



Joint Select Committee on Australia's Family Law System 2020

Men's Rights Agency

A non-profit Australia-wide organisation providing assistance for 26 years for men/fathers, and their children when they are faced with family separation, child support problems, property settlement, domestic violence, shared parenting, discrimination or any other concern

31 January 2020

***Pie-in-the-Sky or just more wishful thinking
..... based on unfulfilled expectations and false promises***

Just how many times are we expected to put forward our complaints, pleas and suggestions to resolve the current system of “family law”? On most previous occasions it appears that our contribution to the discussions and other parent’s submissions have made little difference. I fear this is another of those times.

I note Professor Patrick Parkinson makes similar comment in his Submission No 93. He writes:

- *Do not reinvent the wheel. A vast number of reports have been written about the family law system over the last 20 years. Most of the recommendations in those reports have not been given really serious and thorough consideration by government. These reports have often recommended the same things or variations on the same things. There is no reason to believe that the report of this Committee will suffer any different fate from the previous ones unless it offers a thorough review of the many wise recommendations that have been previously made, and thereafter not implemented.*

The Government has already consulted with the ALRC, and the Attorney General, Christian Porter has already signalled an attempt to change the structure of the Family Court and Federal Circuit Court. The inquiry was seen as a voice for the legal profession, with the general public having little say. For the ALRC to recommend removing Section 65DAA of the Family Law Act is unthinkable. This section was introduced as a result of the Howard Government’s 2006 shared parenting changes and required judges, in certain cases, to consider whether children should spend equal time, or substantial and significant time with each parent.

Almost as an after-thought and under pressure from One Nation, whose vote is required in the Senate, the Government has cautioned itself to make a show of directly listening to the people affected most by the system, before implementing any changes, pre-determined or not. Hence this current inquiry. To not appear to listen to the people or to remove S65DAA would cause irreparable damage to their re-electability. Let’s hope this time, our words will resonate with those truly looking to improve the system of family separation in this country.

INTRODUCTION

Before referring to the problems as we see them, we wish to put before the committee, evidence that improved systems from other parts of the world are having a positive effect in reducing the number of family court actions and claims of domestic violence.

We do so on the basis of posing the question:

- Do we just want to amend the current system to ensure greater accountability, smoother functioning, less friction and costs for parents forced into the family law system?
- Or in addition, would we like to find solutions to make life easier for couples raising children, encouraging them to stay together - which is undoubtedly for the benefit of the children providing they have two fit parents and thereby reducing the number of separations and lessening the aggravation between parents?

Undoubtedly “the popularity of shared parenting is increasing.”^{1 2 3}

In a comparative survey of 34 western countries conducted in 2005/06, the proportion of 11-15 year old children living in a shared parenting arrangement versus sole custody was highest in Sweden (17%), followed by Iceland (11%), Belgium (11%), Denmark (10%), Italy (9%) and Norway (9%). Ukraine, Poland, Croatia, Turkey, the Netherlands and Romania all had 2% or less. Among the English speaking countries, Canada and the United Kingdom had 7% while the United States and Ireland had 5%.^[6]

By 2016/17, the percentage in Sweden had increased to 28%; with 26% for children age 0-5 years, 34% among the 6-12 year old age group, and 23% among the oldest children ages 13-18
[7]

The shared-parenting revolution is gathering pace in the United States of America. Kentucky was the first state to recognise the popularity and easy acceptance amongst their population for shared parenting (joint custody law). Further shared parenting legislation is being introduced and considered by Oklahoma and Pennsylvania.

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1. Fransson, Emma; Sarkadi, Anna; Hjern, Anders; Bergström, Malin (2016-07-01). "Why should “ they live more with one of us when they are children to us both?: Parents' motives for practicing equal joint physical custody for children aged 0–4”. *Children and Youth Services Review*. **66**: 154–160. [doi:10.1016/j.chidyouth.2016.05.011](https://doi.org/10.1016/j.chidyouth.2016.05.011).
 2. Lois M Collins (February 5, 2016). [*"What 'shared parenting' is and how it can affect kids after divorce"*](#). *Deseret News*.
 3. Linda Nielsen (2018). "Joint Versus Sole Physical Custody: Children's Outcomes Independent of Parent–Child Relationships, Income, and Conflict in 60 Studies". *Journal of Divorce & Remarriage*. **59** (4): 247–281. [doi:10.1080/10502556.2018.1454204](https://doi.org/10.1080/10502556.2018.1454204).

Kentucky's popular joint-custody law shows why it's the most effective at helping families – citizens voiced their support by a whopping factor of 6 to 1

In August 2019, Matt Hale, a director with National Parents' Organization Board⁴ reported that since Kentucky passed America's first "shared parenting law", a law that created a starting point that both parents have equal custody time if the parents are fit caregivers, the number of family court applications declined, as did domestic violence claims. Family court applications declined from 22,512 in 2016 to 19,991 in 2018 – a drop of 11% despite the increase in population.

Domestic violence claims show a similar decline. 247 less in 2017, the first year of introduction and 445 less in 2018. This decline was despite the expansion of the domestic violence criteria to broaden its scope to include dating couples and an increasing population.

The Kentucky "Administrative Office of the Courts has issued a report that the law is as effective as it is popular, describing the results as spectacular. Kentucky's family court caseload and domestic violence cases had been rising, which was expected because our state's population is increasing. But, in early July 2017, that trend abruptly stopped and family court cases and domestic violence filings began declining. Why? July 2017 is when Kentucky implemented a partial version of the shared parenting law. The next July, Kentucky's full-blown shared parenting law took effect and the family court caseload and domestic violence filings dropped further."

The joint-custody law is helping Kentucky in yet another way. As parents sue each other less, the state has fewer cases to process. This allows judges time to focus on the more difficult cases including domestic violence situations. Also, taxpayers are paying for fewer cases to go to trial. Separating parents are less frequently paying large attorney fees, too. These transitioning families now will keep more of their own money during family changes That money goes back into the state's economy in normal productive ways instead of legal fees."

Before moving into the body of this report I wish to provide an answer/suggestion in reply to my second question, which I recognise is not within the terms of reference, but may provide some food for thought and an alternative pathway to improve the circumstances of families and encourage them to stay together, thereby alleviating the devastation of separation and divorce.

⁴ <https://www.courier-journal.com/story/opinion/2019/08/30/kentuckys-joint-custody-law-leads-decline-family-court-cases/2158216001/>

I asked:or, in addition, would we like to find solutions to make life easier for couples raising children, encouraging them to stay together - which is undoubtedly for the benefit of the children providing they have two fit parents and thereby reducing the number of separations and lessening the aggravation between parents?"

Hungary's population was declining. Not wanting to lose their own identity, the Hungarian Government set about introducing a raft of changes that would encourage families to stay together and have more children.⁵

In his "State of the Nation" address in February, Prime Minister Viktor Orbán announced a seven-point family protection action plan, which is "Hungary's response to demographic decline." Seven changes came into effect in July 2019.

They are:

- [1] preferential loan offers to every woman under age 40 when they first get married.
- [2] a loan program to support home purchase (also known as CSOK) will be extended and families will also be able to use the loan for purchase of resale homes.
- [3] a subsidy for car purchase for large families;
- [4] loan repayment up to 1 million forints (4799.319 Aud) of the mortgage loan taken out by families with two or more children.
- [5] women who have raised at least four children will receive a life-time exemption from personal income tax
- [6] 21,000 new crèche places will be established over three years.
- [7] grandparents will also become eligible to receive subsidized parental leave, similar to maternity or paternity leave, when they are looking after young children.

"Since the announcement, the plan has garnered its fair share of international attention, some critical and much of it very positive. In any case, it reflects one of the top priorities of the Orbán Governments since taking office in 2010.

"For us, family is the basic unit of society," said State Secretary Katalin Novák in a recent interview. "Traditional families represent a value we intend to defend not only in Hungary but internationally as well."

Hungary's new policy stands out for a number of reasons, not least because it devotes 4.8 percent of GDP on programs to support the family and encourage childbirth."

⁵ abouthungary.hu/blog/hungarys-family-protection-action-plan-its-coming-july

The only criticism this Agency would offer is that the benefits are paid to the mother only. These benefits should be available to the intact family husband/wife, and parenting (defacto) partners. We believe Australia also suffers from the problem of a declining birth-rate.

In 2006, Australia was among the leaders of the western world to introduce a “shared parenting” concept. The old guardianship laws were rehashed to become shared parental responsibility, which was allocated to parents who presented no harm to their children or each other and could show they could communicate and reach agreement. Shared parenting time became a ‘must’ requirement, or substantial contact or any other scenario that was thought to be in the best interest of the child. To encourage cooperation the “friendly parent” requirement was introduced to ensure both parents understood the need for the other parent to be able to share in the care of the children. False allegations and lies attracted further penalties.

TOR a. Ongoing issues and further improvements relating to the interaction and information sharing between the family law system and state and territory child protection systems, and family and domestic violence jurisdictions

Domestic Violence and Family Law:

The Labour Government came into power in 2007, and almost immediately rolled back the changes to the 2006 Shared Parenting Family Law Act by removing the friendly parent provision and the accompanying penalties that would go a long way to identifying and restricting false allegations and lies.

PM Gillard “undermined the shared parenting reforms and broadened the definition of domestic violence to include verbal or financial abuse and emotional manipulation.

This ensures any allegation of abuse from a mother in a custody battle becomes grounds for denying a father access to his children”.⁶

Not only was the legislation rolled-back, the then Labour Government focused on introducing a campaign to protect women only and children from their alleged abuser, taken to be the male partner/husband. In 2012, family violence was elevated in the Family Law Act to take precedence. A blue-print, was adopted by COAG entitled Time for Action, a National Plan to Reduce Violence against Women and their Children 2010 – 2022”.⁷

⁶ The Brutal Truth about Domestic Violence Devine M. <https://www.dailytelegraph.com.au/news/opinion/miranda-devine-the-brutal-truth-about-domestic-violence/news-story/6912df910701f0c249272fd9fecfa4eb>

⁷ Time for Action
<http://www.leadershipforwomen.com.au/images/docs/Federal%20Labor's%20National%20Plan%20to%20Reduce%20Violence%20against%20Women%20and%20their%20Children.pdf>

Changes of Government and Prime Ministers did not halt the level of anti-male propaganda dispensed under the claim of protecting women and children only from violence. Malcolm Turnbull made his first policy announcement as Prime Minister by giving \$100 million dollars to be used to blame domestic violence on gender inequality. Our current Prime Minister has been quick to “White-Knight” his credentials by putting in a \$326 million contribution into the domestic violence industry that will do little to protect women who need protection and continues the demonisation of men and boys without justification. It will provide funds for more talk fests, media lunches and launches, but as we have seen the White Ribbon Foundation has closed having overspent its budget and Rosie Batty’s non-profit help organisation has also closed down, with no reason given for its demise, apart from the promoter’s tiredness.⁸

Women’s domestic violence advocates have been determined to send the message that only men and that means all men, no matter who they are, have the potential to be violent and only women are victims despite statistics proving otherwise.

At least, one in three victims of domestic/family violence are men⁹ and children are in far greater danger from their mothers.

An excellent referenced article by Augusto Zimmermann appeared in News Weekly detailing the evidence about mothers’ offending.¹⁰ A copy is attached at the end of this submission and can also be found on the Men’s Rights Agency website

Another article from Yuri Yoakamidis, a very experienced long term advocate for fathers, addresses “The truth about women who commit domestic violence and child murders”.¹¹ Again, I have attached the referenced article to the end of this submission or it can be read on our website.

⁸ "Unfortunately, I realise that I can't keep going at this pace forever. It is unsustainable and I am tired. Sydney Morning Herald 16Feb2018 <https://www.smh.com.au/lifestyle/life-and-relationships/it-is-unrelenting-rosie-batty-steps-down-from-her-foundation-20180216-h0w70a.html>

⁹ www.oneinthree.com.au/overview

¹⁰ Fatherlessness linked to increased risk of child abuse, Augusto Zimmermann, News Weekly 26 April 2015
<https://mensrights.com.au/hot-topics/fatherlessness-linked-to-increased-risk-of-child-abuse/>

¹¹ <https://mensrights.com.au/hot-topics/the-truth-about-women-who-commit-domestic-violence-and-child-murders/>
The truth about women who commit domestic violence and child murders
By Yuri Joakimidis
June 19, 2012

The women's domestic violence advocates have failed to convince the Australian people that all men are violent, regardless of their situation.

There has been evidence for quite some time showing that domestic/family violence occurs more frequently in towns where indigenous people live, poverty, drug and alcohol abuse goes hand in hand and women are likely to be the perpetrators in at least one third of the complaints.

Miranda Devine came in for considerable abuse when she wrote in 2015 that "Domestic violence is worse in the small remote town of Bourke. With its high indigenous population, it has a rate of 4195.6 offences per 100,000 population (in fact, Bourke's crime rate makes it more dangerous per capita than any country on earth).

Second place goes to Walgett, with a rate of 2,692, then Moree Plains (1824), Glenn Innes (1103.5)".

She made the point that domestic violence was not evenly spread across the board, but more prevalent in poorer areas, with high unemployment, drug and alcohol abuse. She compared the figures already mentioned to those found in the wealthier suburbs of Kuringai 66.1 per 100,000, followed by Hunters Hill, Lane Cove, Hornsby, Manly, Willoughby and so on.

