's health.*

Following the Court hearing, in 2013 and up until the end of 2014, the children continued to complain to their mother that they did not wish to go to their father's, and that they were psychologically abused by their father on some of these visits. The children do not complain of sexual assault on these visits.

Towards the end of 2014, Melanie separated from Rick and took their baby with her. Following this, the children complained more about not wanting to see their father, and they become more distressed on visits. In December, the children refuse to leave the mothers home with their father, and he did not force them to go.

In January 2015, the children continued to refuse to leave with their father when he arrived to collect them. Frances locked herself in a room and refused to go. Frances also informed her Principal that she did not want to go to school, because she is scared of her father. Both children commenced sending their father text messages every alternate weekend and school holidays to say they were not coming to his house. Frances and Anna did not see their father in 2015, nor in 2016. Sandra said that she and the children continue to live in the same place with no intention of moving.



My Story

Please listen to my story because I need some help. This is not easy to write about. but I think it is important. but writeing is easyer for me than Speaking on the phone.

I need to tell you about the things [redacted] did to me in the shower. He would come into the shower with me and even though I always told him that I could wash my own bottom, but he never listened to me. he would pretend to wash my bottom but instead he would stick his three fingers up my bottom. It hurt a lot and it made my bottom sore for days afterwards. It was some when I did a poo and there was blood in my poo. and I had diarrhoea for days afterwards.

He would often pee on me as well. His penis was swollen, sticking up in the air and gross. I remember that pee on white stuff would come out of his penis. The white watery pee did not smell. But the dark fluro yellow pee stank. It felt horrible when he peed on me. his breathing got heavy and fast.

After it happened I felt sad, worried, terrified, and angry. I would cry my self to sleep I remeber in the morning my pillow was wet with tears. I remeber thinking I would rather be dead.

It was so hard because I love my mum but he always used to tell me "this is our big secret" it was like his motto. He would tell me this befor and after we had a shower.

I think it happened from when I was age five to Seven it also happened after the [redacted]

wanted to tell

There were so many people that did'nt listen to me and it made me angry and sad. Some of theese people are [redacted]

The week before I was supposed to see [redacted] I had had trouble geting to sleep, I had night-mares and diarrhoea

In the car with [redacted] I felt my hands sweating and I could not breath properly, and I felt like I needed to do a pee and a poo and I could not move

Letter by nine-year-old boy to the Royal Commission into Institutional Responses to Child Sexual Abuse

CHAPTER 4

This Chapter explores the issues impacting on the family law decision making process in its role to ensure that the protection, safety and best interests of the child are safeguarded.

> *A study of allegations in children's proceedings in Victoria and South Australia by the Australian Institute of Family Studies (Smyth, Moloney, Weston, Richardson, Qu and Gray, 2007) found that allegations of parental abuse of children made up 22-24% of the general litigants sample, but 11-46% of cases requiring judicial determination, illustrating that these cases are more often formally litigated, rather than dealt with at a pre-court negotiation stage. Cases that progressed to a defended hearing were not only more likely than others to include allegations of child abuse, but also more likely to involve two-sided allegations. While cases involving allegations of sexual abuse were few in the general litigants sample (3% of both Family Court and Federal Magistrates Court cases), they made up a larger proportion of judicially determined cases (11% of those in the Family Court).* (Myers, 2013)

4.1 Family Law Approaches to Allegations of Child Sexual Assault

4.1.1 Concept of Unacceptable Risk

One of the functions of the Family Law System is to ensure the protection of children against risks, a role that can be complex when allegations of CSA arise. As noted in Chapter 1, Disclosing CSA, particularly when the alleged perpetrator is a primary caregiver, is notoriously difficult. Assessment of allegations of CSA are extremely complex in any environment. When allegations are raised within the context of the Family Law System, this is particularly evident.

The Family Law System is not charged with investigating allegations of CSA, but must rely on the information presented to it when making decisions as they relate to the level of risk to a child. When making these decisions, the Court is discouraged from making a definitive conclusion, on the balance of probabilities, that assault has or has not occurred (Fogarty, 2006; Nicholson, 1999; Parkinson, 1998; Roebuck, 1996) as a positive finding is considered 'subservient and ancillary' to determining what is in the best interests of a child (*M v M*).

The role of the Family Law System, a court of civil jurisdiction, is not to make a positive finding regarding criminality of actions and, often, even whether CSA occurred. This is more appropriately left to the criminal courts that are charged with making this determination along with any subsequent punishment for perpetrators found guilty. As evidenced in the case studies presented in this report, the Family Law System has either become preoccupied with finding whether assault occurred in order to determine if a child is at risk of sexual assault, or conversely, the Courts, family law practitioners and officials conducting investigations have sought to avoid

dealing with the substance of the allegations, on the grounds that they are subject of a family law matter, which, therefore, leads to insufficient information being available to the Court to make a finding regarding risk to the child. However, it is important to note, that when the Family Law System becomes focussed on whether or not there has been a finding as to whether or not sexual assault has occurred, particularly in relation to the criminal justice system, the Court is shifting its focus of proof from a 'balance of probabilities' to 'beyond reasonable doubt'.

As the law stands in Australia, after assessing all information available, the Court should make a decision withholding custody or access to a parent if it would expose the child to unacceptable risk of harm (*M v M*). This 'test' was created by the trial judge of the *M v M* matter and was upheld by the High Court upon appeal. The trial judge explained that he was unable to find, on the balance of probabilities, that the father sexually assaulted his four year old daughter, but refused to give the father access due to a risk of endangering the welfare of the child (*M v M*, per Gun J). As Fogarty (2006), a former Justice of the Family Court, explains this test,

> "*essentially directs the courts to an assessment of the 'chances' of the risk occurring and the magnitude of potential harm if it did occur, and requires a balancing exercise of advantages and detriments. That is, it requires the court to identify the nature of the risk in the particular case, the degree of risk that may occur and the harm that may be caused if it does occur. It requires an evaluation of all the risks and advantages and realistic options; all to be done in the context of the best interests of the child*."

This decision has been criticised for allowing suspicions and doubts to form the basis of the Court's conclusion or reversing the onus where, unless allegations of CSA can be affirmatively proved, the Court should not withhold custody.

However, it is apparent that some judgements place undue emphasis on the consequences to the alleged abuser as a starting point "and (give the) suggestion it may be better to arrive at a false negative than a false positive decision, rather than emphasise that the interests of the child are paramount throughout," (Fogarty 2006). As illustrated in the Judges by *Re W* (at 18), the focus on Court considers the impact of denying a parent custody if such a false positive decision is made:

> *"unless such a rigorous approach (the very high standard by which a court needs to be satisfied on the balance of probabilities that something has occurred) is taken where the often-inevitable result of a positive finding is a cessation of the relationship between parent and child, there is a major risk of inflicting upon the parent and child the disastrous effects of a positive finding that is reached in error."*

The potential impact on the child, where the courts allow contact despite allegations or disclosure of harm can be devastating for the child. Children can suffer a range of psychological and behavioural problems, from mild to severe, in both the short and

long term. These problems typically include depression, anxiety, guilt, fear, withdrawal, and acting out (Briere & Elliot, 2003; Cutajar et al, 2010). Not being believed or listened to can only compound these impacts.

These decisions are also the most difficult for Judges as it requires a decision to be made based upon information that is often highly disputed sometimes with no evidence to prove the allegations one way or the other (Chisholm, 2011; Parkinson, 2015). Internationally, Judges have also struggled with formulating an appropriate way of ascertaining how, and when, to protect a child if there have been allegations of harm to a child. When deciding a CSA matter, a Judge in the United Kingdom noted that, whilst there were many relevant facts to consider, some examples of facts which may be relevant to establishing whether there is a risk of harm to a child in the future include: any history of sexual assault or abuse by the alleged offender, history of family members, the state of relationships within the family, parental attitudes, physical assaults, threats, abnormal behaviours by a child, unexplained or unexpected omissions, unsatisfactory responses to complaints and any other facts which, if considered in isolation seem trivial, but viewed together demonstrate future risk of harm (Lord Nicholls in Re H & Ors (Minors) (Sexual Abuse: Standard of Proof) [1996] as cited by Roebuck, 1996). We would suggest this is a way forward, where there is standard inclusion of an holistic assessment and one that gives high regard to the observations and views of those to whom the child and family is known.

Drawing by eight year-old girl

The unacceptable risk test is one that requires much time and effort from all involved in these matters, from lawyers and judges to experts providing evidence (Fogarty, 2006), as the consequence of ceasing access on false grounds can be devastating to both the child and parent. The requirements of Family Law legislation to both ensure that a child's right of a meaningful relationship with both parents and to ensure that children are protected from abuse creates an inherent conflict. Historically, during interim proceedings, academics have commented on the likelihood that decisions at interim hearings are more than likely to prioritise the maintenance of a relationship with both parents and maintain contact if possible (Dewar & Parker, 1999). Further, (Rhoades, Graycar, & Harrison, 2001) found that Judges were concerned with ensuring that one parent did not obtain a tactical advantage over the other before a final hearing and therefore made orders providing for equal contact and parental responsibility, sometimes in the face of strong evidence that would justify a change. These authors point out, and Bravehearts agrees, that such decisions are being made on the basis of the parents' interests, rather than having regard for the child's welfare (Rhoades, Graycar, & Harrison, 2001).

It appears from the literature that the Court is unwilling to make a finding of unacceptable risk due to the limitations this may make on change in the future relationship between the alleged offender and the child. Specifically, the Court has commented that there must be fulsome discussion of all components that may lead to a conclusion of unacceptable risk of harm to a child. Justice Warnick provides commentary on the decisions in *Napier* and suggests that a finding of unacceptable risk may "come down between parent and child like an iron gate, that no subsequent efforts can raise", and therefore suggests a close examination of all steps leading to a finding of unacceptable risk in order to illuminate paths which could be explored in the future for change.

> *Australian family law is unashamedly pro-contact. Consequently, this court will bend over backwards to establish or preserve a worthwhile relationship with the poorest of parents provided adequate protective measures can be put in place to prevent any relevant risks. This approach is based on the assumption that a father is much more than the worst thing he has ever done.* (Justice Carmody, *W v G (No 2)* (2005) 35 Fam LR 439)

Bravehearts would dispute the assumption that a parent is "much more" than the "worst thing [the parent] has ever done". The harm committed against a child and the lasting impacts of trauma resulting of the sexual assault, abuse or neglect of a child is devastating and the protection of children from this harm is the most important consideration. We are pleased to have seen changes that shift the primary focus for the Family Law System to the right for the child to be safe and protected from sexual

assault, harm and risk. The Courts' focus must not be about maintaining relationships at all costs.

In Their Own Words

- "Feel terribly emotionally and financially beaten like I have been in a war zone. The Family Court is an ABUSIVE and terribly UNTRUSTWORTHY and NONPROTECTIVE INSTITUTION as an Australian Commonwealth entity. Has HUGE POWER to destroy children and families under TOTAL SECRECY. The scariest part is that the Australian Population ASSUMES it is fair and just and protective. IT IS NOT. IT IS AN ABUSIVE INSTITUTION and those within it KNOW IT! The Australian residents have not a clue. I find this TERRIFYING and all children in Australia are vulnerable and unprotected."
- "I would like my story to be included in the Family Court Project as I was horrified to discover that things remain unchanged in relation to these matters 25 years later. Everyone expects that children will be protected from sex offenders by the law whoever they are. This is what I expected when I first became involved with the Family Court and had no idea that a sex offender's right to have contact with his children would be protected by our legal system over the child's right to be safe from assault. I am also despairing that mothers today are still being branded as vindictive and manipulative despite other evidence to the contrary as in my case. I really thought we had progressed but apparently not - this is tragic."
- "I feel that women who dare to protect their children are denigrated without substantiation and children are the most unlistened to parties in the entire process. Our children have no voice and no choice in any matters concerning their abuse."
- "My opinion is that if there is any suspicion of child sex abuse, that should trump the need for relationship between the alleged perpetrator and his children. However, that does not seem to be the case in the Family Court system."
- "It took 9 years and 407 court cases and lots of money to have the family court seriously taken into consideration the children's fears and that they have been seriously traumatised by placing them in danger and attending contact. Our experience with family court has seriously impacted our lives."
- "The courts have to find a better way to help abused children - something other than a system like family courts that assumes all relationships are mutual, all conflict is acrimonious and all family breakdown is because of the whole family unit. Not so, when you live with an abuser, no reason, no kindness, no logic and no fairness will help you. You will be punished whatever you do and how ever you do it. If you break free, your children will become the brunt of the harm. We need to find another way to help children against parents who are perpetrators."

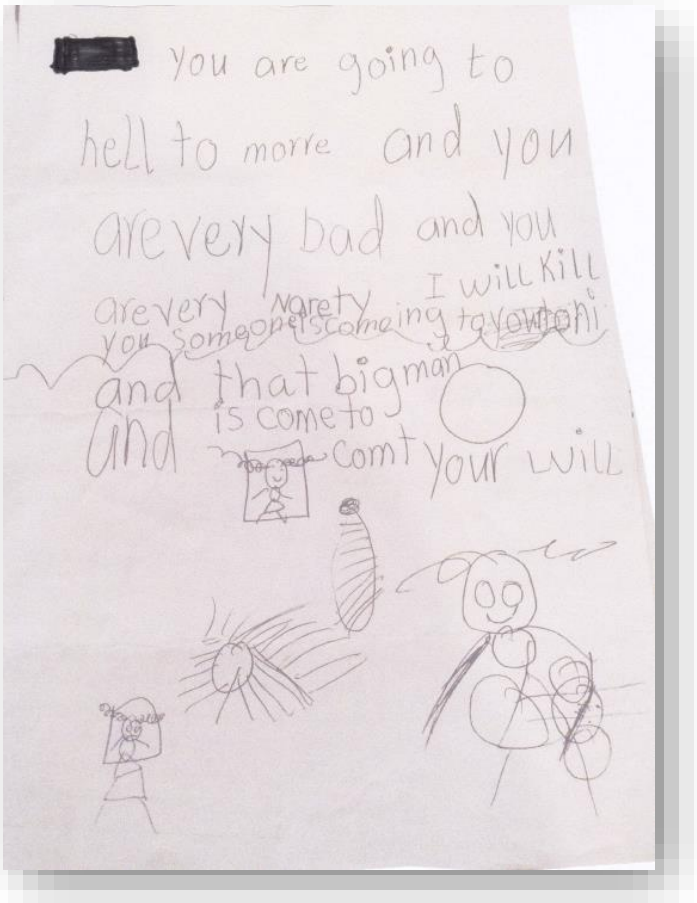
4.1.2 Process of Investigation and Evidence

While a significant number of matters that are tried in the Family Law System involve allegations of CSA or child abuse more broadly (Moloney et al., 2007), Courts do not have an investigatory role in such allegations. The Family Law System relies upon expert

witness and report writers, independent children lawyers, child protection authorities and others, to provide the Court with information to assist in the decision-making process where allegations have been raised.

Parkinson (1998) identified the issues relating to assessing the risk of child sexual harm in the Family Law context, stating that there are challenges "not only [in] how to assess the available evidence, such as it is, but also a challenge of how to reconcile the task of applying the unacceptable risk test with fundamental legal values and modes of thought". Ultimately, Parkinson suggests the need to focus on four key questions:

1. What evidence is there before the Court which gives rise to serious concerns about the child's welfare if contact is allowed with the alleged perpetrator or a residence order is made in his or her favour?
2. What other evidence is there before the Court which might lead the Court to conclude that there is a heightened risk of abuse if contact is allowed with the alleged perpetrator? (including evidence of prior offences and indicators of grooming behaviours)
3. Are there any factors in the case, or options available to the Court, which might operate to reduce the magnitude of risk to the child in the future? (including supervised contact and personal safety programs)
4. Are there other factors relevant to the best interests of the child which might affect the ultimate decision of the Court? (such as a history of family violence)



Child age six – note about her father

In Their Own Words

- "My experience of the court, judges, lawyers, 'experts' was traumatic and very difficult, to put it at its mildest. I am still here, but only because of the support I received from those close to me... I look back now and wonder how I actually survived all of that and still do. I wonder how my children survived and what the long-term impacts on their lives will be because of the actions of our appointed 'experts'."
- "After what's happened to my kids and to me I would suggest not going anywhere near the Family Court."
- "[Every professional I contacted advised me to] do everything possible to keep this matter out of the family courts and the counsellors involved didn't seem to believe they would be heard in the system either. That was another shock to me, that such expertise would be worthless in a system meant to try to keep children safe. Initially I thought they were being meek but I soon realised that they were spot-on in their concerns. The Family Court wasn't interested in hearing from the expertise of either Domestic Violence or child protection counsellors or advocates."
- "All need to be educated in how to best deal with the victim and not to make decision about the outcome of the case before the investigation has even begun."
- "[I believe] that all of the legal representatives should have had a basic understanding of the seriousness of the allegations/the possible consequences of placing a child at risk without considering the evidence they had. They should have listened to me and given me information and options for me to achieve the outcome I needed so I didn't have to fight them too."
- "The Barrister was excellent and totally understood all the information and issues. He was very clear that the case provided by the Father was smoke and mirrors to defuse his responsibility. He seemed to be the only person in the entire court system who understood the behaviour of perpetrators. However, in court he was so up against it. Watching him, I couldn't believe his tenacity as all came out to pitch against him, poke fun at domestic violence survivors and child abuse survivors. All in the court, including the Judge, diminished such abusive behaviours, made light of the abuse and highlighted the women like me who invited such abuse. In terms of child abuse they just negated its existence due to 'Mothers like me' who are vindictive or overly sensitive. I actually felt very sad for my Barrister as he continued to harp on like a dog with a bone about the issues and was regularly dismissed. The system treated him as they do women and children. Although everything he was saying was factual and fair, even I wanted him to sit down and spare himself further humiliation. It was so clear he was never going to be heard."
- "There needs to be mandatory education on an on-going basis as to latest research… and need to be renewed every year. After all most Govt. departments and health professionals have mandatory training in Fire prevention, Safety, etc. why not child abuse and its impacts for lawyers and other personal in this specialised area."

4.1.2.1 Expert Witnesses

Expert witnesses are called upon by the Family Law System when there are concerns about the risk of harm to a child by a parent to "educate or inform the court about the relevant aspects of the witness's speciality to enable the court itself to assess the evidence, which, without that tuition, the court would be unable to do" (Wood, 2001).

Reports prepared by expert witnesses are a vital tool for increasing the focus on the child and issues that relate to them. These reports have the potential to provide for the child's voice to be heard and for their safety and protection to be prioritised.

The reality is that when allegations of CSA are raised in the Court context their assessment is complicated. As Bow, Quinnell, Zaroff and Assemany (2002) suggest, allegations are often made in an atmosphere of complex family dynamics with motives that extend from the parent seeking to protect the child from genuine concerns about risk and harm through to hostility and vindictiveness. Complicating this further is the similar symptomology between children in high-conflict family environments and those who have experienced CSA. The importance in engaging those with expertise in the area of child sexual assault and child abuse and neglect more broadly is crucial to ensure that the symptomology displayed is not mistakenly attributed to high-conflict family dynamics.

One expert witness admitted that while he is "often called on by the Court to assess allegations of physical and sexual abuse" and has provided over 2,000 reports to the Court over his career, he does not have specialised training:

> "As part of training as a child psychiatrist, one is exposed to all forms of potential adversity that could influence a child's development, and sexual abuse is one of those. And so, I guess the training that I would have had is exposure to the various ranges of trauma that children can experience, not specifically sexual abuse, but sexual abuse is one of those areas of abuse" (Rikard-Bell, 2015)

The lack of training in understanding the impact of sexual assault on children and the impacts of both the relationship between a victim and offender and the grooming process is evident in some expert witness practices, including directly questioning a child about allegations of sexual assault and interviewing the child in the presence of the alleged offender (Rikard-Bell, 2015).

The role of expert witness can be a complex one. Allan and Davis (2010) explore some of the challenges facing psychologists in the role as an expert witness, acknowledging that personal bias and taking on the role of advocate for a party may impact on their assessment. An example provided in Allan and Davis (2010), illustrates this potential:

For example, Murrie and colleagues (2008) reviewed inter-rater agreement for scores on the Hare Psychopathy Checklist-Revised during sexually violent predator trials in Texas. They found large discrepancies between the scores reported by experts retained by different sides. In most cases this difference was in the direction of the side that retained the expert and was larger than the standard error of measurement (which is approximately three; Hare, 2003). Alarmingly, one expert was found to be 20 points higher than another expert when retained by the petitioner and 14 points lower when retained by the respondent.

Under common law and as articulated in the *Evidence Act (1995)*, evidence based on opinion is normally precluded, with the exception of expert witnesses, or witnesses with special skills or knowledge. Section 79 of the *Evidence Act (1995)*, states that use of opinion is limited to those who have "specialised knowledge based on the person's training, study or experience" where that opinion is "wholly or substantially based on that knowledge". Brown and colleagues found that these reports were followed by judges in 76% of matters where expert evidence had been sought: "...the most frequent reference of the judge and judicial registrar in reasons for the decision, apart from the individual's circumstance and credibility, was to the findings of the family report" (cited in Australian Law Reform Commission, 1997).

One of the fundamental roles of engaging an expert witness in Family Law System proceedings is to ensure that an impartial assessment is garnered in relation to gathering evidence. The expert witness must act as an independent 'advisor'. A common concern, however, is that there is a lack of objectivity among some exert witnesses (Freckelton, Reddy & Selby, 1999) and a perception held by many, and supported by Bravehearts, is that "all evidence is selective, and it is selected on the basis of what will help the party to win, not on the basis of whether it will help the court to find the facts correctly" (Sperling, cited in Family Court of Australia, 2002). In *W and W* (2001) (Fam CA 216) that Court found that the expert witness was 'extremely partisan' and the Court was unable to accept his 'professional objectivity'.

Story ending by eight year-old girl

In its own review of expert witnesses in 2002 ('The Changing Face of the Expert Witness'), the Court identified the lack of objectivity and the increased costs to parties to call on their own expert witnesses as two major issues. In a 2012 evaluation on expert witnesses in the Family Law System in the United Kingdom, Ireland et al found major issues with the use of expert witness in the UK (including qualifications, training, and assessment methodologies), supporting calls for consideration to be given to the use of multi-disciplinary teams of experts (Tucker, Moorhead & Doughty, 2011). Bravehearts echoes this recommendation.

In Their Own Words

- "I believe it is negligent for an unqualified psychologist, non-expert in child sexual abuse, to make recommendations to the court, and reach conclusions about child sexual abuse, when she has no training or experience in that field. ...Because (the family court consultant) falsely concluded I was mentally ill and the sexual abuse did not happen, all future reports of the child sexual abuse were ignored by police and (child protection)."
- "The court-appointed psychologist said that I had emotionally abused my daughter by taking her to doctors to document her bruising, which in her opinion was FAR WORSE than actual sexual abuse if it did indeed happen."
- "The main issues I can see, is… the lack of expertise evident in the reports made by often unqualified Psychologists, completed after a short meeting with the Child and parents, which are then accepted as gospel by the courts."

4.1.2.2 Independent Children's Lawyer

Under the *Family Law Act* an Independent Children's Lawyer is defined in s4 as a lawyer representing the child's interests in proceedings under an appointment made through a court order under s68L(2). It must be noted that the Independent Children's Lawyer is not a representative of the child themselves; instead, the role of the Independent Children's Lawyer is to be an independent representative of what is best for a child. An Independent Children's Lawyer is tasked with making an independent assessment of all information in a matter in order to ascertain what would be in the best interests of the child and represent these through submissions to the Court.

In cases where there are allegations of CSA, an Independent Children's Lawyer is essential to assist the proceedings and bring focus to the child. Within the role of the ICL it is stated that their role is to facilitate the participation of the child in the Court proceedings, the extent of involvement depends on a variety of factors such as age, emotional state and developmental level (Family Law Court of Australia, 2007).

As stated by the Family Law Court of Australia, "taking account of children's perspective can have beneficial effects on children's mental health, coping capacity and development" (Ross, 2012). Previous research suggests that there are a number of concerns and issues found when Independent Children's Lawyers are taking a child's view into consideration, for example; the lack of weight given to a child's opinion has previously been identified as an issue (Family Law Court of Australia, 2007). ICL's are lawyers and not trained in child development making it difficult for them to understand the symptomology and behavioural indicators of a child who has been sexually harmed and how this impacts on their relationship with the offending parent.

Drawing by six year-old girl

A study by the Australian Institute for Family Studies found that while there were three overlapping roles of the Independent Children's Lawyer (facilitating the participation of the child, evidence gathering and litigation management) ensuring the participation of the child was seen as the least important function (Carson, Kaspiew, Moore, Deblaquiere, De Maio, & Horsfall, 2014). This is clearly reflected in the reported contact with children. Kaspiew and colleagues (cited in Carson, et al 2014) found that only 35% of ICLs reported "often or always [having] direct contact" with the child or young person, just over half (54%) reported rarely or sometimes having direct contact and 8% reported never having direct contact.

This study also found that there were impacting issues, with a significant number of participants reporting that the training and qualifications of ICLs was inadequate (28% of judicial officers, 27% of non-ICL lawyers and 19% of non-legal professionals considered the training and qualifications of ICLs as adequate) (Carson, et al 2014):

> *In relation to the ICL training and selection process, participants from all professional groups described the potential for improving the selection process (including selecting ICLs with social science qualifications and family law accreditation) in order to raise the level of expertise of ICLs appointed (Kaspiew et al., 2013). The development of a national accreditation program, together with the expansion of ICL training to cover areas such as child development, skills in dealing directly with children and young people, and skills in understanding and responding to family violence and child abuse, were also identified as significant (Kaspiew et al., 2013).*

The Family Law Express report *Neither Seen Nor Heard: Australia's Child Protection Conundrum* (Goddard, 2015) investigated the views of parents involved in cases

where an ICL was engaged. Only 8% of respondents felt that the ICL represented the best interests of their child/ren. Dissatisfaction with ICLs was high (79% stated 'extreme dissatisfaction'), with a number of factors considered:

- 91% of respondents said they were not regularly updated,
- 76% stated that they were not appropriately informed of the role of the ICL, and
- 64% considered the ICL to be poorly prepared.

In Their Own Words

- "FCA refused to acknowledge that my daughter was ever abused. They refused to believe she was at risk because she had contact supervised (sic) by his wife (this included an overnight every 2nd weekend) as well as contact visits during the week. The ICL always believed that my daughter should have contact with her father. My ongoing requests to stop contact or to have an independent supervisor of contact with no overnight contact was an irritation to them but they got a shock when he went to jail."
- *(now Adult survivor) speaks of the ICL and not being satisfied with how they assisted the case* "[There was a] five minute consultation in which nothing was achieved other than asking which parent I wanted to reside with."
- "The ICL… was utterly biased from the start. He adopted the father's views totally. He wanted me assessed by a fifth psychiatrist even 4 previous independent psychiatric assessments of me concluded I was in good mental health. The ICL ignored the mountain of evidence of child sexual abuse, the physical symptoms from doctors, the children's statements from child care, contact centre centres, the CCTV footage, my (child's) anal injuries, his statement to police of anal rape, the supervisors reports, the expert reports…"
- "My attorney and the ICL threatened to take my children and hand them over to the perpetrator."
- "The ICL did not consult the children about the children's wants or views."

4.1.2.3 Family Reports

Unlike reports prepared by expert witness, Family Reports are prepared for the Court by a mediator who is attached to the Court. The purposes of the report is to focus and make recommendation on specific issues that relate to the safety and wellbeing of the child/ren. Former Chief Justice Nicholson notes that the nature and function of the report writer is to provide "short term interventions and prepare assessment reports to aid the Court in fulfilling its responsibility to made orders that are in the best interests of the child" (Nicholson, 1999). They are not tasked with carrying out investigations.

While the Family Report does not make any findings about any disputed facts relating to the matter however, "the report writer may nonetheless remark on the apparent veracity of allegations. She or he may, for example, raise allegations with the alleged perpetrator or victim or the children and record any admissions, inconsistencies or other reflections upon the disputed facts" (Moloney et al, 2007) and may provide information that assists the court in determining the likelihood of whether or not sexual harm may have occurred (Neoh and Mellor, 2009).

These reports usually include a summary of the issues as related by the parents, observations of interactions between the parents and children, an outline of the child/ren's wishes and the recommendations of the writer. Aside from interviewing the parents and children, the report writer may also interview other significant family members and have access to filed affidavits.

Similarly to concerns around training for expert witnesses and ICLs, and echoing Bravehearts' concerns, issues have been raised around the experience and qualifications of report writers: "those delivering 'expert evidence' in Australian Family and Federal Magistrates Courts rarely have the training, knowledge and skills needed to do this type of work adequately" (Myers, 2013).

In Their Own Words

- "The family report writer called my children liars."
- "You also have court reporters who lack knowledge of family violence and child sexual abuse who take sides (after a 1 hour assessment) and make findings - the court likes assessors who give a strong picture with firm recommendations."
- *(now Adult survivor) speaks of the family report:* "… everything in the report was as if the expert had turned around everything he witnessed my father doing and pinned it on my mother, making it impossible to see an effective ending to the court proceedings for us... [The report writer was] highly unprofessional and ended up throwing the case… [A]fter this report we were told not to continue with the allegations or custody would be given to my father."
- "I don't believe the court has done the right thing by my children. The report writer said the children would adapt with the change of residence and that children are resilient. They haven't adapted. The children speak very poorly of their father and have no respect for him. They say they are scared of him, and don't want to live with him and say they want to come home."
- "The Family report writer concluded no risk of harm to the children in the alleged perpetrator's care. The family report stated that the children were lying and so was I. The report also indicated that other notifiers were lying and that the father's family could not have been lying because they are a 'well established… family'. [In contrast] the Court appointed psychiatrist did not believe that I was coaching the children, that they had been emotionally and physically abused by

their father and that she felt that sexual abuse was a possibility. She testified that their father should not ever have them overnight and or unsupervised and that they could not handle visits emotionally more than for an 8 hour period once a month, if any visit at all."

4.1.2.4 Jurisdictional Issues

There are challenges regarding the multiple different Family Law Systems existing in Australia. As Nicholson acknowledges, the existence of the three separate systems (FCC, FCoA & FCoWA) "presents challenges for co-ordinated and congruent responses even when leaving aside the eight different State and Territory child protection systems and children's courts" (Nicholson, 1999).

Child protection and the protection of children from harm is a fundamental role of the State and Territory governments. However, it is evident that the Family Law System plays a vital role in the protection of Australia's children and by default is part of the child protection system. As CSA and child abuse matters comprise a significant component of the business of the Courts, we recognise the complexities of this responsibility and the relationship between Federal and State bodies (Brown 1998, cited in Nicholson, 1999).

Under the *Commonwealth of Australia Constitution Act* 1900 (Cth) ('the Constitution') the federal parliament is able to make legislation regarding only the areas outlined in the Constitution and state parliaments are able to legislate with regard to any issue not outlined as belonging in the federal jurisdiction, so long as it is not inconsistent with federal laws (the Constitution, s 109). The Constitution does not allow the federal parliament to make laws regarding children or their protection; therefore, each state or territory of Australia has specific legislation and Courts to govern child protection (Nicholson, 1999). However, the Constitution does allow federal law relating to 'private' Family Law matters such as marriage, divorce and issues relating to these things such as custody and parental rights (Nicholson, 1999). This has created complications where matters must engage with multiple systems, such as where there are allegations of CSA. Brown (1998) found three major issues where multiple systems were involved, including: different definitions of abuse between court & protective services; inadequate feedback to court from protective investigations regarding the outcome of any notifications and lengthy and variable investigation times (cited in Nicholson, 1999).

Brown and colleagues (2001 cited in Foote, 2006) found that the majority of cases in the Family Law System were not investigated by the State child protection authority. This was the case even when notifications from the court were made to child protection; where only half were followed up and substantiation of the harm was low. Investigations by child protection authorities focus on the question of whether or not a child is safe and protected, not whether the child will remain safe or if it is in the best interests of a child to spend time with both parents (Higgins & Kaspiew, 2011). Additionally the information which was brought before the Family Law

System was ‘very cryptic’. Finally, where allegations of child abuse were made to a state child protection authority, that department would refer the case to the Family Law System which is contrary to the requirements and practice of the Court (as noted above, the Court is not an investigatory body and relies on the investigation of those bodies whose job it is to investigate such as child protection and police). In summary, it appears the current Family Law System has no substantive means of protecting children where there are allegations of child sexual assault. While police focus on proving ‘beyond reasonable doubt’ to satisfy the criminal justice system, child protection authorities are not police and are often not trained in the dynamics of child sexual assault, the Family Law System is not effectively consulting or gathering information from significant professionals in the child’s life.