"Devine concludes "It's clear. Welfare traps create the conditions for domestic violence."¹²

Just this week, 5 years later, confirmation of Devine's information was published in the national press claiming that indigenous people were over-represented in the family violence statistics.¹³

"Australian Institute of Criminology research manager Samantha Bricknell said figures involving Aboriginal and Torres Strait Islander victims "stand out" because of their over-representation and because such a high proportion were perpetrated by family members, when compared with the non-indigenous population.

"You do have this concentration of homicide occurring in the domestic space (within the indigenous community) and primarily between intimate partners," she said. "It's concerning."

Australia's National Research Organisation for Women's Safety chief executive Heather Nancarrow said the "very significant over-representation" of indigenous people, who make up less than 3 per cent of the population, pointed to "the limitations of mainstream responses to family violence for those communities". I wonder how long Nancarrow has known about this problem and if anything has been done, to find a way through to helping our indigenous communities?

¹² Miranda Devine, The brutal truth about domestic violence, The Sunday Telegraph, 4 Apr 2015

¹³ <https://www.theaustralian.com.au/search-results?q=Migrant%2C+indigenous+home+violence+%E2%80%98out+of+proportion%E2%80%99>

Of course, this information has, no doubt, sent shock waves through the domestic violence hierarchy. Afterall, as I have pointed out, they have spent years telling Australian politicians, the media and the public that domestic violence occurs across the board.

Still there is no mention of the men who are victims of domestic violence and homicide.

We are told one woman is a murdered every 7 days as a result of family domestic violence, yet one man dies every 10 days for the same reason.¹⁴ Should the gap of three days be enough to ignore the death of men who are victims?

At least one in three victims of domestic violence are men.¹⁵ The proportion of men experiencing current partner violence in the last 12 months between the 2005 and 2016 ABS Personal Safety Survey rose five fold (a 552% increase), while the proportion of men experiencing emotional abuse from a current partner in the last 12 months an increase of 223% occurred. 93.6% of men who experience domestic violence are abused by their female partner. The remainder were in same-sex relationships with male perpetrators.¹⁶

The result of this war on men has been disastrous. The figures for domestic violence have increased as parents' resort to false allegations of domestic violence to give them an advantage when they apply to the family courts.

Sadly, this negative reaction by the Labour government to the sensible proposal of shared parenting, with appropriate penalties if the parents failed to comply, prevented time to 'bed in' the changes and gauge the benefits that may have resulted from the introduction of shared parenting.

The Victorian Crime Statistics Agency report finds Victorian police recorded more than 68,000 family violence incidents in 2014, the number having risen by 70.2% since 2010

Table 13. Family Violence Intervention Orders and Safety Notices sought/issued by Victoria Police, July 2014 to June 2019

	2014-15	2015-16	2016-17	2017-18	2018-19
Incidents where Family Violence Intervention Orders sought by Victoria Police	10,751	11,416	12,079	11,888	13,530
Incidents where Family Violence Safety Notice issued by Victoria Police	10,062	11,567	11,379	11,424	12,606
Total family incidents	70,901	78,006	76,494	76,113	82,652

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According to the Magistrates statistics the numbers are less than half the amount claimed by the Victorian police but still increasing.

¹⁴ <http://www.oneinthree.com.au/overview/>

¹⁵ www.oneinthree.com.au/overview

¹⁶ www.oneinthree.com.au/overview

¹⁷ <https://www.crimestatistics.vic.gov.au/family-violence-data-portalfamily-violence-data-dashboard/magistrates-court>

Table 1. Finalised Family Violence Intervention Order applications by type of application, July 2014 to June 2019

Application type	2014-15	2015-16	2016-17	2017-18	2018-19
Original matters finalised	32,593	33,744	33,723	32,774	33,888
Application for extension	1,550	1,685	1,844	1,874	1,873
Application for revocation	851	767	796	707	688
Application for variation	3,300	3,844	4,330	4,215	4,503
Total	38,294	40,040	40,693	39,570	40,952

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In Queensland applications for domestic violence orders have jumped by 26% from 23,794 in 2012 – 2013 to 32,221 in 2015-2016.

The most recent news in the Brisbane Courier Mail on Wednesday 29 Jan 2020 highlights that “DV cases clogging up courts”¹⁹.

“Domestic violence claims are clogging Queensland courts, driving a backlog of 71,093 cases queued before magistrates – with 8712 dragging on for more than a year.”

According to the Productivity Commission 54% of the cases dealt with by the Queensland courts are for domestic violence, the highest ratio in Australia. NSW is 30%, WA 25%, Vic 38% and SA 17%.”

Undoubtedly, Queensland has an unsustainable problem and the solution is probably to restrict domestic violence abuse charges to actual provable physical abuse and send all other complaints to counselling/mediation. People who express an unreasonable fear of being abused may be better served by spending time with a psychologist rather than police and court.

Child safety:

Just last week on the 23 January 2020 information was released in the news that “more than 1500 Queensland children were harmed within a year by welfare workers dismissing alarms over their safety”²⁰.

“A record 1554 children in Queensland suffered abuse or neglect within a year of Child Safety deciding they were safe – despite police, neighbours, doctors or family members blowing the whistle on maltreatment during 2017/18.

¹⁸ <https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-data-dashboard/magistrates-court>

¹⁹ <https://www.couriermail.com.au/truecrimeaustralia/police-courts/domestic-violence-drives-queensland-court-queues/news-story/d2ff0b07e2b0cb063aa83610a2f61394> “DV cases clogging up court”.

²⁰ <https://www.couriermail.com.au/news/queensland/queensland-government/dozens-die-1500-hurt-on-qld-child-safety-watch/news-story/fafe9ef2c4f834065976b72f4c50f0cb>

“Of that number, 555 were harmed within three months of Child Safety investigators having given the all-clear.

“196 children were harmed in foster care during 2017/18.

It was also revealed that 58 children living in dangerous homes died last year. 2 of those were toddlers left in a car on a hot day by their mother who has been charged with murder²¹.

Another 4 died when a mother had a head on crash, which is being investigated as a murder/suicide attempt²².

A Gold coast mother allegedly tortured and murdered her two disabled children, and tortured a third relative, who had survived, before she left on a cruise.²³

The Queensland Child Safety department takes more than a month to begin more than half of its investigations – the highest of any mainland state or territory.²⁴

We receive information from other States that reports, especially from fathers are ignored by the various child safety departments. Clearly Queensland has very serious issues to contend with. Their shocking record cannot be allowed to continue. We know that many fathers who call this Agency make the complaint that Child Safety will just not listen to their concerns and they are desperate to protect their children from the harm they are exposed to in the mother's house.

The Family Court is also showing an increase in Notices of Child Abuse, Family Violence or Risk of Family Violence. The following chart shows there were 470 cases in 2014-15 increasing to 794 in 2018-19, an increase of 68.9%.²⁵

²¹ <https://www.news.com.au/national/queensland/news/two-children-found-dead-in-a-car-south-of-brisbane/news-story/87a911fd04cfea344a2d6e094a4ef160>

²² <https://www.news.com.au/national/queensland/news/homicide-detectives-investigate-possible-murdersuicide-in-horrific-crash-that-killed-charmaine-harris-mcleod-and-four-kids/news-story/8d0cbcd68856f650518f3dccf3ff6469>

²³ <https://www.couriermail.com.au/news/queensland/crime-and-justice/gold-coast-woman-charged-for-murder-of-son-and-daughter/news-story/86edbc0b11a1fc4728d56d1bbd677f7e>

²⁴ The Brisbane Courier Mail, 23 January 2020, Children dying as warnings ignored, Natasha Bitá

²⁵ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/annual-reports/2018-19/2018-19-annual-report-part3>

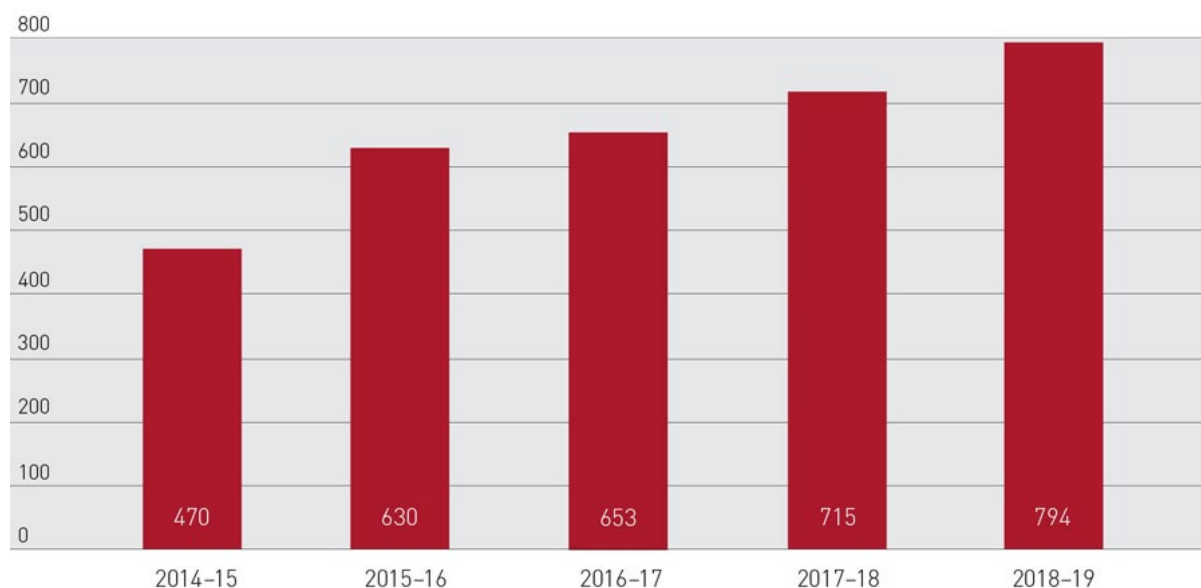
Section 67Z and s 67ZBA of the *Family Law Act 1975* and Part 2.3 of the *Family Law Rules 2004* require a Notice of Child Abuse, Family Violence or Risk of Family Violence to be filed in cases in which it is alleged that a child to a proceeding has been abused or is at risk of abuse, or where there is an allegation of family violence or risk of family violence involving a child or a member of the child's family. Once filed, the notice must be sent to a prescribed child welfare authority.

The proportion of matters in which a Notice of Child Abuse, Family Violence or Risk of Family Violence has been filed does not reflect all the cases in which family violence is raised or is an issue. Allegations of abuse or risk of abuse and family violence or risk of family violence are also raised by parties in other ways; for example, in affidavits filed in the proceedings and by the filing of a Family Violence Order (Rule 2.05 *Family Law Rules 2004*).

Figure 3.18 shows that in 2018–19, the number of Notices of Child Abuse, Family Violence or Risk of Family Violence filed continued to increase. The Family Court believes this reflects the growing awareness of family violence within the community and the need for litigants to raise family violence in conformity with the 2012 amendments. It also reflects the increasing complexity of the Court's cases and the extent to which violence is now an increased element in many of them.

Figure 3.18: Notices of Child Abuse, Family Violence or Risk of Family Violence filed,

2014–15 to 2018–19



I do not believe, it is unreasonable to suggest the change to the family law act to elevate the issue of domestic violence has clearly encouraged more people to use the domestic violence legislation for their benefit, when making an application to the family courts. For if one has a DVO one doesn't need to participate in mediation; one cannot now be cross examined in court by the

self-represented litigant trying to get to the truth; one parent can remove the other parent, usually the father from their children's lives; one can claim a greater percentage of property settlement based on alleged DV; one can claim tenancy or residential status over a respondent's rental unit or house they own; emergency housing can be provided; residential status can be granted to immigrants based on just counsellor's reports and one certainly can present oneself to the courts as a victim, needing protection, consideration, empathy and a more sympathetic outcome. One doesn't have to present any proof, just be convincing in your claim to be a victim of domestic violence. The fear you claim doesn't even have to be shown as reasonable anymore!

Over recent years, police powers to act on domestic violence have been increased significantly. We are facing a growing situation where a person alleged to have committed domestic violence is now considered guilty and needs to prove their innocence. For example, if the Queensland Police issue a Police Protection Notice the officers have the power to interfere with proprietary rights of the respondent with no court oversight. The person can be ordered out of their home immediately on the say so of the complainant. In fact, a clause in the Police Protection Notice states that Police do not require evidence of domestic violence to charge!

A PPN must include details of the hearing to be held in the Magistrates Court within 5 days of issuing the notice or at the next sitting date.

Miranda Devine also noted:

"THE domestic violence bandwagon has been taken up with such gusto by the professionally virtuous that it is becoming meaningless.

"Police are frustrated when they are unable to prosecute violent perpetrators, but they are also realistic about the fact that as many as one-in-four domestic violence allegations that come before the Family Court are bogus, and can be used by women as a weapon. The Gillard government fed this trend when it undermined the shared parenting reforms of the Howard era, and broadened the definition of domestic violence to include verbal or "financial abuse" and emotional manipulation. This ensures any allegation of abuse from a mother in a custody battle becomes grounds for denying a father access to his children."²⁶

In 2009, MRA extensively addressed the proposal to elevate the issue of domestic violence in the family law act in 2012. I do not intend to redraft the information I used. Instead I will reproduce several pages from our submission. If you have seen this information before I apologise, if not

²⁶ Daily Telegraph 4 April 2015 Miranda Devine, The brutal truth about domestic violence

please take a few minutes to read through the information we put forward then. It is as relevant now as it was then.