In Their Own Words

- “I believe that the more reports that I made, the more Police and (the state child protection agency) believed that I was making it up.”
- “I believe (child protection) simply passed the buck to the Family Court, failed to do their job in regard to investigating the alleged abuse of my children, and as a result my kids have suffered immensely.”
- “The FCA says that if there is a concern then the appropriate jurisdiction needs to take action - when they don't they believe nothing is wrong. Most practitioners lack knowledge of family violence and believe that these are likely to be made up and so do not investigate. Many (including courts) fail to understand jurisdiction, feeling that they should not get involved in family court matters. Child protection services avoid making findings when in other cases they would probably have made a finding of medical evidence.”
- “Both Police and (child protection) did not want to be involved while we were in the process of family court, the police didn’t believe they could win a case and family law court is federal higher authority who would sort it out.”
- “(Child protection) advised me to leave the violent father for hitting 2 year old son in the head, otherwise they could be taken from me yet in (Family) court they wanted to take my children away from me as they claimed I was alienating the father and a liar.”
- “I had fears when reporting to docs and police that inaction would only alert the perpetrator of the children's willingness to speak and the measures he'd take to silence them. I never considered the measures that were being taken by the system to silence me.”
- “At one point I was so desperate to protect the girls I went to the Department and had a meeting to beg them to take the girls into care. I believed that they could stop the FC from making the girls have contact with the father. They were so traumatized every time they saw him. They refused.”

- "The courts don't seem to understand the Dept's processes. Any matter un-investigated due to a parent agreeing to behave protectively and doing all that is required to keep their child/ren safe is seen as an unsubstantiated abuse claim"
- "Informing the Family Court of the allegations of sexual assault gave him a 'heads up' on information which would normally be kept private from a perpetrator to the trial against him."
- "(Child protection) acknowledged that they never investigated the sexual abuse since they refuse to get involved with family court cases."
- "I have had an illegal order placed upon me by the Family Court that prevents me from reporting any further incidents to any agencies in relation to any abuse of the children."

4.1.2.5 Other Forms of Evidence

As discussed above, the Family Law System relies heavily on the evidence provided by expert witnesses, however, there are questions around whether or not an expert report writer is best placed to provide advice. Expert witnesses do not necessarily have the expertise to make an assessment in relation to CSA.

The Family Law System can, and does, access additional information for consideration in matters. As well as child protection files, this may include counselling, medical and school reports. Recognising the difficulty in children and young people disclosing, the often lack of medical evidence and that the Court is often placed in a position where it is required to make a decision between two opposing and often unsubstantiated accounts (Lyon & Ahern, 2011), the consideration of available objective evidence may provide a useful avenue of verification. Bravehearts believes that seeking the views and opinions of those who know the child (including counsellors, teachers etc.) would provide invaluable assistance to the Courts. Routinely, as an organisation specialising in child sexual assault, Bravehearts has received negative responses from the Court.

We note further, that many experts are reluctant to become involved in family law matters due to the adversarial nature and the historical lack of weight and consideration given to their views. Bravehearts believes that the Family Law System must actively seek and give serious consideration to the views of those who know the child and family, and those who have specialised knowledge in the area of child sexual assault, trauma and abuse.

Moloney et al (2007) note, the "probative weight, or tendency of such weight to prove the allegation of violence or abuse" vary, however the value of the deliberation of a range of evidence and reports may provide information that is crucial to assessing the best interests of a child. The use of corroborative evidence in cases where there are allegations of family violence, CSA or child abuse, should be routinely and mandatorily sought, yet is not common. In the 2007 AIFS study,

Moloney et al, (2007) found that between 71% and 92% of cases where allegations were raised, no corroborative evidence was provided.

In Their Own Words

- "The Family Court simply does not believe what my children are saying and doing, does not believe what doctors, police, contact centres, supervisors, child care centre, myself, (multiple child psychologists, psychiatrists and experts in CSA) are saying. Instead they believe the alleged perpetrator."
- "I'd consulted many experts and been advised not to use them in court. Mostly because the experts were domestic violence and child sexual abuse experts. They had been so helpful to me in assisting me in supporting my child and understanding the perpetration she'd experienced and continued to experience… However, my Lawyers and Barrister didn't want to call these experts, partly because these experts were afraid of how they would be treated in court and partly because there is apparently a perception that if you have expertise in child sexual abuse or domestic violence you will be written off as a man hater!"
- "The worst part is trying to get someone to help; having to repeat stories of abuse over and over to different authorities, doctors, Police, MPs, support workers, solicitors (approx 10)."
- "(Child protection) had consulted an expert in child sexual abuse who stated the language and level of knowledge was consistent with the child's age and level of understanding and it was almost impossible to coach a child of this age. We discovered this through FOI. (Child protection) took no notice of their own expert."

4.1.2.6 Gathering Evidence from Children

Even when there is corroborative evidence that sexual harm has occurred, including medical evidence (Lyon, 2007), admission by an offender, or substantiating reports (Sjoberg and Lindblad, 2002), research shows that around 43% of child victims are not willing to disclose (Bottoms, Rudnick, & Epstein 2007; London, et al., 2008).

As discussed in Chapter 1, the disclosure of CSA is complex and children and young people face numerous barriers to speaking out. When a parent is the perpetrator of harm against a child, the process of disclosure is further constrained. The familial dynamics that may be present can further complicate the disclosure process through the very nature of the parent-child relationship. Children who are sexually harmed by a parent commonly still feel love for that parent, are dependent on the parent for a range of needs (including emotional and physical need), have a high level of trust between the child and their parent reinforce rules of secrecy, experience 'special' attention that may serve to strengthen the relationship between the child and the offending parent, while increasing the isolation from the non-offending parent, and have fears that there will be negative consequences from disclosing (Lyon & Ahern, 2011).

While professionals who work with child victims of sexual assault acknowledge the difficulties in garnering a disclosure from child victims, there is an inherent problem with many legal processes, where there remains a belief by some that when questioned, children will readily disclose (Ceci, Kulkofsky, Klemfuss, Sweeney, & Bruck, 2007).

As Summit acknowledges, denial of sexual harm, retraction of prior disclosures and inconsistencies in reports, in and of itself, is not persuasive evidence that sexual harm did not occur.

Eight-year-old girl describing her dream

"The more illogical and incredible the initiation scene [of abuse] might seem to adults, the more likely it is that the child's plaintive description is valid." (Summit cited in London et al, 2005)

Questioning children about CSA requires specialist training and expertise. Those working in the sector, recognised that disclosure by children is a "process, not an event" and that, "[r]eluctance is commonplace and difficult to overcome in suspected child sexual [assault] cases" (Carnes, 2000). Interviewing of children should take place as an extended assessment practice, rather than a single event.

In Their Own Words

- "My youngest daughter's behaviours have been severely affected. She has suffered from anxiety, stress - with her hair falling out and there being baldness visible, and depression. She fluctuates between feeling elatedly happy and loving to feeling very angry, shouting, swearing etc. I have fears that she is more likely to develop a mental illness like her father has."
- "My daughter feels it is a waste of time telling people what happened as no one listens. (Child Protection) say she is to take full responsibility for protecting herself."
- "(Child) is highly distressed at any contact with her father. She does not have a bowel motion in the time she spends with her father in fear of him touching her so by the time she comes back to me I have to spend days getting her bowels back in order. She is (age) and still wants to do poos in a pull up because the toilet sensation of it dropping out of her bottom reminds her off the pain from her dad putting his finger in her poo hole. She has no confidence and lacks social ability which has been documented by her latest report card from school."
- "The Judge said in one of the first sittings that we all know children tell lies..."
- "The ICL questioned why [the child] did not tell the court reporter if she really was being abused."
- *(now Adult survivor)*: "I was never asked to attend. Or should I say, never allowed to attend. Yet it was about me, I had a right to be there… [I was] left completely in the dark from my own Court case… [I] felt left out, alone, scared and used."
- *(now Adult survivor)*: "I was hugely relieved that I was not called in to testify or be cross-examined by my dad or by my mum's lawyer or the judge, and thank the family court for that in terms of the process. However, always wondered if I had been cross examined, that dad might have actually understood what he had done was wrong and I could have been there to witness that, which might have been a sort of vindication for me."
- "I was not making the allegations, the children were, but my daughter was not able to sit in the court and make them for herself. The court has a very dim view of mothers who carry these allegations to the court for their children."

- "judges need to understand that although a child under 5 or so may not be a credible witness in legal terms, they are very credible in terms of the fact that they do not lie, and if they had been prompted they would say so. They are in fact more credible because of their very innocence and their voices should be heard and believed and they should be protected."

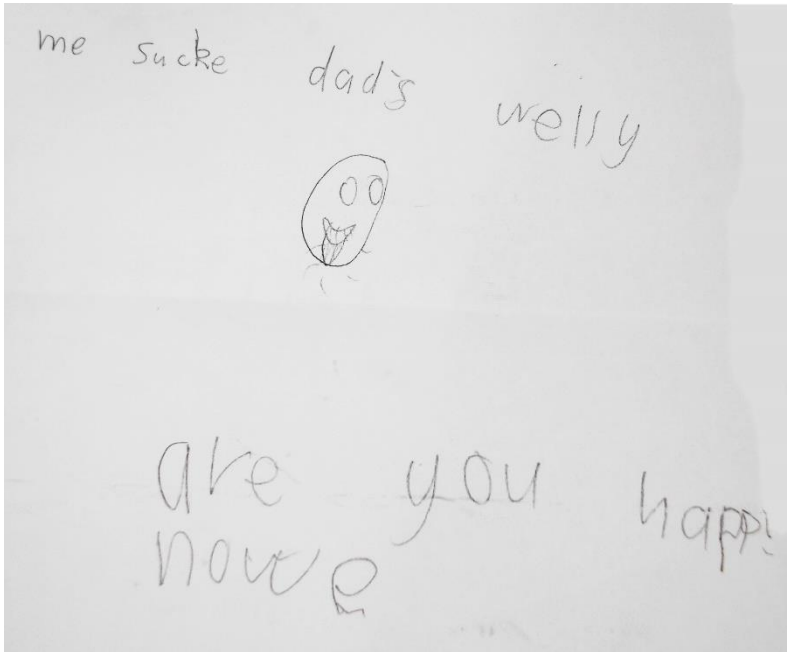
4.1.3 The Voice of the Child

A compelling reason for the court to listen to children's views is that Australian children have a right, enshrined in an international convention, to express their views and be heard in any proceedings affecting them. Australia has an obligation to uphold that right through its laws and processes. Article 12 of the UNCRC reads:

> 12.1 States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 12.2 For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Taking a simple and literal reading of Article 12 of the UNCROC, Australia has expressly agreed, by ratifying the UNCROC, that children have a right to express their views and that, therefore, children who are the subject of family law disputes will be provided with the opportunity to be heard in the proceedings. Article 12 has been broadly conceptualised as children's right to 'participate', although this term does not appear in the text of Article 12.

The inclusion of the voice of the child in matters that relate to them is a critical issue for the Family Law System. Children's participation in the court process through the provision of evidence is not common within the Court. The only exception is where a child seeks to become a party to the Court proceedings. Under the Family Law Rules Order 23, if the Court believes that a child "does not understand the nature and possible consequences of the



Seven year-old girl's writing

proceedings, or is not capable of conducting the proceedings on [their] own behalf" (Family Law Rules Order 23, Rule 3) an Independent Children's Lawyer will be appointed.

Section 60CD(2) of the Family Law Act 1975 (Cth) ('FLA') specifies three ways by which the court may inform itself of a child's views: it may have regard to anything contained in a report given to the court under section 62G(2); it may make an order under section 68L for the child's interests in the proceedings to be independently represented by a lawyer; or it may inform itself of a child's views by such other means as it thinks appropriate, subject to the applicable Rules of Court. Notwithstanding these methods, the Act states that nothing permits the court or any person to require a child to express their views in relation to any matter.

As discussed above under Sect 4.1.2, there are a number of avenues through which the Court currently attempts to include the child's views and voice, specifically through expert witnesses, report writers, the Independent Children's Lawyer and through additional reports. In addition, a judge may interview a child in chambers, however information attained in this interview is not admissible as evidence.

While there may advantages to a child being represented in the Court by a third independent party (for example, they do not have to attend court, they are not subject to cross-examination, they can be interviewed in a non-threatening space), the child's voice is easily lost in this process. The child's views may be filtered through the views and potential biases of the third party. In addition, this third party is often someone who has had little contact with the child (rather than someone who has an established rapport with, and spent substantial time with, the child). Bravehearts believes that it is important to acknowledge that it is a process to gather sufficient insight into a child's life and concerns around risk, and this cannot occur in a single meeting.

In Their Own Words

- *(Adult survivor)*: "[I was] interviewed by child protection and police officers and felt belittled and like a liar in this process. [I did not feel believed] because everything was disregarded and shrugged off due to my young age."
- "I feel like the court process is prolonging the abuse and not taking seriously the voices of children."
- "Children who are victims of sexual abuse or even allege to be victims of sexual abuse need to be listened to, and they should not be forced into facing their perpetrator when they are clearly distressed and still suffering from post traumatic stress disorder."
- *(now Adult survivor)*: "My experience in the family court made me very frightened in enclosed, impersonal spaces, suspicious of adults and their motives, (although my mum's lawyer was a very kind and gentle man and the barrister was not unkind). I became very uncertain and unconfident about myself and what I had done and what had been done to me."
- "My child's voice needed to have been heard in the way she wanted it to be."

- "Children are the most unlistened to party in the entire process. Our children have no voice and no choice in any matters concerning their abuse."
- "[My child] now knows that she was abused by her father and nobody is there telling her that she is 'confused'. [As an adult she] is only now making disclosures of what happened when she was a child and (she) has said [to me] that it was 'worse than you think that it was'. She always felt that everybody to whom she spoke, from the courts (i.e. report writers and counsellors) all ignored her concerns and made her feel as if she was bad for saying what she was saying. She said that they didn't want to hear what she had to say."

4.1.3.1 The Best Interests of the Child

In making decisions the *Family law Act 1975* articulates that the primary concern in all matters relating to children is consideration of their best interests.

The Family Law Act discusses that the court must consider all viewpoints expressed by the child involved before determining what is best for the child (Harland, et al., 2011). However the views of the child alone are not the deciding factor within the court, there are additional factors such as the view of a counsellor (Harland, Cooper, Rathus & Alexander, 2011). When considering the best interests of a child it is necessary to consider (Family Court of Australia, 2015c):

- The benefits of the child having a relationship with both parents in a meaningful way
- Protecting the child from both physical and psychological harm
- Protecting the child from being subjected to neglect, violence or abuse

This reflects the concept that the child's view is of importance within the proceedings, however, the paramount issues remain those listed above. It is important to understand the child has adequate knowledge of the situation, potential consequences of decisions and is of suitable age to make their own rational choices. Bravehearts puts forward that the view of the child is as important, if not more important than any of the above considerations.

In Their Own Words

- "My (grand-child) is not receiving counselling or adequate medical care due to the orders. My son is not permitted to take her without the mother's consent which is never given."
- "Nobody took my allegations seriously. I was told that although he had made threats (to rape his daughter) it was doubted if he would carry out these threats. ...He made lots of threats to sexually abuse her but there were very few witnesses."
- "I will never be the same again as it was like being in a war zone. I felt that I could never be normal. When people ignore your concerns for your child you feel so helpless. My health suffered to a great extent. I found myself unable to think about anything else but protecting [my child]. Now I have become reclusive and afraid. I do work part time but

when I am at home I am reclusive and I keep my doors locked. I have nightmares about the court process. I will never see the world as I did before this terrible experience."

- "It appears to be a case of myself against my ex and who is right, in most magistrates views. I want to scream that "this is about my daughter and what she needs and wants. This is not about me". I do not consider that at any time during this 2 and a half years of hell, that ANYONE has listened to my daughter, other than her Psychologist. My daughter has no voice and I cannot even be the voice for her."
- "Years of feeling terrified for (the child's) safety and of the strain and shock of repeated acrimonious communications, plus lawyer visits and phone calls, court attendances and orders, and most especially watching (the child's) trauma at contact centre visits have caused me and my daughter to have PTSD symptoms. For instance her phone ringing is sufficient to trigger symptoms of distress, nausea and severe anxiety. So many times it has been another horrible shock or situation compromising (the child's) safety. Reading the affidavits and accusations etc., makes me feel sick and scared, and especially I am terrified because the courts here make such appalling decisions and seem hell bent on forcing kids into the company of perpetrators. I have had to move from my home and lost my job and people I thought were friends and felt very lonely, isolated and scared. We have had to hide because of the stalking. I have lost all my hair - I am sure at least part of the reason is all the stress and fear. I have been more and more depressed and unable to cope as time has gone on, felt utterly hopeless and wished I could kill myself but I cannot because I have to support my daughter and granddaughter. I used to be a professional competent person, but now I wake feeling dread and fear and overwhelmed every day, and can't cope, and I feel I have no life worth living, and I miss all my family who are overseas because we have not been allowed to travel with (the child) for 4 years - which in itself is an abuse of human rights. I used to wonder why mothers did not protect their children from perpetrators and now I think that not everyone would be able to withstand years of torment and fear like this. I am horrified that when taking the proper steps to protect a child there wouldn't be appropriate (and) adequate help."
- "*(now Adult survivor)*: "[My experience with the Family Court] broke me and I became someone's little toy to throw around and use to get back at my mother for her persistence in trying to keep me safe."
- "Her Psychologist believes that her ongoing illnesses are a physical manifestation of her emotional turmoil. She can't wait to be 18. I'm encouraging her to be a child and enjoy her childhood. She just wants to be old enough to have a voice and to say what hurts and how she feels. I understand that and so does her teacher and psychologist. So we balance hearing her, supporting her, encouraging her to be a child whilst also trying to walk with her in a very adult realisation of her life and reality."
- "I feel there was no consideration to the safety of my children or I at all and it was the most stressful and appalling situation I have ever been in."

- "I am very angry at the reasons for the final orders, the judge knew that child sexual abuse allegations had been substantiated against the father in relation to my son in the Family Law court yet no mention was made of this instead of which (the Judge) said that he hoped one day that (child) would come to realise the courage it had taken for the father to pursue a relationship with [the child], what does that say to the children that it didn't matter."
- "One change I would love to see happen immediately in the family court/children's court that it is mandatory whether it is children from domestic violence, child abuse or just a normal break up/separation/divorce that it is compulsory/mandatory that the child sees a child counsellor/psychologist to help him/her process all of his feelings/what's going on/which parent is using the child as a pawn etc etc.. reason I am passionate about this is my ex and the children's lawyer continually put a block on my daughter seeing a counsellor and this is my daughter who, a couple of months ago, … told myself and our GP out of the blue that she wants to die."
- "There will never be a mention made of the damage to which a child will go through, psychologically and emotionally, from being removed from the primary carer in their lives. Never a mention of the fear at being sent to the abuser again, the damage that the ongoing abuse will cause, the damage at not being believed causes."

4.1.3 Self-Represented Litigants

Former Chief Justice Nicholson has spoken on his concerns about the impact of self-litigation in the Family Law System noting that: "the nature of the jurisdiction may be causative" (cited in Foster, 2003).

Self-representation in the Family Law System may be a result of declined Legal Aid applications and the unaffordability of private legal representation, although a proportion have reported that they are self-represented as they are unable to engage a lawyer because the client may have been perceived as difficult or the matter was seen as having no merit.

While a number of parties may have had legal advice at some stage, the number of self-represented parties in the Family Law System present numerous concerns and these have been summarised in the *Self Represented Litigants Project Report* (Family Court of Australia, 2003):

- the majority of SRLs cannot afford legal representation, although a significant minority said they did not need or want to be represented by a lawyer
- SRLs are disproportionately concentrated in children's matters as opposed to property matters
- SRLs have a wide range of needs: for information, such as relevant support services, Court procedures etc; for advice, about such things as form-filling, Court etiquette, preparation of documents, the formulation of legal argument etc; and for support, both emotional and practical

- judicial officers and registry staff experience difficulties when dealing with SRLs, because of the SRL's lack of legal and procedural knowledge
- SRLs use up more of the Court's resources than represented clients
- Judicial impartiality and the need to help SRLs compromised the role of judges and registrars as the presiding officer
- an unevenness in the way judicial officers and registry staff respond to the needs of SRLs, suggesting the need for a more consistent policy
- an identifiable link between the unavailability of legal aid and self-representation

The report also included the following recommendations:

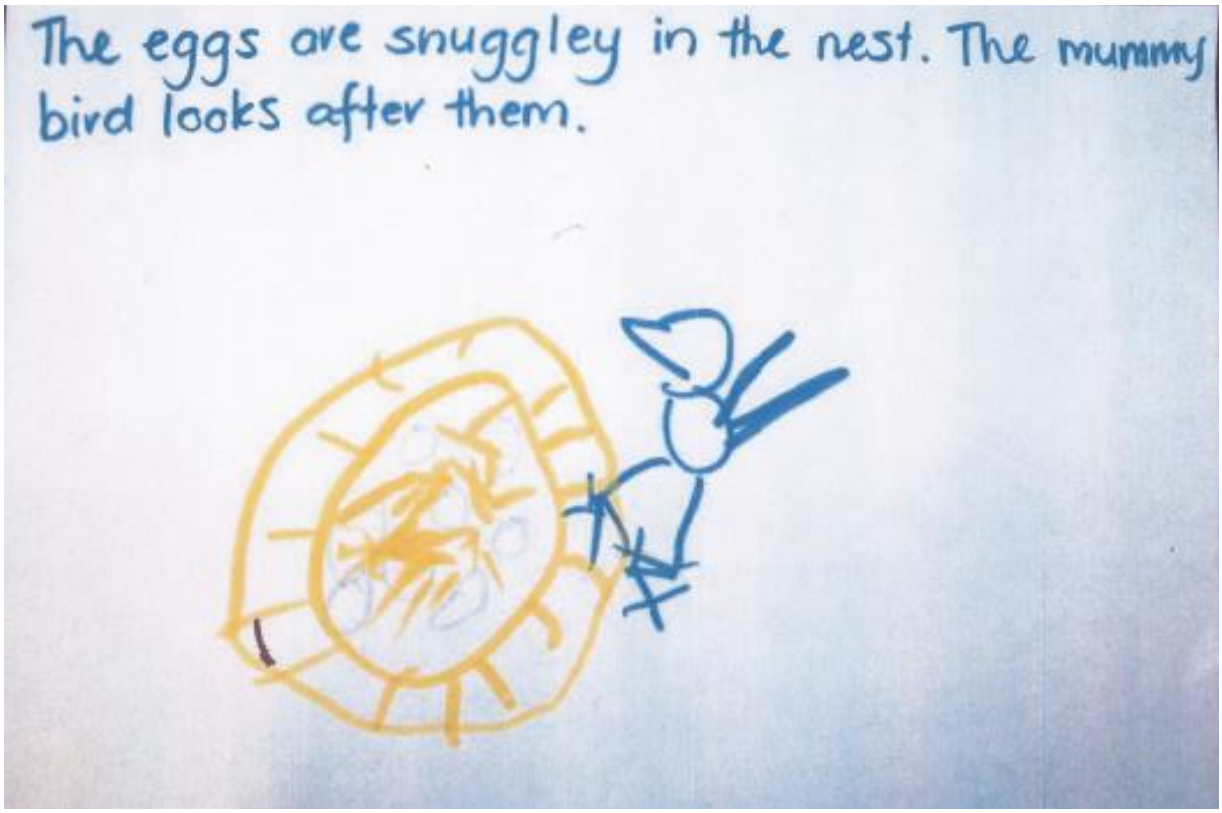
- there should be more and better timed information and assistance to SRLs
- although the Family Court cannot be the chief provider of the support needed by litigants in person, the Court does have a role in coordinating those agencies that are able to offer support
- the Court should consider developing a clearly articulated policy, applicable to all Court personnel and judicial officers, setting out the Court's approach to SRLs from filing to disposition, and practices and procedures for assisting them
- there should be better coordination at a local level of information regarding support services (such as Court networkers, duty lawyer schemes or support programs sponsored by community legal centres) relevant to the needs of SRLs - this would require funding and active management by the federal government and legal aid bodies

The Judicial Commission of New South Wales (undated) have outlined some of the common barrier facing self-representing litigants:

- may not understand the complexities of relevant legislation and case law
- may not fully understand legal language
- may not be able to accurately assess the merits of their case
- may not fully understand the purpose of the proceedings and/or the interlocutory steps in the proceedings
- may not fully understand and/or be able to properly apply the court rules — for example, what they must file when, the rules of evidence and cross-examination
- may not have emotional objectivity or distance, and be overly passionate about their case
- may not be skilled in advocacy and able to adequately test an opponent's evidence, or cross-examine effectively
- may, as a result of many or all of these issues, be feeling anxious, frightened, frustrated, and/or bewildered. The case may also be impacting, or starting to impact, on their emotional and/or physical health.

In Their Own Words

- "Family Court lawyers seem terrified to mention child abuse at all."
- "The costs associated with having to try to protect my child, which I feel like I have failed at, are out of control. It has cost me my business and almost my home. But if I didn't, I would hate to have my child grow up and ask me why I didn't do more to help her. I did everything in my power. The system let me and my daughter down."
- "Some of the lawyers I approached told me I had to drop all mention of abuse, say the father is a great guy and be willing to co-parent as the only way I could see my children."
- "I spent hundreds of thousands of dollars on lawyers, experts, time off work etc. etc."



Drawing by six-year-old boy at counselling

4.1.4 Concept of 'the Friendly Parent' and the Veil of Silencing

A previous additional consideration regarding parenting orders under the *Family Law Act 1975* required judges to consider how 'friendly' a parent is in terms of facilitating the relationship of the child between the other parent (Chisholm, 2010). As Chisholm outlines, whilst this provision can be desirable in most families, it can also be problematic in families where there are allegations of CSA, as the non-harmful parent is required to protect their child which involves demonstrating why the other parent poses a risk to the child and why there should be restrictions on the contact the other parent has with the child.

While this provision was removed in 2012, this view of whether or not a parent is 'friendly' still exists and weight is often given to whether the parent will be willing to facilitate a meaningful relationship with the other parent. Parents are continually reporting being warned against raising disclosures of CSA in the Family Law System arena and being labelled as unwilling to facilitate the relationship between the child and the other parent.

In Their Own Words

- "How are protective parents supposed to pack their child's things up and drop them off to the other parties knowing what they are going to suffer?"
- "[The Family Court] has a fundamental misunderstanding about child sexual abuse. [They] saw it as my duty as a mother to help them reconnect the father and daughter and put aside any of my fears of revulsion."
- "I've been told that if I withdrew as a protective parent and my child was investigated, the Dept. would have found many concerns about her Father and she would have been protected from him. I just couldn't risk being seen as un-protective and losing custody so I agreed to their conditions that I behave protectively."
- "[P]rofessionals don't like dealing with someone who might be upset and stressed - they want you to be calm and to keep a level head otherwise they focus their assessment on you."
- "My life is stunted, the grief of losing a child, who still lives elsewhere is an ongoing terror and cause of depression. The feeling of watching your child drown whilst you are tied up is how I explain my feelings. The idea of 'getting on with my life' just cannot surface fully because I need to save her, I need to be there for her somehow ...the only thing I can do is advocate for changes to this ...system and to speak for the vulnerable who come to be in similar circumstances."
- "I feel like I have failed my daughter and made things worse for her by trying to protect her from harm."
- "My Legal team went through great lengths to protect the children and myself. But I was subject to aggressive attacks by the family court Judge for withholding access from the father, despite the mounting evidence (including charges) of the abuse and threats of violence."
- "He (the alleged offender) was allowed to be emotional (in the court) and it signified the depth of his parental love whereas if I had been emotional it showed that I was unbalanced and influencing the child."
- "I was discouraged by my lawyer from raising allegations of child sexual abuse in court. Advised that the court would not believe allegations, advised that the court would not grant the orders you wanted, advised that the court would believe that you coached the children into making disclosures, advised that there was not enough evidence to raise allegations before the Family Court."
- "[I was advised by police] 'Don't take it to court [sexual abuse allegations of the girls], you'll end up losing your children and they will be worse off'."

- "Although I was given some legal advice not to raise the issue of sexual abuse with the Family Court, my conscience and ethical and moral code could not stop me. I had witnessed my son's growing trauma. My son… was suicidal. I know that in doing so (raising the issue of sexual abuse) with the Family Court made me a target for labels of 'an alienating, unfriendly crazy mother', but I did what I had to do."
- "My lawyer refused to acknowledge my concerns and told me that if I continued reporting any abuse the court would take my children from me and hand them to their father (alleged perpetrator)."
- "My experiences turned my whole belief system and life and those of my Children upside down."
- "The court has made it very clear on the first day because of the seriousness of these allegations there are serious consequences should I proceed to attempt their protection, I risk my children been removed from my care and given to their abuser. This in itself is criminal. I have chosen to proceed despite the system letting my children and I down in the past in the hope justice and common-sense prevails. It seems common practice in family law for the other party to be allowed to defend such an allegation by claiming mental illness of the protective parent."
- "I believe these threatening and intimidating procedures prevent most parents from attempting to protect their children when the abuser is the other parent. This is a level of fear and hopelessness within our court system most parents cannot continue to hold together through."
- "The first barrister tried to dissuade me from running the case according to what the facts were and said that there was no likelihood of a judge substantiating the allegations because this is 'not what they do in the Family Court'."

4.2 Disbelief in the Family Law System

> *"Difficulties… arise because the allegations are made in the context of a custody or access dispute. Generally speaking … the mother who suspects the child is being sexually abused voices her concern and reports the perceived disclosures that have been made to her by the child to the authorities and the Family Court. Her account is at once seen as "allegations" or an "accusation" of sexual abuse and her motives are viewed with suspicion. It is suspected that she is seeking to discredit the father and so advance her claim to custody or to restrict the father's access. Her credibility is put squarely in issue. Although the mother may do no more than report the unusual behaviour she has witnessed in her child and the perceived disclosures which the child made to her, the somewhat dated aphorism that such allegations are easily made and difficult to refute may still prevail." (Thomas, J in S v S)*

Numerous academic studies have identified the sceptical ideologies possessed by the various professionals in the Family Law context. Many professionals find it difficult to

recognise families who have issues of child sexual assault, abuse or family violence and often will view the families through a lens of the professional's own interpretations and clouded by the myths, misinformation and biases that the professionals may hold (Brown & Alexander, 2007).

Court judgements and client's reported experiences through this Project reveal there is sometimes animosity for a parent's conduct or decisions displayed which, in turn, affects the decision made.

Fogarty (2006) admits this area is also "replete with pre-conceived notions and attitudes, normally linked to an individual's culture and social learning and the degree of familiarity with the subject," and is difficult to examine objectively. However, he notes "it is important that Judges and experts do this, and not allow these views to intrude into the evaluation of the issues and evidence in individual cases." However, it appears that this is not always done by Judges in the Courts as analysis of Court judgements and clients' reported experiences reveal there is sometimes pre-conceived notions being brought into play or a lack of familiarity, or understanding, of CSA.

Former Chief Justice of Family Court of Australia, Alistair Nicholson has noted that those in the Family Law System consider it troublesome that allegations of harm to a child arise for the first time in private law proceedings and were seemingly undetected before the proceedings were initiated (Nicholson, 1999).

In Their Own Words

- "At times the judge grilled me about events, expecting me to recall the most minute detail about the times/places and manner in which my son disclosed abuse to me. I felt that he had little understanding of CSA, and little understanding of how traumatic it was for me as (his) mother to find out that he was being sexually molested by his own father. I felt attacked, belittled and made to appear crazy. ...I did not feel that justice was being done."
- "For about the first two years of (my son) being removed from my care I cried a lot every day, often sobbing. I still cry often but not every day."
- "The impact on myself as Grandparent has been total alteration of my world view on how our society operates and protects it's most vulnerable. I suffer with depression as does my son. At times I felt I was losing my mind as I could make no sense of any of the outcomes which were at odds with the evidence."
- "There is still an undercurrent in our society that CSA is not genuine. Because children tell lies or that a mother put the child up to it. There is also a lack of understanding of the impact this has on a child. The FLC process form (sic) day one was all about dismissing what my child had said and a focus on stoning the mother, BURN the witch."
- "I went to family court believing in justice for the truth, however that was far from the reality I found out about. Mothers are treated like nothing liars regardless, I was not given the same opportunities as the father to tell my story."

- "It is a taboo subject, unlike cancer where everyone rally's around to support you. I have been viewed with the stigma of "well you chose to be with him" society views this as a choice so it's all my fault. I cannot talk about it to anyone, people don't understand. I feel embarrassed for my children to have such a father."
- *(now Adult survivor)*: "in one instance, it was my mother who was made out to be the perpetrator, but that is so far from the truth. They punished her and made her and my life miserable while they did so. [B]ecause of this, I never got that bond between me and my mother that I should have developed as a child. Instead, I feel like I don't even know her and that all she did was hurt me. But I know that not to be true. It was the Court's decisions that made it out to be that way."

Miss Understood

The burden of being unheard
is a weight
I can't even explain
it's created this drain
where my will
slowly leaks away ..
every day.
Lost my child
to the cunning wolf
who spins his yarns
as he puffs on his pipe,
draws in his audience
that he owns
like the thick sweet smoke,
his puffed up chest
spews it out
any direction he pleases.

It's his, they're all his
in the palm of his paw
with the sharp hidden claw
in his soft fur,
they all concur
his points of view
just as he knew
they would.
But they've misunderstood
they said they know
what his kind are like
with a hidden spike
in the domestic den,
but he's done it again
they're under his spell
he's won the hard sell.
Being Miss Understood
won't save my girl
he's created such a whirl
with his smoke and mirrors
they're not getting it still.
Miss Understood,
is beginning to think
(through tears she blinks)
...that they never will

[Written by a mother involved in the Family Law System]

4.2.1 False Allegations

There is a misconception that false allegations of CSA are widespread in the Family Law System and a common tool utilised by vindictive parents (Faller, 2005; Jenkins, 2002; Trocmé & Bala, 2005; Varghese, 2004). While most regard the mother as the most likely to make a false report of harm to a child, a study in Canada demonstrated that 1.3% of mother and 21.3% of fathers made intentionally false allegations regarding all forms of harm to a child (Trocmé et al 1994). It is important to note that Bravehearts position is around the

need to protect the child and their rights, we believe that one of the major problems within the current system is that it focuses on the rights and views of the parents, rather than listing to the child.