At the time when the Bill was introduced this Agency objected to the elevation of the domestic violence issue into the principles and objectives of the Act, particularly as we considered the issue was adequately addressed in other parts of the Act and other State based legislation. One barrister mentioned to me, that he was so concerned by the inclusion, of domestic violence to this level he remarked *“that this is the Family Law Act, not a manifesto for a women’s domestic violence service”*.

The heavy-duty focus on family violence has led to a situation where even publications such as the Australian Master Family Law Guide²⁷ discusses the issue purely from the perspective of the Act disadvantaging a woman leaving a violent relationship, where she and/or children have been abused as if it never occurs that a man may be the carer of the children and they may be the people at risk of violence and abuse perpetrated by the woman.

Furthermore, the same text questions the difficulties a woman might experience in leaving a violent relationship if she is then regarded as being “unwilling to facilitate and encourage a close and continuing relationship between the child and the other parent”, S60CC(3)(c)²⁸.

The bias displayed by this prestigious guide in failing to recognize that men and their children can be victims of a mother’s abuse or even abuse at the hands of her boyfriend or other family/friends whom she enlists to support her cause, is surprising and should be subjected to widespread condemnation.

No doubt the “elevation of domestic violence” within the Act occurred as a result of heavy lobbying from women’s groups, who tend to advise their members to apply for an easily gained domestic violence order and/or to make false allegations of child abuse to give them an advantage before the Family Courts and evict their husband from the house without waiting for an application for Sole Use and Occupancy to be heard in the Family Court.

The portrayal that women are the only victims of interpersonal or family violence is incorrect and the longer this falsehood is allowed to be used as the determining factor guiding the Federal/State governments’ response to reducing violence within families, the more likely it is, their proposals will fail. Providing solutions to “deal with” only one half of the problem has never been a successful strategy and is likely to exacerbate the very problem it seeks to resolve. The abuser, if undetected become more powerful, perhaps resulting in serious harm or death of

²⁷ 1 CCH Australia Ltd., 2008 Australian Master Family Law Guide, 2nd Edition, CCH Australia (p282)

²⁸ Family Law Act 1975

their victim and the abused, if not recognised, will become more submissive until perhaps they can no longer live with the abuse, take their own life or retaliate with such force the unintended consequence is the death of the abuser. The battered wife syndrome could be said to apply equally well to battered husbands, but our society has convinced itself that women can be excused their violence if they claim to be a victim of abuse – no such allowance is made for men who are abused.

Similarly, if this inquiry should continue under an invalid assumption that only women are victims of men's abuse and children's only risk is from their fathers, then the outcome will be to put children at greater risk as they are placed with mothers who may be skilled in hiding the child abuse they commit and/or ignore the signs of abuse committed by their live-in boyfriend/defacto/step partner preferring to cherish their adult relationship above the protection of their child. It is not our intention to deny any violence committed by biological fathers, but sadly as is known, mothers are more likely to neglect, assault and kill their children than biological fathers. The children are also at considerable risk from mother's boyfriends, defactos, step-fathers, siblings or other relatives.

Domestic violence is the tool used to gain an advantage in separation. An easily gained domestic violence order will precipitate the removal of a partner from the home, ensure they have no contact with their children. Police suspect one in four DV allegations are false, magistrates suspect only 5% are genuine. Unfortunately, these statistics are several years old. This Agency would recommend another round of research be directed towards various police stations, and magistrates' courts to establish up to date findings. No doubt the suggestion will be greeted with howls of derision and claims that it is not necessary, but there is enough evidence from individual police, judges, magistrates to support our claims that a large percentage of DV allegations are false, used purely to gain an advantage in separation and family law actions.

At least if there is an awareness and punishment for false claims then there would be more services, and funds available for genuine victims of domestic violence.

Misuse of domestic/family violence legislation and making false allegations of abuse:

In 1991, Supreme Court Justice Terence Higgins,²⁹ when overturning a Canberra woman's domestic violence protection order against her estranged husband, described "as nonsense the woman's assertions that the statements attributed to the man had represented a threat to her safety" and he further said "the woman was a liar and that she and her sister have fabricated

²⁹ Canberra Times 1991

their allegations". Justice Higgins pointed out that "harassing or offensive behaviour could justify an order if the spouse feared for her safety. But that fear had to be an objective one and a reasonable response to the situation. "Mere criticism, nagging, even unreasonable persistence cannot credibly be described as violence".

His Honour questioned the practice of the Magistrates Court "in issuing protection orders merely to prevent annoyance by one party to a domestic relationship of another" and suggested that in this case "it seems to me that the resources directed towards eradicating or at least controlling violence in our society are being sadly misdirected". He concluded the woman's evidence was deliberately false and revealed a consistently vindictive attitude.

In 1995, Queensland's Chief Stipendiary Magistrate Mr Stan Deer³⁰ acknowledged the problem of domestic violence orders being misused when he stated, "some women are using domestic violence orders to gain a better position in child custody cases".

Estimates provided to this Agency at the time, by court staff/prosecutors suggested that only 5% of applications for domestic violence orders were legitimate in their claims.

In 1999, a survey conducted with 60 serving NSW magistrates,³¹ conducted by the Judicial Commission of NSW found that most (90 percent) believed domestic violence orders(AVOs) were used by applicants – often on the advice of a solicitor – as a tactic in Family Court proceedings to deprive their partners of access to their children.

A further study of Queensland Magistrates³² found three out of four who responded believed parents use domestic violence protection orders as a tactic in divorce and custody battles. Like their counterparts in NSW several Queensland Magistrates believed many women applied for domestic violence orders on the advice of their solicitors.

Some examples of domestic violence experiences:

An extract from an email communication from a female friend (an academic and health professional) to a woman, separated from her husband, advising her on how to effect a separation provides an example of the attitude towards using the domestic violence legislation for nefarious purposes: (names have been changed)

³⁰ Horan, M., 1995, Women abusing violence orders: top SM, Courier Mail, 5 July 1995, Brisbane

³¹ Noonan G., 1999, Call for tougher checks on AVOs, Sydney Morning Herald, 30 August 1999, Australia and Online Executive Summary, Judicial Commission of NSW
<http://www.judcom.nsw.gov.au/Monograph20/Executive%20summary.htm> (no longer available at this URL)

³² Nolan J., 2001, Domestic violence orders abused, Courier Mail 14 March 2001, Brisbane, Queensland, and Field R., and Carpenter B., 2003, Issues relating to Queensland Magistrates Understandings of Domestic Violence, School of Justice Studies, QUT Brisbane [accessed online at <http://eprints.qut.edu.au/3726/1/3726.pdf>]

From: Mary@XYZ.edu.au

To: Joanne@12345.com

No need to thank me for the coffee this morning darling. Its [sic] always a pleasure to catch up with you. If you want David out of your life altogether that AVO idea isn't as silly as it sounds, is it? A few crocodile tears in front of a stupid cop and they will be happy to do all the work for you. You will be back sunning yourself in (coastal town) before David's feet hit the ground. Put yourself first Joanne. You are single now, you don't have to worry about his feelings any more.

Joanne wrote previously:

Thanks for the coffee this morning. Can't believe I left home without my purse! Got a lot on my mind I suppose. David was here today, he is moving to a unit in (suburb)! Says it will be great because it is across the road from the school. Says he wants the kids to stay over 2 nights a week! Woe is me.

Joanne

Having had one AVO interim order dismissed, the mother tried to take out another and again sought the advice of her friend, Mary.

Joanne: *July 2006*

Hi Mary,

Big day for me today – not nice either. I wonder if you can help me with something...

The constable who came on Saturday would not take out an AVO for me so I have to start again with another officer, but I was told that I should write a letter of complaint about him

first. Trouble is I don't know what to say. If I were to get some ideas together would you be willing to draft the letter for me? Please don't agree unless you feel comfortable with this.. Joanne.

Mary replied:

Of course I can!

I'll try and give you a call later to see what the lawyer said. M.

The mother moved away taking the children with her and the father found himself in receipt of another AVO issued by another police officer in another place. He was also arrested for an alleged breach and eventually cleared. This father spent \$140,000 to clear his name and re-establish contact with his children again – all because of the ease of taking out a, fake AVO.

Another father has survived 5 AVO applications based on false allegations the wife made to the police. This has resulted in 10 court appearances – all dismissed. The father complained to the Judge on the last appearance and she said, “she didn’t care if it was the 90th application that there are new allegations and they must be tested in court”.

Other fathers have expressed their experience in this way:

John says:

I called the police once because my partner was hitting and throwing things at me. The officers talked to both of us individually and seemed understanding. The joke came when the officers came back up and said yes you were right in calling us and she is out of control but you need to leave the premises because if they get a call again to this premise I will be the one going to the lockup for the night. I asked why and the answer was that the man is the one who gets taken away for the night. How is this fair? She was the aggressive one. I will lay money down if the roles were reversed I would have been taken away and charged. Now if someone can tell me how that is justice I would like to hear it.

Or Michael described to MRA his experience as follows:

He called the police to calm his mentally ill wife and prevent her from taking off in the middle of the night, worried she might harm herself. Following procedure, the couple was separated, the female officer talking to his disturbed wife and the male officer talking to Michael. The outcome: Michael was arrested and bailed several hours later and told not to return to his house. Michael was his wife’s day to day support, his wife knew she relied on him and was devastated when she realised the outcome of the police actions. The police aggressiveness, unwillingness to listen to the real problem and determination to proceed using the domestic violence legislation nearly tore this couple apart. Neither party wanted to proceed with a DVO. The interim application was refused, but a mix up with the dates for the next hearing meant the respondent husband was not present. An adjournment requested by his solicitor was refused and a final order made without hearing his side of the story. During the application made by the husband to revoke the order, which was supported by his wife, the Magistrate identified that the husband had been “seriously prejudiced” by the making of the order under those circumstances. Many thousands of dollars later spent in legal fees, the Magistrate revoked the DVO.

Or in David’s words:

This year I experienced first- hand the bias shown toward men when they try to seek protection. On 6 occasions I tried for a DV order after being verbally abused and physically attacked, including times in front of my young daughter. The Police were called on 2 occasions, and each case I was advised to seek a DV order. My lawyer handling the legal

matters advised me to seek a protection order. But it seems that the staff at the courts had different ideas, in fact the indifference shown by the staff was insulting.

When I set out to protect myself and my children from the violence and abuse by an ex partner and her boyfriend the application should not be so easily dismissed. To be told "that is a matter for the family courts" is just wrong! To add insult to injury, when the ex found out that I had been recording conversations, she was IMMEDIATELY granted an intervention order. The other allegations were "not paying bills and using her credit card". There has NEVER been any physical violence on my part, nor listed on her intervention order. She found out after I made it known that my lawyer and I had a copy of the conversation where she and her new boyfriend made threats of "putting a bullet in my head" and "taking me to the police station and beating the shit out of me". And this is justice???

Travel prevented:

A father was prevented from entering an English speaking country when he arrived at their airport. He was taken away by airport police, questioned, detained, fingerprinted, photographed and searched, several times, because he had accepted a domestic violence order on the basis of "no admissions", on the advice of the duty lawyer at the court. He tried to explain the order was civil based and not a criminal matter. The immigration police disagreed and said a domestic violence order in this country is a criminal offence, so you are guilty of a criminal offence and will not be allowed into the country.

He was detained for some hours in uncomfortable circumstances and put on the next flight back to Australia.

To ignore the violence committed against men and their children, is both discriminatory and colluding to excuse women's abusive/criminal behaviour.

British philanthropist Lord Astor remarked in 1993: "Everyone starts out totally dependent on a woman. The idea that she could turn out to be your enemy is terribly frightening"³³

Perhaps this explains in part, why there is such a reluctance to acknowledge women's capacity for violence. Or as we have previously observed, the promotion of "women only as victims and men only as perpetrators" has enabled many pro- feminist organizations to fund their continuing existence with public monies handed out by politicians who see more votes in providing services for women and children than for men and children.

³³ Pearson, P., 1997, When she was bad: Violent Women the Myth of Innocence, Viking Penguin, USA

Many millions of dollars have been provided at both federal and state level for counselling and refuge services for women. Ask the question – is violence against women reducing at a rate commensurate with the expenditure? It was reducing before the additional emphasis of domestic violence in the family law legislation. Now the allegations are increasing rapidly with the increased opportunity to use the domestic violence legislation. Perhaps, improved responses would produce a more noticeable reduction and monies intended to protect victims of violence could be directed towards those people, rather than to people who claim to be victims for ulterior purposes. Then consider asking the question: why is women's violence against men increasing? Statistics confirm this and some commentary has appeared in the media in relation to younger women's aggression and violence as well.

Services for men are limited to a small number of anger management courses. The greatest indignity for any man who is a victim of abuse is to be referred to an anger management course, as if the abuse they have suffered is their fault. MRA has been aware of this occurring numerous times. It sounds absolutely contrary to the mantra of women's groups – *"the violence is never her fault"*! Shouldn't we also be saying that *"the violence he has been subjected to is never his fault"*?

Perhaps, somewhat cynically, we should add a rider to clarify that this statement only applies to women who are victims. If you're a male victim, then your female attacker seemingly has every right to claim *it's not my fault, he made me hit him!*

Anger management courses for women are few and far between!