Former Chief Justice of the Family Court of Australia, Nicholson, acknowledged that the Court has been ascribing to a culture of being "too ready to construe child abuse allegations private disputes about children (usually between separating parents) as false, motivated to gain a tactical advantage or as being a hysterical outpouring of one disgruntled parent engaged in a war of attrition of the other," (Nicholson, 1999). Such beliefs only serve to protect those who perpetrate sexual harm and permit children to be exposed to ongoing harm and risk (Jenkins, 2002) and establish protective parents as vindictive, liars, mentally ill, and hysterical (Foote, 2006).

Drawing by girl, aged seven

Although the former Chief Justice went on to assert that the Family Law System takes the research regarding false allegation rates seriously and is ensuring that their approach does not begin with scepticism and assumption that the allegations are false (Nicholson, 1999), it has been argued that the view that false allegations are dominant continues to overshadow the assessment of allegations by experts and the Family Law System itself (Foote, 2006).

The research around false allegations in the Family Law System context is mixed. Research suggests that the rate of false allegations in the Court is similar to allegations made more generally, at between 1-9% (Brown, Frederico, Hewitt, & Sheehan, 1998; Higgins, 2007). In more 'high conflict' Court matters, Higgins (2007) found false allegations are higher at around 23%. Brown (2003) found a substantiation rate of 52%, with sexual assault being the most likely to be substantiated form of abuse.

However it is important to consider the definitional difference between a 'false' allegation, where there is a deliberate motivation behind the allegation, and an 'unsubstantiated allegation' where there is no verification of the harm occurring but no assumption to the

intent behind the allegation (Trocmé & Bala, 2005). In any discussion, it is important to note that many professionals believe that children underreport the extent and severity of the harm (London et al, 2005).

In Their Own Words

- "The recent disclosure by my child to the school turned into an investigation on me, not about the initial notification and reason for that notification."
- "The court-appointed psychologist said that I had emotionally abused my daughter by taking her to doctors to document her bruising, which in her opinion was FAR WORSE than actual sexual abuse, if it did indeed happen."
- "The culturally believe (sic) of the court is that mother was the problem. At no point was the care and welfare of my child considered short or long term as it was also about 'how could anyone do this to that poor man.'"
- "The Judge said in one of the first sittings that we all know children tell lies… I was treated like dirt throughout the proceedings, we were not given any support. All reports stated that the mother had, they believed, coerced the children. There were recommendations made to remove the children from my care and talk about removal implications, there seemed to be none for the children's removal from me, their only caretaker throughout their lives…"

4.2.1.1 Coaching Children

Some report that coaching must be routinely considered when child sexual assault or abuse is alleged in matters where there is animosity between parents; however, there is little research demonstrating that coaching is a viable explanation for children's disclosures (Coulborn Faller, 2007).

Bravehearts suggests that often there is a demonstrated readiness by the Family Law System to accept that protective parents can successfully 'coach' children into lying, but there is little evidence of an equal readiness to believe, or even consider, that children can be successfully silenced by an offending parent.

Myers (2013) noted that while coaching may occur when a parent has the 'motivation' to prepare a child to provide a false disclosure, research shows that "demonstrable lying by children in sexual [assault] cases is very rare". Moreover, coached evidence can be discovered through expert and specialised interviewing techniques. Coached children are more likely to make false allegation in response to forced-choice questioning as this style of questioning is more likely to increase assent rather than an honest answer (Quas, Davis, Goodman, & Myers, 2007).

Lyon (2005) provides tips for decreasing the suggestibility of children in the interviewing process and circumventing potential coaching issues:

Setting boundaries

1. *Tell the child you don't know what happened.*

2. *Tell the child it is o.k. to say "I don't know," but important to answer when she does know.*
3. *Tell the child it is o.k. to say "I don't understand," and that if she does, you will ask an easier question.*
4. *Elicit a promise from the child that she will tell the truth.*

Top 10 Tips

1. *Begin with instructions.*
2. *Ask for a practice narrative.*
3. *Keep questions as general and open-ended as possible.*
4. *Use 'wh' questions (what, where, when, who, why, how).*
5. *Ask time-segmentation questions (e.g., "What happened just after he…") and cue-questions (e.g., "You said he…Tell me more about that").*
6. *Avoid recognition questions (did, was, were). If you ask a recognition question, follow up with an open-ended question.*
7. *Replace pronouns with names (e.g., "Steve" instead of "he").*
8. *Replace deictics with nouns (e.g., "In the garage" instead of "there").*
9. *Don't ask how many times an event occurred, but whether it happened once or more than once. Follow up by focusing on individual episodes.*
10. *Don't ask what time or what date an event occurred, but about concurrent events that enable you to estimate the time.*

In Their Own Words

- "There has been no closure for me. In fact the family court system is a joke. They don't protect those that need protecting, all they do is try to find faults in the mother and blame the mother for alienation, coaching."
- "The whole case became about me - not a little girl hurting and screaming out in the middle of the night!"
- "I was advised by my lawyers that the court would not believe the allegations. Advised that the court would not grant the orders you wanted, advised that the court would not look favourable on allegations of sexual assault, advised that the court would believe that you coached the children into making disclosures."
- "Not long after my son turned 18, he turned up on my doorstep... I did not recognise him until he said "Hello Mum". He thanked me for all that I had done for them and unprompted, acknowledged that I had never told him to lie about the abuse."

4.2.1.2 Parental Alienation Syndrome

'Parental Alienation Syndrome' ("PAS") has been utilised by the Family Law System as a foundation for decision-making in cases where CSA is alleged against a parent. Parental Alienation Syndrome is a theory postulated by Dr Richard Gardner. Gardner refers to cases of disputed custody following separation when a parent (usually the mother)

attempts to cease access to a child or children by the other parent, alleging that that parent has sexually harmed their child/ren. Gardner suggests that these are 'often' situations where a false allegation is made in an attempt to deliberately alienate the child/ren from the other parent. According to Gardner, in 90% of these cases the allegations are false (Gardner, 1999). Additionally, Gardner said that mothers brainwashed their children into supporting the allegations and therefore no such allegation should be believed. These theories were heavily criticised at the time as not being based on, or supported by, research.

The lack of psychological knowledge and understanding amongst the judiciary and court workers creates the perfect environment in the Australian Family Court system for a de facto operating presumption of 'Parental Alienation Syndrome' to exist and thrive (McInnes, 2003). The major concern with this utility of Parental Alienation Syndrome is that the syndrome is non-diagnostic. It is only useful in explaining 'symptoms' present when it is known that an allegation of sexual harm is a deliberately made false allegation, and therefore is of little value to the courts in making a decision on the validity of allegations (Quadrio, 2003).

In Their Own Words

- "I was seen as a mother who wanted to alienate the child's father. One magistrate told me that my daughter would become promiscuous if she didn't have a relationship with her father."
- "the ICL pursued an assessment of my psychological state and supported the family report writer's opinion that I 'suffered extreme parental alienation'."
- "[T]here were four expert witness reports where 'parental alienation was a recurrent theme' and they 'tried to imply personality disorder'. The Court readily accepted the parts of (the reports) that were bad for me and could be used to undermine my children's testimony."
- "I had to push (my legal representatives) every step of the way and it was extremely traumatic, and I was accused of making allegations for the purpose of alienating the child and using it as a bargaining chip."
- "The Police and doctors gave me a referral for my daughter to go for counselling but the ICL refused to let me take her there. I was told to stop reporting my concerns re the sexual abuse or I would lose my children due to what they felt was my attempt at alienating the children from their father."
- "I'm learning parental alienation is a common defence requiring no previous medical history or evidence for a court to be able to use this and rule against the protective parent causing children to be handed to their abusive parent."

4.3 Orders and Contact

In making a decision in relation to parenting orders, the Court is, as previously outlined, obliged to consider the best interests of the child. While the underlying assumption in the

Court is the benefit to children of a meaningful relationship with both parents and that it is beneficial to children for there to be 'equal shared parental responsibility', the central consideration is the protection of children from harm, be it sexual, physical, psychological or neglect. This means the need to protect children from harm should be given greater weight by the court.

4.3.1 Parenting Orders and Contact

Those in the Family Law System often refer to the difficulties faced in determining parenting and contact orders based on the evidence available. Tilmouth (cited in Roebuck, 1996) outlines evidential problems facing the Court in making decisions around parenting orders (including the reliability of statements, unsupported evidence, and difficulties in attaining expert evidence), and further expresses concern about the negative impacts on the child and parent when contact is denied.

However, research has clearly shown the detrimental effects on children who are subject to orders of contact with an alleged offending parent (Jenkins, 2003). The effects of sexual assault and parental abuse on children can be far-reaching. In addition to negatively affecting the child's relationship with their parent, the child may have difficulty in their relationship with other caregivers (Afifi, Boman, Fleisher, & Sareen, 2009; Cannon, Bonomi, Anderson, Rivara, & Thompson, 2010). Additionally, children may have difficulty forming meaningful relationships with peers, and even into adulthood, children with abusive parents often struggle to form healthy, secure bonds (Afifi, et al., 2009; Briere, & Elliott, 1994; Cannon, et al., 2010).

While Tilmouth (cited in Roebuck, 1996) suggested that the Courts felt compelled to 'deny access to the accused parent, even when the courts cannot make conclusive findings' regarding harm or risk of harm, in their exploratory study into allegations of violence in the Family Law System, Moloney and colleagues (2007) found that allegations of child sexual assault and abuse only appeared to impact orders made when the allegations were included substantial evidence 'of a strong probative weight':

> *While it was unusual for contact to be denied, parenting time may well have been restricted to the daytime. But by and large, orders for overnight stays predominated in the presence or absence of allegations, regardless of the apparent severity or probative weight of evidence underpinning them.*

The reality for those who have shared their experiences with Bravehearts is certainly in line with the findings in Moloney and colleagues, where more often than not contact in some form is ordered.

Issues have been raised that even where supervised contact is ordered, the protective mechanisms put in place may be inadequate. While on the surface, supervised access may be presumed to provide a level of protection, concerns include, unaware supervisors who have a lack of understanding of grooming and offending behaviours (particularly when the supervisor is a family member or partner of the alleged offending parent), supervisors who

are disbelieving of the allegations and who may place children at risk, the opportunities that may still be present for harm to occur, and the negative effects on children where contact is ordered against their wishes. It is well documented that sex offenders do not only groom children, but actively groom protective adults (Craven, Brown, & Gilchrist, 2006).

Parkinson (2014) discusses three factors for consideration in relation to the reduction of risk: (1) supervised contact; (2) successful completion of a treatment program; and (3) the protective effects of disclosure itself (including exposing the child to personal safety programs).

Issues have also been raised in relation to contact centres:

- Lack of consistency in practice, guidelines and procedures
- Differing levels of supervision
- Inadequate training with contact centre staff around grooming and managing risks where sexual assault has been alleged
- The lack of attention paid to reports from contact centre staff

Commerford and Hunter (2015) found the following key issues with contact centres:

- Families who use CCSs tend to be experiencing high levels of conflict and multiple and complex issues such as family violence, mental health problems and substance abuse.
- It is unclear from the research whether the 'best interests of the child' are being met through the provision of supervision services, although in the limited research available many children express positive views about their experiences using these services…
- The research suggests that only a small number of families move to self-management of parenting time arrangements, with many leaving the service for other reasons or remaining in the service for long periods of time.
- There are families for whom safe self-management of parenting time may never be possible due to the complexity of the problems these families face and the degree of risk—often related to violence and abuse and parental incapacity (e.g., substance misuse and untreated mental illness).
- An integrated social services model is recommended for working with families to assist them in transitioning to self-management.
- There is a lack of longitudinal research exploring relationship, safety and wellbeing outcomes for children and families who use these services. Further to this, research exploring how CCSs operate is underdeveloped.

In Their Own Words

- "If the court believed the allegations surely they would help me protect my child from physical and psychological harm, instead my child now has contact with his grandfather and the paternal family has told my child that it was a bad dream and that no abuse ever occurred. I am not allowed to talk to my child about these

allegations as written in the court orders. My child is suffering psychologically, although he is legally not allowed to see his counsellor… unless directed by police or agreed to by his dad."

- "The family law court has a lot to answer for. I had suffered enough with the sexual assault. The experience with the family law court that followed just added to it. It has been a humiliating, traumatic, prolonged experience. They put my son at risk unnecessarily and didn't even feel the need to be sorry for it, or even justify themselves."
- "I was told my case was not 'bad enough' so there was no chance of (protecting) her from her father despite the fact she never wants to go."
- "I have never felt, and will never feel, comfortable about (my son) having contact with (the father) either and only agreed due to (her solicitors) and the barrister threatening me with having my son taken off me if I didn't go along with the Family Report recommendations, in the weeks before court."
- "Exactly what he wanted from me is now required of my daughter because she is too young and too fearful to do anything other than what he demands. … She also knows from me that I have to send her because the court demands I make her go. She gets angry at me regularly and all I can do is tell her that I understand."
- "My Children were removed from my primary care on the supported allegations that I was a liar and unstable in bringing allegations of sexual and other abuse before the Institution and people who were specifically tasked with allegedly protecting them and acting in their 'best interests'."
- "I was told countless times by legal representatives that my son had a right to have contact with (father) regardless of him being a registered sex offender, and they threatened to have (my son) taken off me if I denied him contact. I was also told that 'the sexual assault offences were irrelevant to the custody case' and my concerns for (my son's) safety if he has contact with (his father) 'were unnecessary' because 'they rarely offend against their known children' and also (my son) wasn't his type as he wasn't (the same age or gender the victim) was."
- "I lived for many years without seeing my children, due to the orders of the Court. I was not even permitted to send them a card without the father first checking it to see that I had not been abusive in it."

4.4 Accountability and Transparency

An ongoing concern with many legal processes, and an issue that particularly underpins the lack of confidence in the Family Law System, is the question of accountability and transparency in processes and outcomes.

4.4.1 Accountability

> *With respect, I think that the Family Court judges are as accountable for their judgments as are any other judges in the federal system or the state system, with the possible exception of … publication of judgments of the court. … In terms of the formal process of review and accountability, the Family Court judges are subject to the same processes as all other judges in this country. If we were to attempt to interpose some other form of accountability, it would have significant implications for the separation of powers, the doctrine under the Constitution.* (Attorney General cited in Standing Committee on Family and Community Affairs, 2003).

In Australia constitutional limits to judicial accountability are in place to ensure independence and separation of powers. However, as suggested in the *Every picture tells a story* report, "Whilst there may be constitutional limits to judicial accountability… family law judges, possibly more than others, need to be much more conscious of the societal and non-legal consequences of the decisions they make in a broader sense" (Standing Committee on Family and Community Affairs, 2003.

The Family Law System is independently administered and has an established complaint process around administrative functions of the court (for example, treatment by a registrar and failure to follow policies). A separate Judicial Complaints procedure is in place for complaints about the conduct of a Judge, judicial officer or the judicial process/functions where complaints are referred to the Judicial Complaints Advisor. Complaint against legal representatives are dealt with according to State and Territory legislation, this includes complaints relating to Independent Children's Lawyers. Family Law System complaint procedures do not apply to expert witnesses or report writers who attract witness immunity, and whose evidence can only be contested as part of the Court process (Family Court of Australia, 2015d). Bravehearts believes they should – there must be some level of accountability for all participants in the process.

Additionally, the costs and accessibility of court transcripts and reports is an issue for many participants. Bravehearts strongly believes that a review needs to be undertaken against the *Competition and Consumer Act 2010*.

In Their Own Words

- "None of the processes put in place in this system work. No one listens and no one acts to protect children. There is nowhere that you can complain or get help whilst in this nightmare, no one intervenes in the Family court - it is the sacred cow. The people involved work together to get the wanted outcomes for the children to go to the abusive party. Mothers and children are destroyed in all ways. Life will never be the same again."
- "My second solicitor… appeared shocked at what was happening and told me that my case was 'political'. When I asked her why she was not reporting the corruption, she says "you must be joking. If I reported anything that happens here, I will never get another job in these courts."

- "When we were dealing with Police, Lawyers, Psychologists/Psychiatrists and the Family Law Court, they advised me that this was this best possible protection I could provide for (children). Rather than reprimanding or removing the perpetrator from their lives, the responsibility was placed on the children to be educated against abuse. I find this extremely scary that we live in a country that has this current discourse. Even adults are fooled by these monsters. How does a child possibly have a chance against them? The laws MUST be changed."

4.4.2 Transparency

The matter of transparency in the Family Law System raises questions of what information or processes should be transparent, to whom and for what purpose, and how increased transparency impacts on privacy and confidentiality. There have been two general features to the debate about transparency in the context of the Court systems (Department for Constitutional Affairs, 2007):

- Increased openness in allowing people into Courts would allow for greater public scrutiny of court processes and decision making, and
- More information coming out of Courts for those taking part in proceedings as well as for others.

Both of these aspects are raised as avenues for increasing the legitimacy of the courts, and decreasing the courts vulnerability to claims of secrecy and that unfair decisions are being made behind closed doors.

While there have been recent media stories focussing on the Family Law System and outcomes for children, s.121 of the *Family Law Act 1975* has made it difficult for relevant facts that highlight systemic failures to be reported. It is argued that allowing media access to Court trials may increase media understanding of the complexity of cases and improve reporting, while at the same time providing greater transparency and confidence in the courts.

However the primary consideration for the Family Law System must be to ensure the protection of children and ensure that their identities are not revealed. The presence of media and increased public access to judgements may provide valuable opportunities to increase transparency,

Drawing by girl, aged seven

allowing the public to gain an insight into the Court system and process, allow litigants an avenue to review their matter and provide a resource for those who may be facing Family Law System, but such benefits must not compromise the statutory rights to privacy and protection for vulnerable children (Newlands, 2015).

In Their Own Words

- "Serious mistakes and life destroying decisions are being made and that children are being put at serious risk of harm by them. This has to change for the better. We have to protect children and change this system or find another for these cases."
- "I think only a Royal Commission will break the culture in the Family Court of blaming and victimising the victims of sexual abuse. The Family Court operates in secrecy which is how child sexual abuse is allowed to flourish. More than lip service needs to applied in child sexual abuse cases and an assumption of belief applied to the child reporting this instead of starting from the premise that it has not happened. I hope this story will lead to this."
- "In the end, the truth always comes out... it just takes more of us to stand up for it and to not live in fear."

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APPENDIX A:

MEMORANDUM TO THE ROYAL COMMISSION: INCLUSION OF FAMILY COURT IN TERMS OF REFERENCE

MEMORANDUM

To:	Gail Furness SC, Counsel Assisting the Royal Commission into Institutional Responses to Child Sex Abuse
From:	Hetty Johnston, Founder and Executive Director, Bravehearts
Date:	25 March 2013
Subject:	Royal Commission - inclusion of Family Court in Terms of Reference

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1. INTRODUCTION

This memorandum outlines arguments in favour of practices, policies and procedures of the Family Court (inclusive of the Federal Magistrates Courts and Courts of States and Territories vested with Federal jurisdiction, to the extent that they also interact with children who have been abused) being examined by the Royal Commission into Institutional Responses to Child Sexual Abuse ("**Royal Commission**").

Strong arguments can be made that these practices, policies and procedures fall within the Terms of Reference outlined in the Letters Patent issued on 11 January 2013 ("**the Terms of Reference**").

This memorandum accepts that the Terms of Reference do not provide for the Royal Commission to investigate familial abuse per se. However, it argues that investigating the activities of the Family Court (as an "institution") does not amount to investigating familial abuse and, further, does not involve a broadening of the scope of the Royal Commission beyond what was originally intended.

Bravehearts fully supports the overarching aim of the Commission to focus its investigation on institutional responses to child sexual abuse. We believe we can support the Commission's primary aims with our research and evidence, as well as assist with identifying areas for reform.

However, we feel there is also an opportunity that should not be missed for the Commission to consider institutions such as the Family Court and their role in investigating or dealing with allegations of child sexual assault. It is a very important institutional participant in the nexus between adults and children.

While it is not suggested that abuse takes place within the Family Court, Bravehearts contends that the processes and practices of the institution require further examination. For example, Former Chief Justice of the Family Court, Alistair Nicholson, has stated that it is important to have the correct procedures in place to ensure the best result for a child. In discussing the admissibility in court of child welfare matters discussed during mediation, he stated, "Presently a court is often required to make decisions on issues such as where and with whom a child should live with no knowledge of relevant facts that could affect such a decision".[15]

[15] Nicholson, Alastair (2010) 'Family Law does not put Children First', Available from: http://www.smh.com.au/opinion/society-and-culture/family-law-does-not-put-children-first-20100301-pdi1.html

2. SCOPE AND PURPOSE OF THE ROYAL COMMISSION

2.1 Focus on "institutions" and express exclusion of the family

It is accepted that the Terms of Reference state, or imply, several times that abuse within family environments is not within the scope of the Royal Commission. Instead, the focus is on institutional contexts.

Examples include:

- The statement in the preamble that "without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts";
- The repeated references to "child sexual abuse and related matters in institutional contexts"; and,
- The definition of "institution", especially point (ii) in that definition, which excludes "the family".

Further, the Hon. Prime Minister Julia Gillard, when announcing the Royal Commission, made it clear that the Commission, "will not deal with child sexual abuse in the family…"[16]

3. THE TERMS OF REFERENCE

3.1 Interpretation of Terms of Reference

The Terms of Reference are silent as to whether the actions of the Family Court are within the scope of the Royal Commission.

In determining whether the activities of the Family Court are within scope, principles of statutory interpretation need to be applied.

The Letters Patent are a legislative instrument and are therefore subject to the general rules of statutory interpretation, as well as the *Acts Interpretation Act 1901* (Cth).

The power of the Governor-General, by Letters Patent, to issue a Royal Commission is set out in *Royal Commissions Act 1902* (Cth) s 1A. It could be argued that the source of the power is not the *Royal Commissions Act 1902* (Cth) and that it is instead a prerogative power of the Crown.

Arguably, the Letters Patent is of a legislative character and was made in the exercise of a power delegated by the Parliament via the *Royal Commissions Act 1902* (Cth).[17] This means it is a legislative instrument pursuant to the *Legislative*

[16] http://www.news.com.au/national-news/royal-commission-into-alleged-sex-abuse-in-church-must-have-independence-police-officer-says/story-fncynjr2-1226551959912

[17] *Legislative Instruments Act 2003* (Cth) s 5.

Instruments Act 2003 (Cth), and thereby also subject to the *Acts Interpretation Act 1901* (Cth).[18]

3.2 Requirements

In order to be within the Terms of Reference, the Family Court must fulfil two criteria:

- The Family Court must fall within the definition of "institution"; and,
- To the degree that the activities of the Family Court deal with allegations or proof of child sexual abuse, that abuse must amount to "child sexual abuse and related matters in institutional contexts".

3.3 The Family Court falls within the definition of an "institution"

The Terms of Reference define an "institution" as:

> *"…any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described".*

The definition is an exhaustive definition.[19] We think the Family Court clearly falls within the plain meaning of "institution", given it is:

- a public body;
- a public institution; or,
- another entity.

After this definition in the Terms of Reference, an example is provided of what the definition "includes". The example provided is:

(i) an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families.

The ordinary rules of statutory interpretation dictate that the example provided at (i) is not exhaustive.[20] According to this principle of statutory interpretation, the Family Court does not need to fall within this example provided in order to qualify as an "institution". However, in any event, arguably it is an entity that provides services *that provide the means through which adults have contact with children, including through their families*.

For these reasons, we think it is strongly arguable that the Family Court is an "institution", for the purposes of the Terms of Reference.

[18] *Acts Interpretation Act 1901* (Cth) s 2(1) – Note.

[19] *Cohns Industries Pty Ltd v Deputy FCT* (1979) 24 ALR 658.

[20] For example, as reflected in the *Acts Interpretation Act 1901* (Cth) s 15AD.

3.4 "Child sexual abuse and related matters in an institutional context"

The Terms of Reference focus the Royal Commission on "child sexual abuse and related matters in an institutional context".

As an "institution", the Family Court deals extensively with "child sexual abuse". Many children who have been sexually abused – whether at home or elsewhere - interact with this institution daily.

We accept that it is not clear whether the practices, policies and procedures of the Family Court (to the extent that they intersect with child sexual abuse) give particular instances of abuse in an "institutional context".

However, the definition of "institutional context", for the purposes of the Terms of Reference includes the following:

> *"child sexual abuse happens in an **institutional context**, if, for example….*
>
> *… (iii) it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with* children.

The phrase must be given, not its plain meaning, but the technical definition attributed to it in the Letters Patent.

When determining the level of contact that family members have with children, the Family Court is "responsible for adults having contact with children". Thus, "child sexual abuse in an institutional context" occurs in the circumstances of Family Court proceedings and processes. We therefore believe that the activities of the Family Court are within the scope of the Terms of Reference.

3.5 Conclusion

We accept that it is not clear whether the Family Court is within or outside the scope of the Terms of Reference. However, on a close reading of the Terms of Reference, we think there is a strong argument that it is.

This interpretation is open, according to the text of the Letters Patent. Where there are different interpretations of a section in the Terms of Reference available, the interpretation that would best achieve the purpose of the Letters Patent should be preferred.[21] A key purpose expressed in the Letters Patent is that claims of "systemic failures by institutions" in relation to child abuse be "fully explored".

There is a strong argument that a broad interpretation of the Terms of Reference should be adopted – that includes examination of the Family Court – due to the significance of this institution's role in responding to child sexual assault and its associated powerful influence in the lives of children that have suffered sexual abuse.

[21] *Acts Interpretation Act 1901* (Cth) s 15AA.

4. FAMILY COURT – A DISTINCT ISSUE FROM FAMILIAL ABUSE

Importantly, consideration of the Family Court's practices and procedures is not a consideration of what can be done to alleviate familial abuse itself.

For example, an analogy can be drawn with examining the procedures that a school has in place to deal with children who have been abused in the home. The focus would be on how the school became aware of the abuse, and reported/dealt with this once they were aware of the sexual abuse.

The focus of the inquiry would not be on what caused a family member to abuse the particular child, or obligations that the family itself had in dealing with the abuse. Rather, it would be on how the school dealt with the revelations of abuse.

5. FAMILY COURT – THE IMPORTANCE OF ITS INCLUSION

Even if the Royal Commission considers that its ability to examine the practices and procedures of the Family Court is unclear, we think there is a moral imperative for it to do so.

The Family Court is a critical institution that interacts with and deals with issues of child sexual abuse daily. Improvements to practices, policies and procedures within this institution will have a positive impact on a large number of Australian sexual abuse survivors.

Bravehearts is aware of many instances where deficiencies in the Family Court's practices, policies and procedures have placed children at serious risk of sexual assault.

Bravehearts can provide detailed case examples of such instances in submissions to the Royal Commission.

6. OBSERVATIONS FROM CASE EXAMPLES - IMPROVEMENTS THE ROYAL COMMISSION COULD RECOMMEND

Under its terms of reference, the Royal Commission has power to inquire into:

> *"(d) what institutions and governments should do to address, or alleviate, the impact of past and future child sexual abuse and related matters in institutional contexts..."*

Given this power, and our view that the Family Court is within the scope of the terms of reference, we believe the Royal Commission can examine the Court's practices, policies and procedures and recommend improvements to them, such as:

(i) Ensuring that Family Court officers are adequately trained in the prevalence, modus operandi, signs of and consequences of child sexual assault.

For example, personnel should have specific training regarding the dynamics of child sexual assault, including the indicators and the

barriers to speaking out, grooming and offending patterns and the impact on the victim. This training should also highlight how a child discloses (such as, via small pieces of information over time) and why a child might retract disclosure (i.e. wants it to go back to "normal").

(ii) Improvements to the way the Court handles evidence of child sexual assault, in particular evidence given by children, child protection professionals and allegations that child witnesses have been coached to accuse a particular individual of assaulting them.

(iii) Reviewing the Court's power to order psychiatric assessments in cases involving allegations of child sexual assault. Bravehearts is concerned that the power to order such assessments is open to abuse as a tactical ploy by parties to proceedings.

(iv) Improvement of the intersection between Family Court, police and child protection authorities, in particular regarding information sharing among agencies, and cross-agency cooperation to promote the protection of children at risk of abuse.

(v) Improvements to the way that Family Court judges access, and interpret expert reports involving allegations of child sexual assault.

For example, in some instances the degree of weight placed upon the report prepared by the Family Report writer may be inappropriate. Often, the report writer has sufficient contact with a child to establish a 'basic' rapport – however, there may be other counsellors or teachers who have greater knowledge given they have established rapport with the child over a longer period of time.

Improvements to the representation of children in the Family Court. This may involve ongoing evaluation of the performance of Independent Children's Lawyers (**"ICL**"), or threshold requirements to be appointed as an ICL, in terms of level of experience required. This is important because the ICL has immense responsibilities to carry out investigations, gather results and inform the court regarding the child's best interests.

(vi) Ensure the Court has a wider breadth of relevant opinions relating to the safety or otherwise of the child.

(vii) Review the training, policies and practices of Contact Centres and staff in relation to responding to risk. For example, the provision of consistent guidelines and procedures to be followed by all Contact Centres.

(viii) Review Magellan processes and procedures, which operate in family law proceedings where there is an allegation of child sexual abuse or serious physical abuse of a child. For example, the program is often primarily centred in capital cities, to the detriment of children in rural and regional areas.

Although important issues, we acknowledge the following are outside the scope of the Terms of Reference.

(ix) We do not suggest that the Royal Commission examine the causes of child sexual abuse in a familial context – that is, the way in which child sexual abuse arises before a child interacts with the Family Court.

(x) We do not suggest that the Royal Commission examine the strategies to prevent child sexual abuse in a familial context that arises before a child interacts with the Family Court.

APPENDIX B:

"SUFFER THE CHILDREN" BY JESS HILL

THE MONTHLY ESSAYS

SUFFER THE CHILDREN

Trouble in the Family Court

BY JESS HILL[22]

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When Erin saw the police lights flashing, she knew it was over. She steered the car to the side of the road, and turned to her two children. "OK guys, this is it," she said. "We've done our best."

Her teenaged daughter started to panic. "Fuck! Oh my god!" she cried. "I can't do this. You can't leave us!" She grabbed for the bottle of Panadol in the centre console, insisting she wanted to die. "No!" Erin said firmly. "Settle, just settle."

As the police officer approached with a warrant, Erin got out of her car. She asked for time to talk to her two children, and promised she'd follow him to the station. Back in the car, Erin tried to remain calm. "I am so sorry I have put you through all of this. This is not the life I wanted for you. Always remember how much I love you."

"What's going to happen to us?" her 10-year-old son cried. "I don't know," Erin replied. "You just need to tell the truth."

By the time the police caught up with them, Erin had been on the run with her children for nine months. She was now confronting a reality she'd been avoiding for years.

Since their children were born, and ever since he'd first held a knife to her throat, Erin had tried to manage her husband's abuse. In 2012, however, a warning from her GP had broken through her denial. In front of their screaming kids, John had

[22] Retrieved from: https://www.themonthly.com.au/issue/2015/november/1446296400/jess-hill/suffer-children

throttled Erin until her eyes rolled back in her head. “If you don’t leave,” her GP warned, “you’re as bad as he is.”

Erin did leave, and took the children to live with her parents interstate. Soon after, the Family Court granted John regular access to his kids. For the next year, Erin weighed her responsibility to her children, who were terrified of their father, against the risks of disobeying Family Court orders. There was a further complication: Erin had consented to the orders granting John fortnightly access – under pressure from her lawyer, she says, who advised that if she didn’t compromise, John could end up with sole custody.

When the children refused to see or even speak to their father, however, Erin felt she had no choice but to breach the orders. When John applied for full custody, both children refused to be assessed in the same room with him, and their counsellor wrote to the Family Court, advising that such a meeting would be traumatising for them. But when they presented their fears to a court-appointed social worker, whose job it was to assess the family, it was Erin’s motivations that were questioned, and her parenting criticised.

In 2014, two months before the full custody hearing was due to be heard, the Family Court suddenly made interim orders for John to have sole custody. Police were directed to enforce the orders, and both children were prohibited from having contact with their mother.

“So we fled,” says Erin. After they were stopped at the airport trying to leave the country, Erin slipped the authorities, drove the children down south, and disappeared. John went to the media, appealing for information about his missing children. He said he loved them very much, and couldn’t understand why, after their amicable separation, his ex-wife had disappeared with them.

Now under arrest, Erin sat with her children in the police station, and tried to explain to the officers why they had run. By chance, her daughter had just finished writing a protest letter. Erin handed the letter to police, and asked them to read it.

“My name is [...], and I am scared of my dad,” it began. “I have seen him in a rage throw my brother across the room. He has held a knife to my mother’s throat telling her how easy it would be to cut it ... and the court has given me to him. I have tried to tell all the legal people involved how scared he makes me but I am too young for anyone to listen ...”