Police frequently ask men seeking protection from a female abuser, *"what did you do to make her hit you?"* Then suggest they should be *"be a man about it"* asking *"are you a whimp or what?"*

For a man who is a victim of abuse and who is trying to protect himself and his children, it is difficult enough to admit being abused by his wife without being exposed to this unhelpful reaction when seeking the assistance from the authorities.

Administrative abuse is not restricted only to police. Over the years, our clients have frequently reported difficulties in arranging a court appearance – refusal to accept applications; refusal to arrange urgent hearings for temporary protection orders; of being asked to wait in a room away from the court, while the hearing into his application for protection is heard in his absence and as you might have anticipated – a protection order is refused because he didn't appear; being given a wrong time for appearance or the magistrate refusing point blank to hear his evidence or finally a failure by the police to serve the summons or the domestic violence orders on women who are perpetrators of abuse.

Other men who have committed no violence/abuse whatsoever, are persuaded to accept a domestic violence order, “without admissions” after being persuaded that the outcome is not going to affect his life or his contact with his children. Various reasons are put forward such as “*why spend the money on defending the wife’s application – you don’t really want to see her anyway!*” Or “*The order is only a civil order*” without explaining that the DV order is entered onto the police data base and they could be accused at anytime of breaching the order, which then becomes a criminal offence and the existence of any DV order is going to be used against them in future hearings, especially those involving family issues.

Of course, women and children should be protected from violence and abuse BUT so should men and children!

TOR a. ii

The visibility of, and consideration given to, domestic violence orders and apprehended violence orders in family law proceedings

The Labour Party was determined to roll-back the shared parenting laws and they were not short of academics willing to produce reports claiming domestic violence was allegedly a growing threat to women and children.

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 to report 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.**³⁴

Evaluation of the 2012 Family Violence Amendments – October 2015

Rae Kaspiew, Rachel Carson, Jessie Dunstan, Lixia Qu, Briony Horsfall, John De Maio, Sharnee Moore, Lawrie Moloney, Melissa Coulson, Sarah Tayton, the authors of the Australian Institute of Family Studies Evaluation of the 2012 family violence³⁵ amendments have announced that "Overall the main findings of the evaluation indicate that the 2012 family violence amendments are a step in the right direction in a reform agenda intended to improve the system's response to family violence and child abuse concerns in post-separation parenting arrangements".

Summary from the report:

This report sets out the overall findings of the Evaluation of the 2012 Family Violence Amendments. The evaluation examined the effects of amendments to the *Family Law Act*

³⁴ <https://www.themonthly.com.au/issue/2015/november/1446296400/jess-hill/suffer-children>

³⁵ <https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments>

Evaluation of the 2012 family violence amendments

1975 (Cth) that were intended to improve the family law system's responses to matters involving family violence and safety concerns.

The evaluation research program had three different elements. The findings from these three projects are described separately in the following reports:

- Experiences of Separated Parents Study
- Responding to Family Violence: A Survey of Family Law Practices and Experiences
- Court Outcomes Project

Their key messages are listed below, but we find it disturbing that they seem to be celebrating the response to the increased focus on domestic violence by the apparent decrease in the number children able to spend time with their father. When one creates an impression that domestic violence is rife in the community and then tells the mother that she can prevent the father spending any time with the children by making an allegation of domestic violence or child abuse, then that is what some will do.

But we ask the question how many of those allegations are made to give an advantage in family court proceedings; how many are made to ensure 100% of child support is received because the father has no contact; how many are made to enable the mother to take over control of the children and avoid any oversight of her behaviour and finally how many allegations are made out of sheer spite and anger?

Key messages from the Report:

- Most separated parents don't use family dispute resolution, lawyers or courts to resolve parenting matters after they separate.
- Those parents who do use family law systems tend to be those affected by complex /+*for themselves and/or their children.
- There has been an increased emphasis on identifying families with concerns about family violence and child abuse, however 29% of parents using family law system services reported never being asked about family violence or safety concerns.
- Family law professionals indicated that better screening tools and approaches are required.
- The reforms have supported sorting out parenting arrangements by agreement. This is likely to be due to a change in 2012 that means advisors tell parents that parenting arrangements should be in a child's best interests.
- Subtle changes in parenting arrangements are evident such as more parents with safety concerns reporting a shift away from overnight stays with fathers.
- **The proportion of children with court orders for shared care, where allegations of both family violence or child safety had been raised, fell after the reforms (from 19% to 11%).**
- The proportion of court orders for shared care where neither family violence nor child safety was raised remained stable (22%): no significant change showed where only one issue was raised (17% pre-reform, 15% post-reform).

The term 'family violence' has been defined in different ways. To appreciate the context in which courts exercising family law jurisdiction approach this issue, it is important to know how the definition is used in the FLA.³⁶

The FLA definition is contained in section 4AB. This definition came into effect on 7 June 2012 and is significantly broader than the definition that formerly appeared in the Act.

Section 4AB states:

1. For the purposes of this Act, **family violence** means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the **family member**), or causes the family member to be fearful.
2. Examples of behaviour that may constitute family violence include (but are not limited to):
 - a. an assault, or
 - b. a sexual assault or other sexually abusive behaviour, or
 - c. stalking, or
 - d. repeated derogatory taunts, or
 - e. intentionally damaging or destroying property, or
 - f. intentionally causing death or injury to an animal, or
 - g. unreasonably denying the family member the financial autonomy that he or she would otherwise have had, or
 - h. unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support, or
 - i. preventing the family member from making or keeping connections with his or her family, friends or culture, or
 - j. unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.
3. For the purposes of this Act, a child is **exposed** to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.
4. Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:
 - a. overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family, or
 - b. seeing or hearing an assault of a member of the child's family by another member of the child's family, or
 - c. comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family, or

³⁶ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/publications/Family+Violence/family-violence-best-practice-principles>

- d. cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family, or
- e. being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

While the definition includes examples of particular behaviour, it is not an exhaustive list. Even though conduct may not be specifically mentioned in the FLA definition, the courts (through section 60CC(3)(m)) may still take such conduct into account.

Unlike the earlier definition, there is no requirement that any fear experienced by the victim of the violence is reasonable. Thus the new definition has objective and subjective elements.

As we have stated before on Page 13, undoubtedly, we have shown that there is a correlation between the changes to the family law act to elevate the issue of domestic violence that has caused an increase in domestic violence allegations. For if one has a DVO, FDVO, IVO, AFDO, one doesn't need to participate in mediation, one cannot now be cross examined in court by the self-represented litigant trying to get to the truth; one can even hide behind a screen so no one can see your reactions to judge if you are telling the truth, one can claim a greater percentage of property settlement based on the alleged domestic violence one claims; and one certainly can present oneself to the court as a victim, needing protection, consideration, empathy and a more sympathetic outcome. One doesn't have to present any proof, just be convincing in your claim to be a victim of domestic violence.

The fear you claim doesn't even have to be shown as reasonable anymore.

TOR b. the appropriateness of family court powers to ensure parties in family law proceedings provide truthful and complete evidence, and the ability of the court make orders for non-compliance and the efficacy of the enforcement of such orders

Recently retired barrister, Anthony Smith, who is experienced in family law and criminal matters, has an exceptional understanding of the difficulties faced by participants in family court cases.

Mr Smith has supplied a submission for inclusion in this discussion.

We are pleased and extremely grateful for Mr Smith's insight into one of the major problems that has been allowed to develop and is causing devastating harm to parents because judges no longer use the ability they have to gather the evidence they need to make a reasoned decision in the first instance.

Fixing the Family Law Mess

The Oxford Don, author and philosopher C.S. Lewis wrote:-

We all want progress, but if you're on the wrong road, progress means doing an about-turn and walking back to the right road; in that case, the man who turns back soonest is the most progressive.

The decision of Cowling v Cowling in 1995³⁷ put paid to the hitherto existing practice of interim hearings with cross-examination in the Family Court. Since that "progressive" decision, the welfare of children has suffered and the cost of litigation skyrocketed.

The impetus for the decision was not the inefficacy, faultiness or justiciability of the existing practice but that the then resources of the court, viz. judges, availability and court time, simply wasn't there.

For those who practised between the commencement of the Family Court's sole federal jurisdiction from 1976 and up until 1995, few would disagree that interim hearings became a type of "clearing house." The system allowed justice to flourish.

Thus, spurious, frivolous, vexatious, piffling and even false claims usually by one parent against the other in respect of the care or lack of capacity to care, guide and nurture in a proper and responsible manner for the children of the marriage, would be dealt with in a quasi-summary fashion. These hearings would normally be over in half a day sometimes less.

What happened therein, more often than not, was that a judicial determination was pronounced about the credit of the maker of the allegations and/or the denier. Absurd and preposterous contentions were given short shrift by the judge. An adverse finding of credit against a parent resisting the other's application for access, as it was then called, invariably

³⁷ C and C [1995] FamCA 156; "We would add that in Australia at least, while a judge always retains the discretion to permit the calling of evidence and cross examination on interlocutory hearing, as a general rule this should not be permitted.

This Court has finite resources and a limited number of judicial officers coupled with an ever increasing work load. If it was required to embark upon lengthy examinations of interlocutory issues such as interim custody, important though they may be to the parties, this would inevitably lead to an inability to provide hearings of final determinations of issues of custody and property within a reasonable time. In addition, other persons requiring a determination of these and similar issues would be impossibly inconvenienced. Indeed, as his Honour pointed out, there were two cases awaiting hearing in the list before him on the day in question apart from this one. It is true that an adjournment of this case would have enabled his Honour to proceed with the others, but it would have further delayed the lists at a later stage."

resulted in an order for access and more often than not put an end there and then to costly litigation.

In many cases, such hearings led to final orders being made on or just after the interim stage following such findings. Often the experienced judges would issue veiled warnings to parents, more often than not in those days, mothers, who were the subject of an adverse interim finding of credit that the custodial arrangements may be looked at should the matter go to trial. In some cases, this applied to non-custodial fathers who weren't 'playing the game' either.

When a superior court justice made a ruling on credit like this and/or issued warnings, they had a salutary effect upon the miscreant party and hastened resolution of the dispute. This procedure was fundamentally one carried out in the interests of justice.

I recall speaking to the late District Court of Qld judge, B.M. McLoughlin who before being elevated to the bench, used to practise as a barrister under the *Matrimonial Causes Act* (the precursor to the Family Law Act).

The practice of having an interim hearing was one to which he was well used and commended it in respect of contested divorces. He said once a ruling was made on credit, invariably the parenting matters and often property, too, settled thereafter.

I hasten to add that I'm not suggesting a return to bunfights over who committed adultery with whomever. But the position with interim parenting hearings is analogous.

Within four years of Cowling, the Federal Magistrates Act was promulgated and the FMC became operational. This court (these days called the Federal Circuit Court) was created to ameliorate the workload of the Family Court. For practical purposes, it dealt with interim hearings in parenting matters but did so on the papers despite the fact that the Cowling impetus no longer existed. It became a "convenient" practice to follow in order to free up ever more court time for final hearings. But of course, it didn't work that way as parenting matters assumed ever greater complexity of what might be respectfully called the "bureaucratic" kind.

Thus where allegations of the type referred to above were made, that often meant no contact or supervised contact in the meantime and the commencement of an attenuated process of family reports, psychiatric and/or psychological expert reports. And to complicate the process further came the proliferation of the Independent Children's Lawyer, a well-meaning but yet another stumbling block to speedy resolution of the parenting list of cases.

In my opinion part of the problem of Family Court and Federal Circuit Court jurisdiction lies in the prism of its creation. Certainly, the Federal Circuit Court has a wider jurisdictional remit than the Family Court given that the former deals with immigration, social security, employment and union issues, bankruptcy and other areas whereas the latter is the exclusive creature of the Family Law Act.

At least with any change, the Federal Circuit Court could be stripped of its family law jurisdiction and function in the other areas for which it is already mandated. However, it must necessarily follow that without family law, the Family Court would become otiose.

In my opinion, in shaping a future direction for the determination of the sensitive and difficult issues surrounding parenting disputes in particular, that future lies with the return of family law justiciability to the State Courts as was the case prior to 1976.

Judges of the Supreme Courts of the various States and territories could, as part of their jurisdictional remit, handle these cases. In my opinion, their broad experience of the general law and not being confined to just one area such as family, would be in the interests of justice. Existing Family Court judges could be recruited to the State Supreme Courts if they so choose. However, importantly and vitally to the litigants and the judges themselves, they would float between the various legal jurisdictions comprising State Supreme Courts. I note that Western Australia has its own Family Court exercising federal jurisdiction.

One has to be cautious of anecdotal references as much as one has to be careful to appraise so-called 'research'. But I speak as someone who has appeared in a number of cases in the Supreme Court in the 1980's involving *ex nuptial* children, including access and custody of these. Such experience must count for something.

The one thing that distinguished how these cases were dealt with from how the same or similar cases were dealt with under the federal courts was the speed and efficiency of the State Courts. To put it bluntly, if an Order was in place with the custodial parent non-compliant or even defiant, it wasn't a happy place for the contemnor to be when trying to justify his or her position before a Supreme Court judge.

Cowling marked the start of the rut into which family court and subsequent courts fell. An untenable situation has now arisen where a parent's relationship with his or her child[ren] can be permanently damaged by delay in getting the matter to court for hearing and final determination.

Delay is a deadening experience for the parties but can be devastating for the children. A malevolent parent can even use delay to improve his or her position at trial especially if the child[ren] have been subjected to alienating predations by the parent with whom the child resides. The psychological damage can be irreversible to the child[ren] and a formerly sound parent/child relationship may be permanently severed.