In a recording of the letter, her unsteady voice becomes indignant. “At what point do I become old enough? I want to ... think that somewhere in the cosmos is a place where I am valued and safe. I don’t want to be the next Luke Batty ... Please, please help.”

That afternoon, the police drove Erin and her kids to a nearby town, so Erin could front a magistrate on criminal charges of abduction. There was one last chance to say goodbye, and then the children, distraught, were taken away.

That was earlier this year. Neither Erin nor anyone she knows has been allowed to contact her children. The next Family Court hearing isn't far away. Erin's legal advice is that, because she ran, she doesn't stand a chance.

Even its most ardent critics wouldn't claim the family law courts have an easy task. Child custody cases can be wickedly complex, especially when one or both parents are alleging abuse. Making the wrong decision can be devastating; children may be ordered into the care of an abusive parent, or prohibited from seeing a safe and loving one. They are not easy decisions, and they require great skill and understanding to get right.

Such skill and understanding, however, is dangerously inconsistent across the family law system. This has long been the case – for 15 years, studies have revealed the courts' failure to reliably detect and comprehend abuse. In these studies, countless victims (mostly mothers and children) recall being disbelieved by judges, court staff, family assessors – even by their own lawyers.

Mothers who seek no-contact orders (known as "no-contact mums") are warned that they risk being viewed as a hostile parent, which could lead to them losing care of their child altogether. A parent's record of violent offending may persuade the court to prohibit contact, but perpetrators aren't always so obvious: they often look like decent, high-functioning people.

In an alarming number of cases, no-contact mums who've raised allegations of child abuse *have* had their child removed and placed with the alleged abuser. Court orders have restricted these mothers to a few hours per week with their child at a family centre, where they must pay a stranger to supervise them.

Twenty years ago, it was "extremely rare" for a mother to lose care of her children for alleging child abuse, says Professor Patrick Parkinson, former chair of the Family Law Council (an advisory body to the federal attorney-general). Today, he says, it is all too common. "I'm seriously worried about this trend. They are based on a certainty about what has occurred which is not [always] justified by a serious examination of the facts." This dynamic is so entrenched, that "some lawyers now tell their clients, 'If you make these allegations, you risk losing the care of your child.'"

This doesn't marry with public perception. Stories about distressed fathers who've lost access to their children are legion, like the aggrieved father who protested atop the Sydney Harbour Bridge, or the fathers who've ended up killing themselves – or their own kids. Typically, these stories have two villains: the Family Court, which is in the thrall of the feminist lobby, and the vindictive mothers who will do anything to prevent a dad from seeing his children.

Fathers' rights groups have been cultivating this narrative for decades. They've been very effective: a 2013 VicHealth survey found 53% of Australians believe women in custody battles often make up or exaggerate claims of domestic violence to improve their case. Before I began researching this story, I did too.

Forensic psychiatrist Carolyn Quadrio, a medico-legal expert on domestic violence and child abuse, says this popular belief is a myth: studies commonly show false

abuse allegations comprise only 10% of the total. Furthermore, fathers are just as likely to make them.

Within Australia's Family Court, opinions on false allegations differ significantly. In 2013, retiring Justice David Collier said mothers were increasingly fabricating child sexual-abuse allegations to stop fathers seeing their children. "I'm satisfied," he told Fairfax, "that a number of people who have appeared before me have known that is one of the ways of completely shutting husbands out of the child's life." Privately, a retired Family Court justice said Collier's comments were "unfortunate", and another said that in his experience it was "uncommon" for parents to raise false abuse allegations.

There's no doubt that some good fathers have been falsely accused of abuse, and dealt with unfairly by the family law courts. But the concerted campaign by fathers' rights groups to convert these exceptions into the rule has been so successful, it may now be undermining the Family Court's ability to keep children safe.

Family violence experts say the situation is so dire they want the entire system investigated. The Australian of the Year, Rosie Batty, told the recent Senate inquiry into domestic violence that the Family Court is her "biggest area of concern". Speaking to the *Monthly*, Batty said she and other domestic violence advocates are "swamped" with calls for help from victims who say they're met with suspicion and even derision when they bring concerns about their children's safety to the courts. "If we were to properly investigate what is happening in the family courts," she says, "we would be horrified."

It wasn't always this way. In 1975, the new Family Court was a big win for the nascent women's liberation movement, which had just celebrated the opening of Elsie's, Australia's first domestic violence refuge. The *Family Law Act 1975* enabled victims to divorce their husbands affordably and quickly. Demand for women's shelters spiked: by 1979, there were more than 100 government-funded refuges in Australia.

From the beginning, men's rights groups decried the *Family Law Act* for emboldening spiteful wives, and accused the Family Court of being biased against men. Despite research showing that the involvement of a judge in a custody case increased the likelihood of a favourable outcome for a man, the claim stuck.

Tensions literally exploded in the early 1980s, when the Family Court was rocked by a shocking series of bombings and assassinations. The blame, according to some in the media, lay at the feet of the court, not the assassin. After the killing of Justice Ray Watson's wife, Pearl, the *Sydney Morning Herald* editorialised that some would feel "there must be something seriously wrong with the Family Court system for such an outrage to occur". The *Bulletin*, under the headline 'Family courts – too much of a revolution?' wrote that the attacks "exposed serious flaws in our divorce machinery". In the months following, the then attorney-general, Gareth Evans, wrote to several fathers' rights groups, saying he would welcome their suggestions for change.

In its waning days, the Keating government did make major changes to the *Family Law Act*. Where previously it was considered in the child's best interests to live with their primary caregiver, in 1995 the Family Court was assigned a new guiding

principle: children now had a right to *regular*contact with *both* parents. To counterbalance what one researcher termed "equality with a vengeance", another principle was introduced: the need to ensure the child's safety from family violence.

By 2000, these reforms had in effect "turned back the clock" on Family Court responses to domestic violence, according to legal practitioners quoted in an extensive study by the Family Court of Australia and the University of Sydney. This study found that the "safety from family violence" provision had done nothing to dissuade abusive fathers from believing they now had a right to their kids; fathers who would never have even tried to get access before were now being encouraged to fight tooth and nail.

This study was also one of the first to report that domestic violence victims were being pressured by their lawyers to sign consent orders, despite fearing for their children's safety.

In this short period, the "family law 'system' tilted more and more against women, either by accident or design", according to family law academics Stephen Parker and John Dewar. The success of a mother's case, they wrote, now depended on whether she was willing to support ongoing paternal involvement. In 2007, Rae Kaspiew (now at the Australian Institute of Family Studies) found the same: there were very limited circumstances in which a mother could challenge ongoing paternal involvement, "except in cases where the evidence of severe violence was clear-cut".

Evidence of child abuse is rarely clear-cut. When a parent molests a child they go to great pains to keep it secret, and often the only mark they leave is on the child's psyche. The child's disclosure is often the only available evidence, but that can be hard for authorities to verify: it's common for a child to disclose abuse to someone they trust, and then deny it when they're questioned by strangers.

Such was the case with Emily and her son, Alex. When Alex was three, Emily began to suspect her husband, who'd been violent towards her for years, was also sexually molesting their son. Her suspicion was triggered by several incidents, like the time Alex tried to kiss her "like a man", because that's the way his dad kissed him. As her suspicion gradually firmed into conviction, she left, taking Alex away to live with her mother. One night several months later, in 2006, Alex curled up in a ball one night and repeated in a singsong voice, "Daddy, you can't rip my bottom or take me away anymore." When Emily took Alex to the police station, he said his dad *hadn't* touched him on the bottom. But two months later, Alex told staff at his school that he wanted his father dead or in jail, that he hated it "when he kisses me or hugs me or licks me", and that he was "special" because of what his daddy did to him. In an interview with child protection, Alex didn't disclose sexual abuse, but said he didn't want to see his father because he was a "bad man".

When Emily filed abuse allegations with the Family Court, Alex's father denied them, and counter-alleged that her discipline was too strict. To assess both parents' allegations and their relationship with Alex, a judge requested they find a "single expert" to prepare a report for the court.

Single experts are used routinely in custody cases where abuse is alleged. They are generally child psychiatrists or psychologists who specialise in medico-legal work, and are regarded by judges to be honest, independent witnesses, particularly because they're usually selected – and paid for – by both parents. (Where parents can't agree, the court will choose the single expert for them.) When preparing a report, the single expert will consider evidence from sources like child protection and police, and may interview friends and relatives. They then interview each immediate family member, and observe how the parents and children interact with each other, typically in a single session. The single expert will then provide an opinion on parenting arrangements, and may even make recommendations on how the court should order the parents to behave.

Single experts are not easy to come by – it's difficult work, and few are willing to do it. "In any given city there may be only five or six experts prepared to do these reports at all," says Patrick Parkinson. "They are cross-examined – sometimes fiercely – by lawyers. That's not a pleasant experience for any doctor to go through." Parkinson says this small group of professionals carries a huge amount of influence, due to the "hierarchy" of expertise in the Family Court. "At the bottom there are social workers, who I'm afraid are not often given the credence their expertise deserves. Police officers have slightly more credibility; psychologists, more credibility again; but the gods of the Family Court are psychiatrists," he says. "Enormous weight is put upon their recommendations because of their long years of training, even though it may not be specific [to] discerning whether a child has been abused." As expert witnesses, single experts operate under immunity, which means they can't be identified for their work on any particular case.

The single expert assigned to Emily's case wrote that she presented in a "self-absorbed manner" and had an "over-valued idea" that Alex had been abused. He noted that the father's two former wives had also separately accused him of sexually abusing their young children, both under five. This was "hard to dismiss", but he could see nothing in his assessment of the father or his relationship with Alex that confirmed sexual abuse. Alex's "features of trauma", he believed, were instead caused by a "toxic relationship" with his mother, who overloaded Alex "with anxiety and the demands of the parental conflict". If Alex continued to live with his mother, the single expert observed, it was unlikely he would have a relationship with his father. In a separate investigation instigated through the Family Court, child protection also concluded there was no risk of Alex being harmed by his father.

In 2006, as Emily's case was waiting to be heard, the Howard government introduced further controversial reforms to the *Family Law Act*. Among them was the new "friendly parent" provision, which mandated judges to consider the willingness of each parent to encourage a close relationship between the child and the other parent. Parents hoping to raise abuse allegations in the family law courts now faced what former Family Court judge Richard Chisholm termed "the victim's dilemma": abuse allegations could be viewed as vindictive or punitive, and consequently, a judge may order that the child be placed with the perpetrator for longer periods, to protect them from the other parent's "alienating" behaviour.

In 2007, just after Alex turned six, a Family Court judge made just such an order. Emily can still remember the last thing she said in court. “I could see I was being painted as this terrible mother. In my last statement to the judge, I said, ‘If you have to take Alex away from me, please don’t give him to his father.’ My lawyer told me later that was the moment I lost my son.” The Family Court ordered Alex to be removed from his mother’s care, and placed with his father. Emily was prohibited from seeing Alex for three months; for the next year, she was allowed to see him for one hour a week at a supervised contact centre, and wasn’t able to care for him at weekends until Alex turned ten.

Outcomes such as this were soon considered not only possible but likely: one fifth of all women who accessed the Family Court between 2006 and 2010 reported feeling “forced” or “bullied” by their lawyers into agreeing to equal-time parenting arrangements, out of fear they could lose their children.

That’s what happened to Tina. She had left her abusive husband, Peter, 15 years ago, when their daughter, Lucy, was two, and was granted a three-year apprehended violence order (AVO) against him. When Peter took Tina to the Family Court, the sharp-eyed presiding judge warned that Lucy was in danger of becoming his next victim. He ordered that Peter’s access be supervised and, if his behaviour didn’t improve within a year, access should cease altogether. When that year was up, however, Tina’s lawyer advised her to consent to unsupervised access; if she didn’t, the father would take it back to the Family Court and, depending on the judge they got, he could end up with more contact than she’d want. Tina, agreeing it probably was best for Lucy to have a relationship with her father, relented.

Five years later, at a personal-development class, Lucy learned for the first time about her “no-no zones”. “It suddenly clicked with me at eight years old that the things that were happening in my household shouldn’t be happening,” says Lucy, now 18. That day, she told a school counsellor her father touched her in ways she didn’t like. She’d never thought to say anything before, because she thought it was part of a “special father–daughter bond”. “I wasn’t supposed to speak about it,” says Lucy, “because it would ruin the secret.”

When Tina applied to the Family Court for a no-contact order, the judge requested an assessment from a single expert. When the expert interviewed Lucy alone, she told him that her father used to touch her in her “private parts”, would often sleep next to her, and that she remembered waking up feeling “all sticky”. When the single expert interviewed Lucy and her father together, he asked if she was worried about her father touching her “in a bad way”. Lucy avoided the question. He asked again. “It’s unnerving – you don’t want to tell, because he’s the one who’s doing it!” Lucy explains. “And he’s sitting there staring at you the whole time.”

In his report, the single expert observed that Lucy appeared “very guarded” with her father, but decided this was because she felt pressured by her mother to reject him. This same pressure, he concluded, had led Lucy to allege abuse in the first place. The expert portrayed Tina as “anxious”, “over-protective” and “possibly suffering from psychosis”, and reframed the history of domestic violence between her and Peter to a “convoluted and strained” relationship.

In his recommendations to the judge, the single expert advised that Lucy should continue spending regular weekends and half the school holidays with her father, and that Tina should get counselling to help her support the father–daughter relationship. The final recommendation doubled as a warning: "Should the mother not be able to support a relationship between the child and the father or if further spurious allegations of sexual abuse arise, then I would recommend that the mother have a close psychological assessment and that the child be placed in residence with the father."

Tina was mortified. "This report writer shook our hands, looked my daughter in the eyes, and said, 'We will help you.'" Her lawyer said that, in the face of such a definitive report, persisting with the allegations could mean losing custody of Lucy altogether. "I considered running away with her, but I had another young child at the time," says Tina. On her lawyer's advice, Tina signed consent orders granting Peter unsupervised overnight access.

Lucy was scared into silence for years. "The abuse obviously got worse. It went from being daddy's little secret, to just full on … just awful abuse," she says, tripping over her words. "It became very violent, and if I wouldn't comply, it was brought up that I wasn't allowed to speak about it, so maybe I should just shut up and let it happen, and no one would believe me anyway.

"It did come to the stage where he was in fact having sex with me, and I got my period quite young, so it was scary to the point where I didn't even know if I'd come home pregnant."

When Lucy was 13, Tina received a letter from Lucy's father, relinquishing custody. He didn't give any reasons. "I think it was because I was old enough to be believed," says Lucy. Even though her case didn't end up going to trial, she feels like the whole system betrayed her. "I've been asked, now that I'm 18, if I want to go back and finish the report with the police," she says. "I'm like, what's the point? Are they going to believe me? I still don't have any more evidence than I did back then."

Reading court decisions from this period, it seems some judges believed an abusive father was better than no father at all. One 2007 Family Court judgement stated that "The consequences of denying contact between the abusive parent, usually the father, and the child may well be as serious as the risk of harm from abuse … There is no presumption or a priori rule that even gross misbehaviour such as child sexual abuse … puts up an insurmountable barrier in the way of having contact with a child victim."

In a 2010 case, a father already on the sex offenders register for possessing child pornography was fighting for equal care of his daughters, aged eight and ten. The mother was requesting he have supervised daytime contact only. Their eldest daughter had told child-protection workers that she loved her father and didn't want to upset him, but wasn't comfortable staying over at his house, particularly on her own. When asked why, she referred them back to what she'd told the police, but became "extremely distressed" when pressed to elaborate. She repeatedly pleaded with child-protection workers not to repeat what she'd said to her father.

In his judgement, the Family Court justice accepted that the father had demonstrated "inappropriate" affection towards his daughter. He also believed the mother's allegation that several years earlier she had seen the father with an erection, leaning over and touching his five-year-old stepdaughter while her pyjama pants were down, and he accepted that the mother delayed reporting it for years because she was afraid of the father. The justice also found the father had been intimidating during the marriage, and "manipulative and disingenuous" in his evidence.

Despite all this, the justice ordered that the daughters spend alternate weekends and half the school holidays with their father. Overnight stays were to be supervised by an "adult friend" of the father, to "address" the elder daughter's nervousness, and the daughters should share a room for "mutual support".

These cases reflect a bizarre paradigm that was emerging in the Family Court: a parent perceived to be alienating their child against the other parent was in some cases being treated as a greater threat than a parent with a record of abusive behaviour and child sex offences.

By 2012, three more inquiries had found that the *Family Law Act* wasn't protecting victims of family violence. The then attorney-general, Nicola Roxon, said the research clearly showed that parents were afraid of reporting abuse, and announced another set of reforms to the *Act*. The Gillard government removed the "friendly parent" provision, expanded the definition of domestic violence, and broadened child abuse to include exposure to domestic violence, on advice from the Australian Law Reform Commission. On paper, the Family Court now had a clear mandate to prioritise a child's safety over their right to a meaningful relationship with both parents. The changes had an immediate impact: in the Family Court, 470 parents filed allegations of child abuse or family violence in 2014–15, compared with 334 in 2011–12 – a 41% increase.