Only in exceptional cases do allegations by the custodial parent against the non-custodial parent of physical/sexual abuse made at an early stage of proceedings, lead to judicial findings of actual abuse by a court at trial.

Furthermore, it remains rare for a finding of "unacceptable risk" of physical/sexual abuse to be made against one parent in a parenting matter, the more so in both examples with respect to sexual abuse.

In my opinion Cowling sent the wrong message. It was a case of court adopting pragmatic means to better manage its workload with limited judges and resources after years of pleading to the politicians that more judges were needed to cope with ever burgeoning lists.

The Federal Magistrates Court's creation didn't solve the problem and Cowling became the convenient adjunct to further entrench the process whereby cases that should have been culled very early and separated parents sent home to co-operatively parent their children, were lined up against each other for bitter and costly battle with the prominent casualties being the child[ren].

How can that fulfill the fundamental object of the Family Law Act namely, furthering, *the best interests of the child*?

Time, way past it in fact, for "turning back soonest" than any later, in order to make "progress" in family law.

Anthony C. Smith

The result of a decision in an interim hearing (2 hours allowed) made purely on the affidavits depends entirely on the ability of the writer/parties to paint a compelling picture of their client's/or their circumstances. The prize goes to the best description of events. It may not disclose the truth and without cross examination and subpoenaed witnesses/evidence, the judge has no way to confirm just who is telling the truth.

A wrong decision effectively removes a parent, usually the father from their children's lives. It may take several months, if not years to bring the matter before a trial hearing, that is if the father can afford the cost. Just over 1 million children live without one of their parents, usually their father.³⁸

Contravention Applications:

The remedy to deal with a person who does not abide by court orders is via a contravention application. However, the court (judiciary) seem to be particularly reluctant to deal with contravention orders where the mother is the alleged offender. The applicant and the respondent will be sent out of the court to discuss amending the orders for contact to a timetable that is more amenable to the offender and any other part of the order causing concern and the contravention is then dismissed. A good talking to might result, but most often an offender, particularly female will leave the court without any penalty being applied. The courts must overcome their reluctance to punish a female offender, then the orders made will have meaning and respect. There appears to be no reluctance on the court's behalf to punish a male offender with heavy fines and in some instances goal.

Telling lies in family court has become an art form. Everyone knows no women will ever be charged for perjury and this was confirmed to me and the rest of the committee by the Attorney General's representative at the Senate inquiry into Family Violence held at Parliament House, 2009, Canberra.

The Queensland Government Department of Communities (2009)¹⁴ reported that 40% (more than one in three) domestic and family violence protection orders issued by the Magistrate Court were issued to protect males.

¹⁴ Queensland Government Department of Communities (2009, October 9). Domestic and family violence orders: Number and type of order by gender, Queensland, 2004-05 to 2008-09. [Letter]. Retrieved October 31, 2009, from http://www.menshealthaustralia.net/files/Magistrates_Court_data_on_QLD_DVOs.pdf

TOR C. beyond the proposed merger of the Family Court and the Federal Circuit Court any other reform that may be needed to the family law and current structure of the Family Court and Federal Circuit Court

On September 15, 2018 the Australian published an article about the need for a complaint mechanism for judges who were failing to uphold their obligations to the court and the people of Australia. Remarkably and agreeably the judges seemed to approve this proposal.

³⁸ 4102.0 - Australian Social Trends, March Quarter 2012 ABS Divorce and Children

Judicial Complaints Push³⁹

“Judges are reportedly supportive of the creation of a federal system for dealing with complaints.

The group representing the nation’s judges has backed calls for a federal judicial commission to handle complaints against federal judges, saying it would promote public confidence in the courts.

“Attorney-General Christian Porter says he is “not closed-minded” to the idea.

“Judicial Conference of Australia president Robert Beech-Jones, a NSW Supreme Court judge, said judges supported the creation of a structured federal system for dealing with complaints, based on the system in NSW.

“As with other jurisdictions, a judicial commission promotes public confidence in the accountability of the judiciary while providing formal protections to judicial officers in respect of complaints,” he said.

The comments made are correct. The participants in the court process need to be reassured that if they feel there has been incompetency or unfairness in the making of a decision, then they must have a place to go to air their concern. If this had been available, perhaps the complaints arising recently and published in the media about a particular judge, would have been addressed much sooner.

The general public also needs to know the family courts are operated by well-informed, sensible, competent people who understand the workings of a modern family and are able to accept times have moved on from the notion that the mother stays home to look after the children and the father goes out to work. Most families do not have the luxury of allowing one parent to stay at home, both need to work to manage the mortgage and the other living expenses they incur.

Magellan Process

The Family Court of Australia has established the Magellan model for case management in most Registries to handle allegations of physical or sexual harm to children. Case management is intended to provide coordination and bring together all the departments that may be involved, state police, family services, statutory child protection agencies, and juvenile courts. The appointed Independent Children’s Lawyer is charged with organising

³⁹ N.Berkovic, *Judicial Complaints Push*, The Australian, 15 Sept 2018

various investigations with police, child protection, medical personnel, psychologists, family report writers etc towards the completion of the Magellan Report readied for hearing.

An evaluation of the Family Court of Australia's Magellan case-management model has been conducted by Dr Daryl J Higgins from the Australian Institute of Family Studies⁴⁰.

There are many interesting views expressed by judges, who are involved in the Magellan process, contained in the evaluation.

Here is an example of a Judge's view of the likelihood of Magellan matters dealing with cases that, upon investigation by the statutory child protection department, do not have the abuse or 'unacceptable risk' confirmed:

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*"I have a sense that **in the overwhelming majority of cases, abuse is not confirmed. And probably in not many cases is there found to be an unacceptable risk.** I don't have the stats, so it's probably silly of me to quote stats, but I'm talking of probably upwards of 70 or 80% where the relationship with the father is restored. Which, in itself, is a worry if that is true. Why are so few being confirmed? Is it mum—usually—using it as a weapon to get dad out of the kid's life? Is it mum misidentifying the signals and then not accepting professional advice as to what it might really mean? Is it that there has been abuse, but the proof is inadequate for there to be the findings?"*

Judge

One Judge expressed deep concern about the misunderstanding in the community (and potentially in child protection departmental workers) about the role of the Court, and other agencies.

"We do not have any investigative capacity whatsoever. We rely upon the evidence that is presented to us by others. We can make recommendations that people collect evidence on certain topics that we might be interested to hear. We have no resources—nor should we ever have resources—to carry out the investigation... They're allowed to think that it's all the Family Court's fault for not investigating it

⁴⁰ Cooperation and Coordination: An evaluation of the Family Court of Australia's Magellan case-management model, Dr Daryl J. Higgins, Australian Institute of Family Studies, 2007

properly. I'm so angry about it—I've been fighting against that perception for 20 years..."

Judge (Page 146)

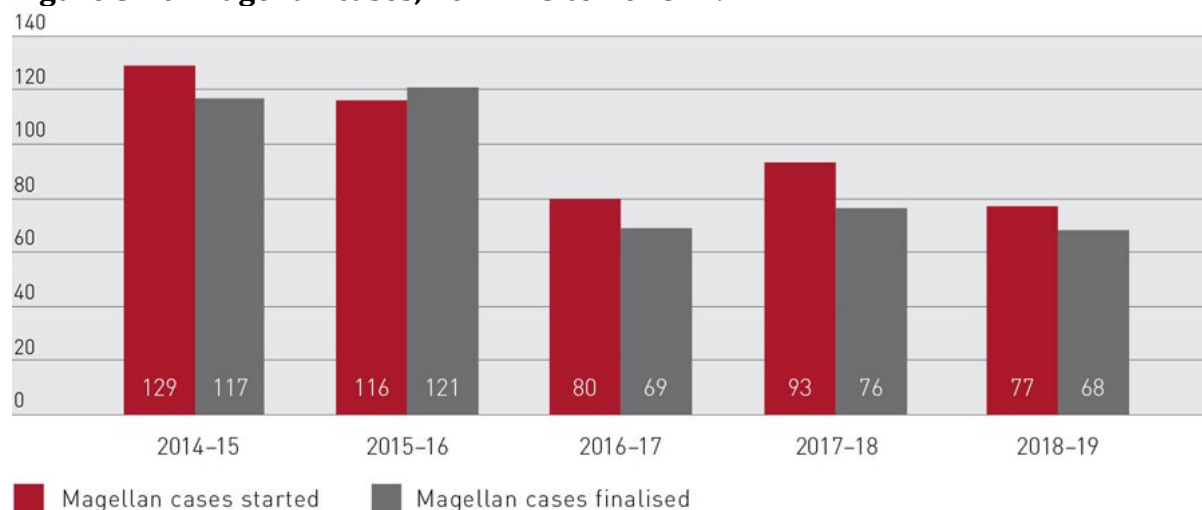
Unfortunately, most of the discussion in the evaluation is around automatically suggesting that the father is the abuser. Little attention is paid to the abuse committed by mothers, boyfriends, step-fathers, other siblings, and especially step-siblings with the increasing numbers of blended families.

The Court claims Magellan case management resolves accusations quicker than the usual criminal process, which is a good thing, but it is worrying just how much pressure can be exerted to get results from the police and child safety services without creating a situation where the need for speed influences the outcome. For example, if a child safety officer is not sure if a child has been abused the pressure of completing a Magellan report on time may cause them to jump to an unsustained conclusion. Which could mean a child is left at risk or a person is wrongly designated as an abuser.

Perhaps, we would be better off to consider the State court option to determine if a child has been exposed to abuse.

The following graph taken from the Family Court Annual Report of the Magellan cases from 2014/15 to 2018/19 shows a considerable fall in the numbers – a 40.31% drop.

Figure 3.20: Magellan cases, 2014–15 to 2018–19 ⁴¹



⁴¹ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/annual-reports/2018-19/2018-19-annual-report-part3>

Fathers' experience with family separation and the courts

No submission from Men's Rights Agency would be complete without evidence of some of the dreadful experiences faced by fathers and their children, who want nothing more than to be a part of their children's lives, to care for and nurture them as they grow into self-confident young people.

David's story (not his real name)

Recently, one of our clients found himself in the unfortunate situation of being removed from his children's lives. He had been sharing the care of the children 50/50, after agreement was reached in mediation with consent orders signed and filed with the court.

All went well, until the father met a new girlfriend.

The mother immediately made an application for an ADVO and made a further assault complaint. The father was advised "to consent without admission" to the ADVO for a period of 12 months and the assault charge was eventually withdrawn.

Early in 2018, the mother herself, without legal representation filed a misleading ex parte application with the Family Court that failed to reveal to the court the existence of the signed Consent Order that included clear statements that there were no risks of abuse or domestic violence. Her application was denied.

The mother continued to denigrate the father and if the children expressed any love for him she would abuse them if they did not agree or comply with her view. The mother removed all vestiges of the father from their home, cutting up photos, even using her church associates to wash the children's toys in lye soap to remove any lingering scent of the father. She proceeded to blacken his name with the school, his business associates and their friends.

The mother made a new application supported by legal representation to the Family Court in the following month 2018 and a Senior Registrar (1), without undertaking any risk assessment, with no testing of evidence in the face of opposing evidence, and without any basis of fact placed the children in the mother's sole care.

The father then had supervised fortnightly contact with his children. The supervisor observed the father was caring and loving and the children returned the love. Each time the supervisor returned the children to the mother the children refused to get out of the car, told her they did not want to live there, that they were afraid of their mother and then tried to run away.

The children, on being returned to the mother continued to be subjected to her unreasonable behaviour in her attempt to teach the children to hate their father. Their lives were thrown

into turmoil and they ran away, navigating the streets and transport by themselves attempting to return to their father's home on eleven (11) occasions.

One child was hospitalised for two weeks threatening self-harm unless they were returned to live with the Father. The police investigated the circumstances, spoke to the parties and considered the Registrar's decision to return the children to the mother, which was based on no evidence, just innuendo. They decided to issue an ADVO against the mother for the protection of the severely distressed child.

The child remained in the father's care until another Family Court hearing was arranged a month later. This time with Judge (2) who wrote a set of orders one might equate with a father presenting as being a clear danger to his children. The Judge denied the children any contact with their father, despite previous contact centre reports praising the father's relationship with the children and despite there being no evidence presented to suggest the children were at any risk of harm from their father. The Judge (2) also gave the mother sole responsibility, the ability to move house, change schools, arrange counselling for the children, all on the basis of the mother's unproven allegations that the father had a propensity for extreme violence. A claim she had previously denied in their consent order for shared parenting and did not use when applying for her ADVO.

Furthermore Judge (2) ordered that the father be arrested without warrant if he attempted to remove any of the children or any are found to be with him.

No doubt this decision was exacerbated by the accusation, in court, of the mother's barrister that the father had a long criminal history. Untrue, the father has NO criminal history. No drug usage, no history of abuse or risk to his name. The barrister has faced no condemnation for the lies they told and no penalty.

The father filed for a review of the previous decision that prevented all contact with his children after gathering a substantial amount of evidence including the family report which was totally in support of his contact with the children. Judge (3) declined the father's application to have contact with his children restored and permitted him to just send cards and presents to each child at Christmas and on their birthdays via the Independent Children's Lawyer.

The father's barrister considered that two crucial adverse assumptions were not available for the judge to make and had not yet been fully tested: i) that the judge attempted to link the absconding child to the father or to the influence of the father at the time the child fled, given that the supervisor reports were positive and presented a contrary picture and ii) the judge found that during periods when the father has had time with the children or an ability to communicate with them, it has been disturbing and disruptive for the children. The disturbance categorically was identified by the supervisor to be related to the children's return to their mother's house.

The father tried appealing this decision, but one page, with a one-liner dismissing the appeal and a cost order issued by Judge(4) was the result.

The children related their desperation at being removed from their father's care via emails, which have now been forbidden by the Judge (3).

The father had submitted himself to independent psychometric testing and passed with flying colours; his family report writer(4) found no problems confirming the applicant's accusations were not evident or supported, the children wanted to be with the Father and there were no signs of any abuse, domestic violence or other assertions made by the applicant. In fact, a positive report supported his paternal love and care, that is until some months later the report writer wrote a 2 page addendum to his report turning his previous opinion around 180 degrees to now find the father incapable of caring for his children at all. Accusing him of being narcissistic. Serious questions have to be asked as to why this so-called professional decided to write this additional information. Has someone persuaded him it would be in his best interest to do so, to ensure the flow of work he receives via the court continues or some other equally malevolent reason. He certainly had no further contact with the father prior to revising his opinion.

Further adjournments and appeals have added to the time to resolve this case. The children are still waiting for the court to realise their father is no risk to them and that they love each other dearly and just want to be together. A further hearing is scheduled for early 2020 and the costs (legal and associated fees) to this devoted dad who doesn't appear to have done anything wrong are in excess of \$1.32 million dollars.

Another father of three children lost shared parental responsibility and some contact nights, despite the mother having a domestic violence order against her for physically assaulting the maternal grandmother, threatening the maternal grandfather, yelling at the father in front of the children and the rest of the school at a sports day, then dragging one of the children away by the arm. Police made a report to child safety after the father gave police a photograph of injuries to the child in the form of a hand shaped welt on the child's bottom. The police considered charging her, but the young child (4 years old) could not recall the earlier incident because he was distracted when an iPad with a game showing was put in front of him.

The mother had found a new partner and repeatedly told the children the new man was their father now. She also made disparaging comments about the grandparents who lived in another state and not to worry about them or their father because they would be dead by the time they were grown up. She peppered their mouths with pepper and mustard, and duck taped the youngest child's mouth to stop him screaming, on more than one occasion, when they said something she didn't like. Family Services did nothing when the paternal grandmother, who is a counsellor and his sister, a teacher made mandated reports that she was abusing the children.

This family has been subjected to four family reports compiled by four different consultants. Each reaching a different conclusion. The father says that often the questioning of the children was leading and the children had difficulty understanding the questions as they used long and unfamiliar words. One Report writer asked one child about where he wanted to live - he confirmed he lived with his mother which he described as good, because she had a big area out the back where they played tennis. He did not like it when his mother smacked him with an open hand. Another child was not clear about the time he spent with his father, but indicated he saw him some days. He liked his father as he played with him and his siblings - there was nothing he disliked. If he misbehaved his father sent him to his room. He told the FRW that his mother sometime keeps them at her place for two of more

days and he was unaware why, but this makes him feel sad. The FRW said when she endeavoured to seek his views about the time with his parents “moving forward”, one son indicated he wanted to keep it the way it was, but she was not sure this child understood what was being asked of him. He felt sad when the parents argued on the phone and may have simply said what he did to answer the question.

During a second interview with a family report writer, one of the younger children recalled a discussion the police had when they were questioning the mother and her boyfriend, in front of the children, about her cross application for a DVO. The police had asked about the mother’s complaint when she alleged that the father wanted to “stab and shoot the mother”. (the father strongly denied this allegation). The children heard this conversation and one of them repeated a portion of it to the Family Report Writer. Another child made a comment about “remembering all that Dad had said”. The comment about “remembering” was from a conversation the father had with his children to explain what would occur at the interview with the FRW.

The FRW came to the conclusion that the father was coaching the children and making threats against the mother.

Unfortunately, this was not challenged in the subsequent court hearing before Judge (7) when the FRW was interviewed by telephone. She made further allegations that had not been aired previously, accusing the father of lying when she realised the father was applying for shared care of the children. As a result of this interview the father lost shared parental responsibility and some time with the children. The children were ordered back into the mother’s and boyfriend’s care.

The father wanted to appeal, but has been unable to do so because the Judge would not provide the Reasons for her Decision. Despite many complaints to senior court personnel, the Judge has still not complied. It is now 42 months since the trial in mid 2016 and he is still waiting.

In the interim his overnight contact with the children has been restored for 3/14 nights

Another family report was ordered and this time the conclusion was one child wants to live with dad, the youngest didn’t understand the question, the other child wants to live week and week about with each parent.

The children, however, were frightened the mother would punish them for their comments in the report. She did – she punished the eldest child by grounding him for a week, confined to his room with no video games to pass the time.

The case heads back to court in 2020. The paternal grandparents sold their farm to fund the hearings.

Yet again, a father with one child has been attempting to secure time with his teenage child. The mother had stopped contact several months ago and did everything she could to disrupt contact.

The hearing which was supposed to be for a 4-day trial was adjourned for a further 6 months after just half a day's hearing.

In this case, the judge did order that the father should have re-introductory contact with his child at a contact centre for a number of weeks, followed by direct unsupervised contact if all was going well.

The drafting of the final order was left to the Independent Children's Lawyer and the father alleges that further conditions managed to appear in the order, which had not been approved by him or his legal team.

A further problem for this father was the cost of the supervised care. He was not working and was expected to pay \$165 for the initiating interview, then \$400 for the two-hour supervised sessions each month. If you are supporting yourself on Centrelink benefits that's difficult to do.

Another father has three children living with him. They have done so since mid 2018 when the mother put the children in her 4 Wheel drive vehicle and proceeded to ram the vehicle into the central pillar of the garage three times.

She did some \$44K worth of damage to the house, then attempted to claim the write off of the vehicle. She is facing charges of reckless endangerment, wilful damage and fraud, to be heard later this year.

The mother was granted 2 hours supervised contact with the children each fortnight on a Sunday, then the latest orders gave her 8 hours every Sunday, supervised by her mother.

She has a history of mental health problems, including 2 suicide attempts, apart from the vehicle incident.

The father is a high-income earner, but that has been reduced considerably as he needs to stay in the city to care for his children.

However, he finds he is now overcommitted financially and despite having two investment properties and a family home, he needs to sell one, to get himself out of trouble. The mother has managed to take-over the family home and live in it on her own for the past 18 months. She is not paying any rent or contributing to the mortgage as she is not working. The father has been forced to rent another property for himself and the children.

Her solicitor is aggressive and threatening an injunction to stop the father from selling one of the houses. The bank is also threatening to foreclose on the family home where the mother lives.

Another problem is the court has ordered that the two older children should continue to attend a private boys' school, which the father now cannot afford. The mother does not contribute anything.

Apart from all the financial problems, he is deeply concerned for his children's safety and worried about the long contact time she now has every week, which is supervised by her mother.

Sample emails received from fathers and other relatives

An email from a sister concerned for her brother and his children.

Hi, I am writing because I don't know where else to turn!

I am trying to find support/advice and HELP for my brother - and I'm sure he's not the only man out there in this situation. I'll TRY to keep it brief!

My brother and his wife are separated and going through a very nasty split. She kicked him out in April 2019 and she remains in the family home.

This house has NO mortgage, therefore she is living rent free while my brother is paying \$500 per week in rent, for a 4 bedroom house. They have three children, all of whom suggested they wished to split their time between their mum and Dad.

My ex sister-in-law has refused to allow the children to spend ONE NIGHT with their own father. She is making excuse after excuse to keep them with her 100% of the time and claiming Child Support for 100%.

They have attended mediation, which was a complete waste of time as she was utterly uncooperative, stating that she felt "uncomfortable" with the children being with their dad. The children were allowed to spend a few hours with him only several times over the Christmas school holidays, but NEVER overnight, because of course she has them 100% of the time!

To make matters even worse, she now has her new boyfriend living in the house with her and the children - RENT FREE and he has an AVO for bashing HIS WIFE (when she discovered the affair with my ex sister-in-law!)

My brother is at his wits end - he's paying over \$500 per WEEK in Child Support - when he is in fact being DENIED time with his own children and paying rent while his EX lives rent free with a wife basher!

Court will be the next step - but as we know the system is clogged and this could take years.

At mediation, both agreed that the houses would be sold (they also own an investment property on the Coast) but since that time she has suggested she won't be rushing to sell because the market is slow.

My question is - WHERE can my brother turn? If it was him keeping his children from their mother 100% of the time there would be police knocking at the door and there would be hell to pay. Why does she get away with this and WHAT can we do to stop it?

PLEASE.... we need help.

I am GRAVELY concerned for my brother's mental health at this point in time. He's actually stated that there is no point continuing as there seems to be nowhere else to turn. She is out to destroy him financially, mentally and emotionally and currently she is succeeding, despite the fact she is the cheater.

It's not fair... please help!

Hi my name is

I have been going through a separation where my ex has taken our children.

I do not qualify for legal aid and have no legal help. My ex has lied to the court about me and hired a lawyer to help her.

She has been holding our children ransom for the sale of our house of which I actually have been building with a fractured back that I did not know about.

I was a day care cook at our children's daycare. She has a very well-paying public service job.

I have been going broke, lost my job and have found it hard to get any support to help me through this tough time. I have approached everyman, menslink, beyond blue ,St Vincent Depaul, St John's, Salvation Army ,

I need a lawyer..... like yesterday.

I have tried a lawyer that charged me 3000 dollars to write a letter and make a Phone call.

I have represented myself but now it's all to much, not seeing my children properly for nearly 12months has taken it's toll.

I think she might have a new partner, but she won't tell me the truth. She has lied to me so much and through the court I don't want anything to do with her.

I have been alienated from my children.

The system sucks I need help.

On Thu, 9 Jan 2020 at 8:38 pm,

Hi

I have 2 Child support accounts for the 1 child.

1 is for ongoing payments. The other is back dated payments because of the assessor's opinion.

Just before Christmas I tried to contact child support 4 times by phone and of course nobody ever answers.

Also, at that time they took my Tax return to pay most of the outstanding balance.

Now I'm left with very few funds. I find it difficult to live. I am moving house as well.

My question is! Can Child support take my rental bond which is now owing?

Everything here in NSW is under the same banner (service NSW) including the bond board.

If they take this I will be on the streets.

Every day we receive many emails of a similar nature. Fathers, grandmothers, sisters, new partners and other family and friends, desperate to find help to cope with the situation of being evicted from their house and not seeing their children. Solutions are needed to provide more services and/or to find a way to remove the heavy cost of court applications and the delays which exacerbate the costs.

TOR D. The financial costs to families of family law proceedings, and options to reduce the financial impact, with particular focus on those instances where legal fees incurred by parties are disproportionate to the total property pool in dispute or are disproportionate to the objective level of complexity of parenting issues, and with consideration being given amongst other things to banning “disappointment fees”, and:

Legal fees charged are extremely high, and probably the highest of any profession in Australia. The following list was downloaded from Legal Lawyers.com.au to provide a guide as what level of charging we are talking about.⁴² <http://www.legallawyers.com.au/legal-topics/law-firm-sydney/solicitor-prices/>

SOLICITOR AND BARRISTER PRICES

The prices that a solicitor will charge for various prices vary between regions of Australia such as city, suburban and country-based solicitors or between the big firms, small firms and mid-tier firms. This may not reflect the quality of the service being provided by the firm, it may simply be a function of where they sit in the market. The charge out rates of particular solicitors and barristers will also vary on the basis of the seniority of the person doing the legal work. Please not that these figures are only general estimates and not indicative of the specific amounts that a lawyer in a particular instance might charge, but, as a basic guide, in Sydney for a small firm you might expect the following charge out rates:

Senior Solicitor – \$300.00 per hour
Junior Solicitor – \$200.00 per hour
Law Clerk – \$120.00 per hour

In a large firm, you would expect much higher charge out rates such as:

Partner: \$800.00 per hour
Special Counsel: \$600.00 per hour
Senior Associate: \$500.00 per hour
Junior Lawyer: \$300.00 per hour
Law Clerk: \$180.00 per hour

The medium sized firms would most likely have charge out rates somewhere between these rates. Barristers are on a different system of rankings within the profession and often charge in a different manner to solicitors. Some will charge on an hourly basis and others an appearance fee, or a specific fee for a given type of hearing. Some barristers also charge an amount for each day of work which is conducted on a case. Barristers rarely do work on a

⁴² <http://www.legallawyers.com.au/legal-topics/law-firm-sydney/solicitor-prices/>

contingency basis and mainly charge an hourly rate for their work which may be advisory in nature or related to court appearance. As a very basic guide, barristers may charge the following amounts:

QC/SC: 1,000.00 per hour
Senior Barrister: 600.00 per hour
Junior Barrister: 400.00 per hour

For daily court fees, this would relate to the following amounts:

QC/SC: 8,000.00 per day
Senior Barrister: 5,000 per day
Junior Barrister: 3,000 per day

For some types of matters like legal aid, motor vehicle accident insurance and workers compensation there are rates which are proscribed by statute or in the case of legal aid by the agency procuring the work such as legal aid New South Wales. Also, in relation to appearances by counsel, there are often systems of suggested fees which are given by the courts as a guide to what solicitors should charge in relation to their work. An example of this is the system of fees given by the Federal Court:

Fee on Brief

Junior Counsel \$1200-4,800
Senior Counsel \$1,950-7,200

Appearance at hearing (daily rate including conference)

Junior Counsel \$850-3,950
Senior Counsel \$1,950-6,000

Interlocutory Applications

Motion/Interlocutory hearing

– short (up to 2 hours)

Junior Counsel \$350-2,000
Senior Counsel \$650-3,900

– long (2 hrs plus)

Junior Counsel \$400-3,000
Senior Counsel \$800-6,000

Hourly rate for: Directions hearing, Preparation time, Conferences (not occurring on day of hearing), Settling applications, statements of claim, affidavits, defence, other documents, Opinions, advice on evidence, Written submissions (where not allowed above), Attending to receive judgment (where appropriate), Not otherwise provided for:

Junior Counsel \$250-500
Senior Counsel \$400-700

If you have any questions about engaging a lawyer, please do not hesitate to contact us in relation to your inquiry using the contact form or by calling (02)99231700.