Yet despite these positive changes to the *Act*, the same stories persist. Parents are still warned against raising abuse allegations, and pressured by their lawyers to sign consent orders they fear will endanger their children. Victims are still finding that both their disclosures and those of their children are diminished or disbelieved. In research for this story, the same themes were repeated time and again: domestic violence victims being admonished by judges for bringing up "ancient history", and urged to forget their grievances and "think about their children", as though domestic violence ends when the relationship does.

When domestic violence victims present at the Family Court, they are already at a significant disadvantage. Leaving an abusive relationship can be like escaping from captivity – victims emerge disoriented and afraid, and have often been reduced to a state of helplessness. Recalling details of abuse – even years later – can trigger post-traumatic stress, and render them anxious and emotional. Tragically, this can undermine their credibility as witnesses.

It's even worse if they believe their abuser is also a threat to their children. As Professor Kelsey Hegarty told the Victorian Royal Commission into Family Violence this year, victims in these circumstances can look "mentally unwell", which can then be used against them. "In contrast," she said, "the perpetrator can often look very

calm and rational." The perpetrator – if unrepresented, as are so many litigants – is also allowed to cross-examine their victim.

Even if victims present well, their evidence can sound implausible. Some of the signature traits of domestic violence and child abuse are inherently counterintuitive. It doesn't make sense that a hard-working family man could go home and do such things. It doesn't make sense that a victim will return to their abuser again and again (seven times on average). It doesn't make sense that, having escaped, a victim may go out of their way to encourage the abuser's relationship with their child, only to change their mind (after discovering the abuser is also a danger to their child). Nor is it logical that child sexual-abuse victims may still love their abuser, and show no fear in their presence. Or that a child may disclose abuse to one person, then deny it to another.

Domestic violence is core business for the Family Court, and yet there's little to no mandated training on it for judges, lawyers or judicial staff. There's not even a required level of expertise in it for the single experts and in-house family report writers who assess allegations of abuse. This alarming deficit was highlighted in a recent paper by Matthew Myers, now a judge on the Federal Circuit Court (where the majority of family law cases are heard): "Those delivering 'expert evidence' in Australian Family and Federal Magistrates courts," he wrote, "rarely have the training, knowledge and skills needed to do this type of work adequately."

Court experts' opinions are enormously influential. If they decide the allegations aren't true, the alleging parent's case is considered so damaged that Legal Aid will often withdraw their legal representation, because such support is predicated on the case's potential for success. If that parent wants to challenge an expert's findings, they have to find another lawyer or cross-examine the expert themselves. Many parents end up simply consenting to an expert's recommended parenting orders, as happened with Tina and her daughter, Lucy.

Any suggested lack of expertise in this area greatly concerns Magistrate Anne Goldsbrough who, as Australian Law Reform Commissioner, oversaw recommendations that every Australian judicial officer have ongoing family violence education. Goldsbrough was the only official to identify that Greg Anderson posed a deadly threat to Luke Batty and his mother, Rosie, after Rosie testified in Goldsbrough's court that Anderson had held up a knife and said, "This could be the one that ends it all." Goldsbrough was so concerned by Rosie's testimony, she ordered there be no father–son contact, and suspended the existing family law contact orders. That intervention order was later relaxed by another court, after Anderson reapplied for contact. The tragedy of Luke Batty's case is that a succession of police, magistrates, counsellors and child-protection workers failed to recognise the risk factors that had so alerted Goldsbrough. Ten months after Goldsbrough's original order, Anderson murdered Luke with a cricket bat and a knife after cricket practice in Tyabb, south-east of Melbourne.

Goldsbrough, a former family lawyer, says that without education on the dynamics of family violence, myths can calcify into accepted wisdom. "It's a common misunderstanding among many – including some in the family law system – that

mothers use intervention orders as swords, not shields," says Goldsbrough. "Anybody in this job will tell you false allegations are incredibly rare … Intervention orders are made based on evidence. Is there evidence that family violence has occurred, and that it's likely to occur again? Yes there is? Then we can make an order."

If you're a parent making a genuine allegation of abuse in the Family Court, you could be fortunate: your judge may understand family violence, your family report writer may be trained to recognise it, and your lawyer might believe you. Many court decisions reflect this. But too often these parents are instead accused of overloading their child with anxiety, and destroying their relationship with the other parent. The most recognised (and controversial) term for this is "parental alienation", though it's not always referred to so explicitly, due to its inflammatory nature. Accusations of parental alienation in its various guises, however, have become a common counter-allegation made by parents accused of abuse – especially when the accusations have been made by a child.

The notion of parental alienation first gained currency in the 1980s, and was the brainchild of American child psychiatrist Richard Gardner. He wrote extensively on Parental Alienation Syndrome (PAS), which supposedly affected children who'd been "brainwashed" by one parent to denigrate or allege abuse against the other. Gardner identified several symptoms in children suffering from PAS: using foul language against the rejected parent, insisting that they alone came up with the allegations, and supporting and protecting the non-accused parent. Gardner claimed that PAS was found especially in custody cases involving child sexual abuse, in which, he said, the vast majority of allegations were fabricated.

The cure Gardner proposed for PAS was radical: force the child away from the alienating parent (most often the mother) and have the child placed with the alleged abuser (most often the father). He also recommended severing contact between mother and child for months at a time, and even encouraged jail time for mothers who persisted with abuse allegations.

Despite publishing no statistical evidence to prove his theory, Gardner became known as the "guru" of child-custody evaluations in the United States. He testified in more than 400 court cases, and PAS became popular with family lawyers across the UK, Canada and Australia. Though he believed most sexual abuse allegations in custody cases to be false, Gardner did believe child sexual abuse occurred, and self-published several books on the subject. In his 1992 book *True and False Allegations of Child Sex Abuse*, he condemned what he called "sex-abuse hysteria", and outlined his staunch opposition to society's "overly moralistic" and punitive approach to paedophilia: "It is because our society overreacts to it that children suffer."

In this book, Gardner advised therapists treating child sexual-abuse victims to work with the whole family. "Older children may be helped to appreciate that sexual encounters between an adult and a child are not universally considered to be reprehensible acts," Gardner wrote. "The child might [also] be helped to appreciate the wisdom of Shakespeare's Hamlet, who said, 'Nothing's either good or bad, but thinking makes it so.'" If the mother is reacting to the abuse in a hysterical fashion,

or is using it as an excuse for a campaign of denigration, then the therapist should help her appreciate that such behaviour is “ubiquitous”, and assist her in becoming more sexually responsive. This “may lessen the need for her husband to return to their daughter for sexual gratification”, Gardner advised. The father, on the other hand, should be reassured that “there is a certain amount of paedophilia in all of us”, and it “has been considered the norm by the vast majority of individuals in the history of the world”. The father, however, “must learn to control himself if he is to protect himself from the Draconian punishments meted out to those in our society who act out their paedophilic impulses”.

Gardner stood by his theories until his suicide in 2003. By then, PAS had been discredited as a “syndrome”, and disavowed by the Family Court of Australia. Although Gardner’s syndrome is not referred to directly, there have long been concerns that it is being used in substance. Child psychiatrist Chris Rikard-Bell is one of the most prolific single experts consulting for the Family Court. In his 25-year career, he’s evaluated around 2000 families, and is regularly called on in cases featuring “highly conflicted” allegations of physical and sexual abuse. Like Gardner, Rikard-Bell says that “about 90%” of child sexual-abuse allegations he assesses are false.

When this figure was quoted to Carolyn Quadrio, who regularly gives single-expert evidence in the Family Court, she was “astonished”. “Gardner also suggested it was 90% false allegations,” she replied. “He had absolutely no data to back it up.” Conversely, says Quadrio, “something like 80–90% [of allegations] have a reasonable foundation to them when they’re investigated.”

After a wide-ranging conversation about his methods, I asked Rikard-Bell which experts on child sexual abuse he referred to when forming an opinion of a case. “It’s a very difficult area to get objective information and to carry out controlled trials,” he said, “so the scientific literature is really a combination of looking at very experienced, well-regarded people in the field.”

Is there anyone in particular? “Gardner, for example, looked at Parental Alienation Syndrome,” he replied. “There’s been a lot of debate about the use and misuse of PAS, but clinically often we see children who have become distanced from the other parent under influence, and so develop a degree of alienation. I think it’s a useful concept in some circumstances, but it’s sometimes overused and misused.”

On this point the Family Court’s deputy chief justice, John Faulks, agrees. “So far as [PAS] is concerned, I wouldn’t have thought anyone was relevantly suggesting that was still a psychologically valid concept,” he says, “but that does not in any way suggest there aren’t situations in which parents do engage in a process of trying to alienate the children from the other parent.”

Parental alienation may be a valid notion, but what of Gardner’s syndrome specifically? When I asked Rikard-Bell if he thought Gardner had been unfairly maligned, he said Gardner was still “very relevant” but PAS, “even though it is often useful”, had created “more debate than was helpful”. Rikard-Bell said he does assess “the degrees of alienation Richard Gardner talked about … mild, moderate, or severe, and that may lead to an appropriate response from the court”.

In 2008, Brisbane clinical psychologist William Wrigley was sanctioned by the Queensland Psychology Board for referencing PAS in evidence to the Family Court. On a website moderated by fathers' rights advocates, the Family Law Web Guide, this case was presented as cautionary: "Consider carefully before you use the term PAS in an Australian family law court; especially using the word 'syndrome'. Better perhaps to talk about 'brainwashing', 'extreme alignment' or just 'parental alienation'."

Advocates have for years raised concerns that PAS is influencing some single experts working in the Family Court. Whether this is widespread or not, it's perhaps more concerning that Gardner's "cure" – removing the child from the alleging parent and placing them with the alleged abuser – is still being prescribed by judges.

In 2014, a Family Court judge ordered that two children under eight be removed from their mother's care, after she raised sexual abuse allegations against the father. The mother's allegations were based on statements made by her daughter – to her, the police, the maternal grandparents, child protection and a counsellor – that she'd been asked to "rub" and "look" at her father's "private parts".

In an extraordinary departure from standard procedure, the judge made these orders in an ex-parte hearing (meaning the parties to the case weren't present) in the judge's chambers. Ex-parte hearings are reserved for situations where there's an immediate risk of harm or flight, neither of which existed. This secret hearing was not recorded, and occurred on the recommendation of the single expert assigned to the case.

With nobody present who would contest the single expert's findings, the judge quoted them extensively in her judgement:

> I don't believe the sexual abuse on balance is likely to have occurred … this has been more the anxiety of the mother which has been projected onto the children. I believe the only alternative now is for the children to be placed with the father. I recommend this happen immediately and without notice.

The single expert did not have any concerns about the mother's parenting capacity; his major concern was that she wouldn't be able to support her children's relationship with their father. The judge agreed this was serious and potentially irreparable, and reason enough to remove the children without warning. Quoting the single expert again, the judge noted that if the children were removed in the presence of the mother and maternal grandparents, their "great emotional responses" could trigger child protection and police being involved, which would make it impossible to remove the children. The judgement prohibited the mother from seeing her children for two weeks after they were removed. Following that, her access was to be restricted to a couple of hours every weekend, monitored by a paid supervisor.

The following day, the two young children were fetched from class and told they were going home early. At head office, they were delivered into the custody of their father.

"The day the children were taken," their mother recalls, "I had gone to the school and talked very briefly to the school principal to say, just as a heads up, we now have a final trial date, and this is the gist of what [child protection] has said." Child protection had recently filed an affidavit with the Family Court, advising it believed

one or both children were at risk of sexual harm in their father's care. "Within an hour and a half of getting home, I had another phone call from the school, saying the most shocking thing has happened – almost as soon as I had left, two officers arrived and presented court orders that the children were to be immediately removed to go and live with the father." The mother says this staff member reported that when the children realised what was happening, he saw "a look of betrayal" on their faces, and he hoped they would be able to forgive him.

The *Monthly* requested an interview with the school, but they declined, citing legal threats from the father's lawyer. The children remain with their father.

In what seems like an obvious oversight, there is no formal process to review a child's wellbeing after parenting orders are made. If a parent has run out of resources or energy to keep fighting the case, their children have little choice but to obey court orders. If they've been ordered into the care of an abusive parent, this can be diabolical.

Alex was seven when he was removed from the care of his mother, Emily, and ordered to live with his father. "That one decision the judge made ruined my whole childhood," says Alex, now 14.

Alex says that for as long as he can remember, his father subjected him to regular physical and emotional abuse. "One time, I was brushing my teeth, and he just walked in the door and slapped me really hard across the face, for no reason." Alex says he tried "again and again" to tell people what was happening, but nobody would believe him. "I was too small."

Two years ago, Alex breached the court order and ran away to his mother, threatening to kill himself if he was forced to go back. When his father filed recovery orders, the judge requested that a single expert assess Alex's allegations. The single expert concluded that Alex's "suicidal feelings" were stress-related, and he didn't believe Alex really wanted to die. He recommended the judge return Alex to his father and, to help them reconnect emotionally, Alex should not contact his mother for a month. If he fled again, "the mother should be held responsible and incarcerated". On the single expert's advice, the judge issued a recovery order, and suspended contact between Alex and his mother for a month.

The next morning, Alex rode the train to his older brother's house, and they went to the police. "There was a very, very good police officer who said he would do anything he could … but he couldn't do anything," says Alex. Police records show that at 8.30 pm Alex's father arrived at the station with a recovery order. "They actually dragged me to the police car, put me in and drove me back to my dad's house," says Alex. Every day for the next three days, Alex ran away to the police, and each time they had to return him to his dad. "The Family Courts, they overrule everyone," he says. "Even the police – *the police* – couldn't protect me!"

Two weeks later, Alex fled again to the police. This time, they applied for a provisional AVO to protect Alex from his father. In their application, the police wrote that Alex gave evidence that two nights previous his father had forced him to stay at a party until 2.30 am, and after Alex asked repeatedly to go home his father had called

him “a fucking shit” and physically assaulted him. Alex’s father denied the incident, and said they were home by 11.30 pm. A child-protection report recorded Alex “shaking and crying when discussing living with his father”.

With the case set to go back to the Family Court, child-protection officers needed to find somewhere else for Alex to live in the meantime. He wanted to stay with his maternal grandmother, but his father, who still had sole parental responsibility, refused. When Alex rejected his father’s suggestion to stay with a family friend, the father consented to Alex staying in a refuge for two months, adding “that might give Alex some time to have a think about things”.

“For that whole two months, I couldn’t speak to my brother or my mum – no phone calls, no nothing,” says Alex. Back in the Family Court, child protection filed an intervention, seeking orders for Alex to live with his mother. “Finally, after all those two months, there was another court order made that I get to live with my mum,” says Alex, “and I’ve been living with my mum happily ever since.”

Alex has formed a support group for kids who’ve been through the Family Court, and he is campaigning for the rights of children to be heard in the court process. “I really, really don’t want children to get taken away from their mothers or fathers and given to the abusers,” he says. “I’m doing this so their childhood doesn’t get destroyed like mine did.”

With children as young as 14 campaigning against the family law system, and Rosie Batty framing it as her primary area of concern, it’s fair to say the Family Court has some serious issues to consider. Some people I spoke to within the system pointed to chronic under-resourcing as the court’s chief problem. The Family Court’s chief justice, Diana Bryant, declined the *Monthly*’s interview request, but told ABC’s Radio National last month that the family law courts are in urgent need of more funding, especially to assist judges assessing at-risk families for interim parenting orders. Interim orders can be in effect for 12 months or more, but are decided in hearings shorter than two hours, with scant evidence apart from the parents’ own submissions. Inexplicably, since the funding has already been allocated, Bryant said the federal government had also neglected to replace several retired judges across the family law courts, which is creating significant – and risky – delays in an already overburdened system.

But other observers say these problems can’t be fixed by simply injecting more resources. They say domestic violence education is urgently needed. At the very least, it’s clear that single experts – whose evidence can be so influential – should have to meet minimum standards of expertise in domestic violence and child abuse.

There are promising signs of change. Even fierce critics of the Family Court say it’s starting to recognise these shortcomings, and becoming more open to consultation. But openness alone will not change the fact that every week parents who fear for their children’s safety are being pressured into making potentially tragic compromises.

As the true extent and nature of domestic violence becomes more widely understood, pressure will mount on the justice system to improve its ability to respond. Prime

Minister Malcolm Turnbull says a “big cultural shift” is required to achieve lasting change. But such change can’t be left to the citizenry alone. True cultural change must occur within the justice system itself.

** Some names and identifying details have been changed.*