Individual cases can reach expenditure for one party as high as \$1.32 million (see our previous real-life example).

Other cases might attract fees of ten thousand dollars, to several hundred thousand dollars. It depends on the amount of work, the difficulties raised by the other parent and their solicitors. Litigious solicitors will attempt to drown the other party in correspondence and encourage their client to make spurious allegations, every single one needing a response and costing money that most separating parents just do not have. It has become very apparent to us that some parties deliberately work to run the other parent out of money, so they cannot proceed. They max out their credit cards first, drawdown on their superannuation, commit their property settlement proceeds before settlement on a “contingency basis” or use the available monies to pay their legal fees and finally borrow excessively from parents, other family members and friends.

Frequent adjournments and long delays in court are not helpful, all adding to the incredibly high costs charged.

Legal Aid is available, but mostly restricted to women, who are on low income/Centrelink benefits and claim to have the sole care of the children. There is an unwillingness to grant aid to fathers despite qualifying under the means test. Refusals often quote a conflict of interest when LA has already granted aid to the mother ... or the amount of money required to secure a judicial outcome is not warranted or your case has little chance of success. Women receive \$2 for every \$1 granted to men. Even if aid is granted, it is usually only given for a mediation conference which takes six to eight weeks or more to arrange. By this time the status quo with the children has been established and the fathers are so desperate to see their children they will agree to just about anything. Legal Aid mediators have been known to use coercion to reach agreement with the promise that the father will be able to then see his children.

Mediation:

Even mediation comes with a cost!

A father told me yesterday that he had spent \$8500 on a half day mediation, because his solicitors arranged it and accompanied him, which seems to defeat the purpose of an alternative resolution to going to court! A final affront to the cost was.... no resolution or agreement was secured.

Private mediation can cost \$2200 to \$5500 per day, then there is the cost of a solicitor if you choose to take one with you.

Non-profit organisations such as Relationship Australia charge \$35 per party for the intake session; and \$75 per hour per party for the Family Dispute Resolution mediation. Reduced fees are available in certain circumstances.

The Government funded Family Relationship Centres provide up to one hour of joint Family Dispute Resolution sessions free of charge.

Family Relationship Centres will charge clients earning \$50,000 or more gross annual income \$30 per hour per person for the second and third hours of Family Dispute Resolution.

Delay is a serious drawback...see our comments under **TOR E**.

Court Fees (Family Law)

When talking about the costs of litigation, court fees are often forgotten in the struggle to finance the legal costs for an application before the Family or FC court. The individual fees are expensive and possibly beyond the means of many hard working Australian's. We would like to suggest that as the Family Court is likely to impact 50% of marriages it should be considered as more of a service supplied by the government than used as a resource to offset approximately 23.66% of the costs to run the court. Those in failed marriages have no other choice than to apply for a divorce in the Family Courts. Court fees produce an income of \$84 million. Court expenses are \$355 million. The removal of fees paid to lodge applications etc. in the court would remove a significant obstacle to people's access to justice.

An Accountant, David Hardidge has kindly looked at the income and costs associated with the family/federal courts and his comments are below. We thank him for his contribution. He writes:

The accounting is complex and confusing. Since the year ending 2016, the three courts finances have been subsumed into one set of figures. Prior to this event, the Family Court fees were \$60 million as against costs of \$200 million for year ending 2016, i.e. 30% of the costs.

Basically, the charges collected by the courts, departments etc. do not belong to those entities – they are collected on behalf of consolidated revenue. So, for accounting purposes, there is a distinction between the revenue and expenses of the entities themselves (called

controlled activities), and the revenue and expenses of activities they 'administer' (i.e. administered activities).

To use an example, the Australian Taxation Office is funded by appropriations, and pays salaries and services costs. The income tax, company tax, GST collected is recorded in 'administered' activities. Tax collected does not belong to the ATO – they cannot spend it.

For accounting, the focus is on the controlled activities. The administered activities are in the notes to the financial statements.

The figures are in Table 3.7: Schedule of budgeted income and expenses administered on behalf of government (for the period ended 30 June) (page 156, PDF page no. 168).

So, for the Federal Court, the 2018-19 the budget for 'other revenue' is \$77.353 million, with an estimated actual for 2017-18 of \$75.464 million. There was also an estimated actual of fines for 2018-19 of \$25.1 million.

The Federal Court 2019 Annual Report, Note 2 - Income and Expenses Administered on Behalf of Government (page 101, PDF page no. 115)

Accounting Policy

All administered revenues relate to the course of ordinary activities performed by the Federal Court of Australia, the Federal Circuit Court and the Family Court of Australia on behalf of the Australian Government. As such administered revenues are not revenues of the Courts. Fees are charged for access to the Courts' services.

Administered fee revenue is recognised when the service occurs. The services are performed at the same time as or within two days of the fees becoming due and payable. Revenue from fines is recognised when a fine is paid to the Court on behalf of the Government. Fees and Fines are recognised at their nominal amount due less any impairment allowance. Collectability of debts is reviewed at the end of the reporting period. Impairment allowances are made when collectability of the debt is judged to be less, rather than more, likely.

Note 2.2A shows the actual fees for 2018-19 of \$84.201 million and for 2017-18 of \$81.063 million.

For 2019, the details of running the Federal Court itself is in the Statement of Comprehensive Income (fancy name for profit or loss) on page 83, PDF page no. 97.

The costs of running (expenses) was about \$355 million. This covered

Judicial benefits	105 million
Employee benefits	118 million
Suppliers	117 million
Depreciation and amortisation	14 million

These were funded by:

Government appropriations	\$265 million
Resources received free of charge	\$ 43 million

These appear to be mainly notional costs for the use of Commonwealth Law Courts Buildings in each capital city and the Law Courts Building in Sydney. These amounts are included in expenses above, but are not actually paid for by the Federal Court.

Liabilities assumed by other agencies	\$ 33 million
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These are mainly the notional cost of judicial pensions, where the amount is recognised in expenses, but not actually paid for by the Federal Court).

The ratio of fees \$84 million to costs of running of \$355 million for 2019 is slightly lower than the Family Court for the year ended 2016 (before it was merged) of approx. \$60 million of fees charged against costs of \$200 million (I have not included the detailed references here).

Family Court annual reports

<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/annual-reports/>

It appears there are no separate financial statements from the administrative merger from 1 July 2016

Federal Court annual reports

<https://www.fedcourt.gov.au/digital-law-library/annual-reports>

Happy to discuss further.

David Hardidge FCPA, FCA

Fees are set by federal government regulations – Family Law (Fees) Regulations 2012.

GST does not apply to court fees.

FAMILY COURT OF AUSTRALIA

FILING FEES	
Application for consent orders	\$165
Application for decree as to nullity	\$1290
Application for decree as to nullity – reduced fee [^]	\$430
Application as to validity of Marriage, Divorce Annulment	\$1290
Initiating Application (Parenting OR Financial, Final only)	\$350
Initiating Application (Parenting OR Financial, Final AND Interim)	\$470*
Initiating Application (Parenting AND Financial, Final only)	\$575
Initiating Application (Parenting AND Financial, Final AND Interim)	\$695*
Response to initiating application	\$350
Interim order application/Application in a case (Parenting AND/OR Financial)	\$120
Notice of appeal to the full court including an appeal from the Federal Circuit Court	\$1380
Application for leave to appeal	\$1380
Application under the <i>Trans-Tasman Proceedings Act 2010</i>	\$120
Filing an application to register a New Zealand judgment	\$110
Issue subpoena (including Subpoena in an Arbitration)	\$55
COURT EVENT FEES	
Setting down for hearing fee (defended matter) (<i>This fee is not refundable</i>)	\$870

Daily hearing fee (for each hearing day, excluding the first hearing day)	\$870
Conciliation conference	\$400

FEDERAL CIRCUIT COURT OF AUSTRALIA

FILING FEES	
Application for divorce	\$910
Application for divorce – reduced fee [^]	\$305
Initiating Application (Parenting OR Financial, Final only)	\$350
Initiating Application (Parenting OR Financial, Final AND Interim)	\$470*
Initiating Application (Parenting AND Financial, Final only)	\$575
Initiating Application (Parenting AND Financial, Final AND Interim)	\$695*
Response to initiating application	\$350
Interim order application/Application in a case (Parenting AND/OR Financial)	\$120
Issue subpoena	\$55
Application under the <i>Trans-Tasman Proceedings Act 2010</i>	\$120
Filing an application to register a New Zealand judgment	\$110
COURT EVENT FEES	
Setting down for hearing fee (defended matter) (<i>This fee is not refundable</i>)	\$640
Daily hearing fee (for each hearing day, excluding the first hearing day)	\$640
Conciliation conference	\$400

* Initiating applications that seek interim **AND** final orders also attract the interim order fee. Example:

- Initiating Application (Parenting **AND** Financial) \$575 + Interim order application \$120 = Total filing fee \$695
- Initiating Application (Parenting **OR** Financial, Final) \$350 + Interim order application \$120 = Total filing fee \$470

If you hold certain Government concession cards or you can demonstrate financial hardship, you may be eligible for:

[^] a reduced fee for an application for divorce (both parties must be eligible if filing a joint application) or decree of nullity.

For all other applications you may be eligible for an exemption of fees.

See the *Guidelines for exemption of court fees* at www.familycourt.gov.au and www.federalcircuitcourt.gov.au

Filing fees can be paid online when eFiling using the Commonwealth Courts Portal www.comcourts.gov.au

Court event fees can also be paid online (once you have received a statement with your PID number) via eservices.comcourts.gov.au

i. capping total fees by reference to the total pool of assets in dispute, or any other regulatory option to prevent disproportionate legal fees being charged in family law matters, and

I would suggest most of the cost of legal fees arises through the children's matters. Mediation, initial meetings with solicitors, letters written and answered, preparation of affidavits, gathering subpoenaed evidence, statements, paying for family reports, responding to family reports or other allegations, defending domestic violence allegations, form preparation and court filing, then there are mentions, interim hearings final hearings and compliance with any orders the court makes.

Property may be a simpler exercise, but many cases and hearings are jointly for children's matters and property settlement.

ii. any mechanisms to improve the timely, efficient and effective resolution of property disputes in family law proceedings.

Ensure full disclosure of financial circumstances is provided without delay. Impose penalties if necessary, if delays appear to be a deliberate attempt to sabotage a property settlement. Once it has been established all documents have been made available there should be no further adjournments. Ensure adjournments are kept to a minimum time. Six months adjournment is not acceptable.

TOR E. the effectiveness of the delivery of family law support services and family dispute resolution processes

Mediation:

The real difficulties with using the Family Relationship Centres funded by the Government is the delay in securing an appointment.

On checking with Interrelate, in NSW they advise there is an 8 week wait and for Relationships Australia the delay is even worse ...May 2020....3 to 4 months!

Certainly, too long, when one hasn't seen one's children for weeks since being forced out of the home.

Even when a couple reaches an agreement and signs off on a parenting plan it has no legal standing unless the couple follow through with a court application for a consent order. If they don't and one of the parents decides to not honour their agreement, a court application will not succeed because there is no court order. So, they are back to square one and have to make an interim application to the court for parenting orders before they can lodge a Contravention application, if the other parent continues to ignore the spirit of their original agreement.

We hear reports that mediators are ill advised and unable to offer even basic information that their parenting plan, that they may have worked so hard for, has no legal options if one party decides to ignore the spirit of the agreement.

As mentioned, there are long delays in securing an intake appointment, followed by further delay waiting to see if the other parent will attend. At the end of this process one may just walk away with a certificate issued under S66i of the Family Law Act which gives permission to the parent to make an application to the court.

The Certificate used to provide details of why the mediation hadn't succeeded. It could be that one or other of the parents did not make a genuine effort to resolve the problems or one party refused to attend or some other reason that gave an indication as to who was causing the lack of progress. Now, the Certificates indicate that the parties just failed to reach agreement!

TOR F. the impacts of family law proceedings on the health, safety and wellbeing of children and families involved in those proceedings

Suicide, suicide and more suicide,

Heart attacks, heart attacks, heart attacks

Stress related illness, accidents at work

Nutritional failure due to lack of food – no money left to feed or cloth oneself after paying high levels of child support.

Little consideration is given to the circumstances a parent may find themselves in when removed from their home either at the request of the wife/partner or by the police, if she has sought a convenient domestic violence order. Usually it's the father who is thrown out of the home with little opportunity to take clothing, personal items or paperwork with him. It takes a further return visit accompanied by the police to secure some of those items if they haven't already been sold or thrown out. The father has had to organise other accommodation, with two or three bedrooms and furnish the house/unit, so he has a place for his children. He ends up paying for two homes and child support on top of trying to keep himself fed and clothed, with transport to get to and from work.

It usually takes about two years for the credit cards to reach their limit, for their borrowing capacity to cease, their family can lend no more money, and by this time due to the stress and time off that is required to deal with the legal issues they may have lost their job.

Children in the meantime have lost contact with a father that has presented no confirmed risk to his children. False allegations of domestic violence may have removed him from his children's lives. The effect on a child losing a parent is devastating. They do not understand why this has happened.

Dr Linda Neilson, a professor of Adolescent and Educational Psychology at Wake Forest University⁴³ writes her review of 54 studies on shared parenting finding that, independent of parental conflict and family income, children in shared physical custody families—with the exception of situations where children need protection from an abusive or negligent parent—have better outcomes across a variety of measures of well-being than do children in sole physical custody. Knowledge and understanding of these findings allow us to dismantle some of the myths surrounding shared parenting so we can better serve the interests of the millions of children whose parents are no longer living together.

What is the most beneficial parenting plan for children after their parents separate or divorce? Are children better off living primarily or exclusively with one parent in sole physical custody (SPC) and spending varying amounts of time with their other parent? Or are their outcomes better when they live with each parent at least 35% of the time in a joint physical custody/shared parenting (JPC) family? Furthermore, is JPC beneficial when parents have high, ongoing conflict? In fact, isn't shared parenting only chosen by, and suitable for, a very select group of parents—those with higher incomes, lower conflict, and more cooperative relationships who mutually and voluntarily agree to share from the outset?

1. In the 54 studies—absent situations in which children needed protection from an abusive or negligent parent even before their parents separated—children in shared-parenting families had better outcomes than children in sole physical custody families. The measures of well-being included: academic achievement, emotional health (anxiety, depression, self-esteem, life satisfaction), behavioural problems (delinquency, school misbehaviour, bullying, drugs, alcohol, smoking), physical health and stress-related illnesses, and relationships with parents, stepparents, and grandparents.

⁴³ <https://education.wfu.edu/about-the-department/faculty-and-staff-profiles/dr-linda-nielsen/>

- 2. Infants and toddlers in JPC families have no worse outcomes than those in SPC families.** Sharing overnight parenting time does not weaken young children's bonds with either parent.
- 3. When the level of parental conflict was factored in, JPC children still had better outcomes across multiple measures of well-being.** High conflict did not override the benefits linked to shared parenting, so JPC children's better outcomes cannot be attributed to lower parental conflict.
- 4. Even when family income was factored in, JPC children still had better outcomes.** Moreover, JPC parents were not significantly richer than SPC parents.
- 5. JPC parents generally did not have better co-parenting relationships or significantly less conflict than SPC parents.** The benefits linked to JPC cannot be attributed to better co-parenting or to lower conflict.
- 6. Most JPC parents do not mutually or voluntarily agree to the plan at the outset.** In the majority of cases, one parent initially opposed the plan and compromised as a result of legal negotiations, mediation, or court orders. Yet in these studies, JPC children still had better outcomes than SPC children.
- 7. When children are exposed to high, ongoing conflict between their parents, including physical conflict, they do not have any worse outcomes in JPC than in SPC families.** Being involved in high, ongoing conflict is no more damaging to children in JPC than in SPC families.
- 8. Maintaining strong relationships with both parents by living in JPC families appears to offset the damage of high parental conflict and poor co-parenting.** Although JPC does not eliminate the negative impact of frequently being caught in the middle of high, ongoing conflict between divorced parents, it does appear to reduce children's stress, anxiety, and depression.
- 9. JPC parents are more likely to have detached, distant, and "parallel" parenting relationships** than to have "co-parenting" relationships where they work closely together, communicate often, interact regularly, coordinate household rules and routines, or try to parent with the same parenting style.
- 10. No study has shown that children whose parents are in high legal conflict or who take their custody dispute to court have worse outcomes than children whose parents have less legal conflict and no custody hearing.**

These findings refute a number of popular myths about shared parenting. One among many examples is a 2013 study from the University of Virginia that was reported in dozens of media outlets around the world under frightening headlines such as: “Spending overnights away from mom weakens infants’ bonds.” In the official press release, the researchers stated that their study should guide judges’ decisions about custody for children under the age of four. In fact, however, the study is not in any way applicable to the general population. The participants were impoverished, poorly-educated, non-white parents who had never been married or lived together, had high rates of incarceration, drug abuse, and violence, and had children with multiple partners. Moreover, there were no clear relationships between overnighting and children’s attachments to their mothers.

Dr. Linda Nielsen is a professor of Adolescent and Educational Psychology at Wake Forest University. She has written numerous articles on shared parenting research and is frequently called upon to share the research with legislative committees and family court professionals. For copies of her research articles contact nielsen@wfu.edu.

TOR G. any issues arising for grandparent carers in family law matters and family law court proceedings.

If the mother is granted sole residency and denies contact for the father, she will very likely deny other family members contact, including the paternal grandparents.

If the Grandparents are caring for the children when both parents are working to payoff their mortgage, they should be fully compensated by the parents and the government could consider sharing the parenting payment with them. If the grandparents are caring full time for the children because the parents are incapacitated through drug usage or other medical situation, they should be able to access all Centrelink benefits reserved for parents.

As a general rule, Grandparents should not access family court proceedings, in normal circumstances, unless their adult child, who is the parent is incapacitated or not available to appear. Grandparents contact with the children is usually arranged via the parent when during their time with the children.

Family law with two parents and children is complicated enough and the primary participants should be the children’s parents and the children.

However, not every situation can be covered by a blanket statement. Each case has its own merits and must be considered in that light. If parent(s) are totally denying grandparents contact, and the grandparents present no risk to the children, the court could consider their application for contact.

TOR H. any further avenues to improve the performance and monitoring of professional involved in family law proceedings and the resolution of disputes, including agencies, family law practitioners, family law experts and report writers, the staff and judicial officers of the courts, and family dispute resolution practitioners

They say 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.⁴⁴

Recently it has been disclosed that these protected experts have not been as reliable as they should be. One psychologist was recently named for totally alienating a father from his child by his appallingly incorrect diagnosis.

Another exposed for taking his client for a drink in a wine bar.

A group of parents⁴⁵ has banded together to lodge complaints against one NSW family report writer claiming his reports resulted in a string of failures, including "grossly inaccurate and incomplete" recordings of interviews, "misdiagnosis", and that he applies unscientific theory" particularly in response to allegations of child abuse and family violence.

A former president of the Clinical Psychologists Association of Australia and a psychology clinic director at the University of Sydney, Judy Hyde, said the level of training family report writers were required to have was "scary".

⁴⁴ <https://www.themonthly.com.au/issue/2015/november/1446296400/jess-hill/suffer-children> Trouble in the Family Court, Jess Hill

⁴⁵ ABC News, Family Court expert referred to Medical Council after parents lodge complaints, 4 Sept 2018 <https://www.abc.net.au/news/2018-09-04/family-report-writer-used-in-court-referred-to-medical-council/10038516>

"The public doesn't know how bad this is," she said.

"This is terrible because what they're saying is, we're prepared to have people with unaccredited training undertake assessments of very complex, specialised, difficult cases where people's lives are based on the decisions that are made for them.

"For the rest of their lives it will have an impact."

Ms Hyde made the point that other types of assessments have registers of approved suppliers.

"WorkCover requires you to have accredited training for WorkCover ... that should be the same at least for the children that we're trying to deal with and help manage their lives going forward," she said.

Ms Hyde acknowledged family law was a difficult area of practice for assessors.

"There are complaints made by people who haven't got what they wanted, but the fact is people are very poorly trained to actually manage these assessments anyway and the lives of our children are put at risk," she said.

Our recommendations are that family report writers, whether psychologist, social workers or counsellors should be registered and required to undertake a course to skill them further in conducting interviews with family members and their children.

All interviews with children and parents should be video-taped and the tapes made available to the parents concerned and their legal advisors. The written family report should not be held to be secret. This only prevents proper scrutiny of the information contained therein.

Parents should be allowed to consult a second opinion and present the finding in court. To not do so is placing far too much reliance on the opinion of one person, who may or may not have interpreted the circumstances correctly.

Appointments are too short and do not provide enough time to understand the family dynamics.

Family Report Writers should visit the family home where the mother is living and the home where the father is living, without giving prior notice of their visit. FRW need to see the family in situ to gauge the level of care provided.

ToR i. any improvements to the interaction between the family law system and the child support system

It would seem, that the Child Support Agency, over the years, has managed to basically eliminate the Family Court from its business.

I well remember the laughter emanating from the CSA personnel and women representing single mothers' groups, who attended a Stakeholders' Meeting, when a CSA staffer described that only two solicitors had been involved in the new system of AAT hearings, after the 2006 changes to the Family Law Act. They cheered! CSA do not want the legal profession or courts included in their business

Section 66E of the Family Law Act states that

Child maintenance order not to be made etc. if application for administrative assessment of child support could be made

- (1) A court having jurisdiction under this Part must not, at any time, make, revive or vary a child maintenance order in relation to a child on the application of a person (the **applicant**) against, or in favour of, a person (the **respondent**) if an application could properly be made, at that time, under the Child Support (Assessment) Act 1989 for administrative assessment of child support (within the meaning of that Act):

This is an example of father who was ordered by a Federal Magistrate in August 2001 to pay \$200 per week for two children from a previous relationship apparently contrary to S66E. The Federal Magistrate knew the father had been in a severe car accident and was receiving a disability support pension. Also, that he had another new born son from a second relationship, to support from the \$80 per week Family Tax Benefit payment he received.

The father could clearly not afford to pay this amount from his disability pension. A second court hearing before the same Federal Magistrate ordered a lump sum payment in advance, calculated for the two children until they reached 18 years.

A warrant was issued to seize his home in November 2002, on account of the order for a lump sum payment. The father failed to move out of the home in time and remove all their possessions. He had no spare money to arrange removalists or storage. He was charged with contravening an order and sentenced to 28 days imprisonment.

Further inquiries of the two Sheriffs involved, produced the information that there was nothing on the system ordering the sale of the house.

The father claims a loophole was found to transfer the property to a clerk in the Federal Magistrates Court who lived in a southern State, to overcome the problems that the Court had as the property was located in that other State..

The father tried several appeals. His local town Counsellor was providing assistance with contacts to the Prime Minister, Governor General, Human Services Minister and the Chief Justice of the Court who acknowledged that an error had taken place.

The Counsellor had sent an enormous number of letters and as a result the father was facing vexatious litigation charges. These were dropped, when the Counsellor suggested to the Court that if they restored the title to the father, the Counsellor would raise a loan, pay out the CSA order, recover the monies from the sale of the property, with the balance to the father. The father did not receive any of the monies from the sale. He then successfully sued the Counsellor, but he has not received any of the monies awarded by the court.

In 2006 the father took the FMC court order to the Child Support Agency for assessment and was advised his payment would have been \$14.00 per month. Instead the court order for up-front payment was \$43,000 and with interest totalled \$87,000.

The father claims if the Federal Magistrate had acted according to the legislation S66E he would not have been jailed or evicted from his home and his house sold. Neither would he and his young son endured years of distress, without receiving any compensation for judicial error.

END

The Child Support Agency regards itself as untouchable. They often refer people to consult The Guide as being an explanation of the operation and requirements of child support. Even though this guide gives examples of legal precedents and outcomes, when one attends the Administrative Appeals Tribunal one will be told "we don't take any notice of the information in The Guide so stop referring to it".

A suggestion to improve the system would be to re-educate the CSA staff to realise they are do not run a penalty operation to punish those so called "deadbeat dads" who are in reality more "dead broke" than "dead beat".

Also, further monitoring needs to be undertaken of the commissioners employed in the AAT. Some of them appear to have previously had strong ties to the CSA and seem unable to conduct themselves without prejudice.

ToR j. the potential usage of pre-nuptial agreements and their enforceability to minimise future property disputes

Pre-nuptial agreements presented as a good idea so couples could understand exactly what they might be entitled to if they separated. Unfortunately, many pre-nups were badly constructed, failing to take into account other unexpected situations, such as the birth of a child, loss of ability to earn an income, illness etc.

The courts, presumably, will continue to make adjustments to the pre-nup depending on the new circumstances that have arisen.

ToR k. any related matters

Section 121 of the Family Law Act needs to be removed to ensure cases can be reported and people can have confidence in seeing good decisions being made by the courts.

Secrecy just raises the question, What are you trying to hide?

I note the Australian media has put forward a comprehensive submission No 530 *Australia's Right to Know* that should be taken into account.

Perjury: the lies being told in State Courts to achieve DV orders or criminal charges of child abuse must be uncovered and the person should face the full extent of a prosecution for perjury. There is no excuse for either a man or woman to lie about their previous partner. To allow either to get away with perjury just diminishes the standing and trust in court procedures.

We have been told by a representative of the Attorney General's office that it would be highly unlikely that a women would be charged with perjury. Why? Are they saying women are too stupid to understand the meaning of right and wrong, know what they are doing and must be excused their actions, even though those actions could totally destroy a man's life. Men have been charged by the family courts and others for telling lies and no excuses have been allowed. Perhaps it is time to look to women taking full responsibility for their actions instead of making excuses for them.