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Submission to the ALRC Review of the Family Law System

Dear Sir,

I am not a party to any Family Court case. I have never been a party to a Family Court case.

I am an investigative journalist who has been reporting on the sexual abuse of children since 2001 and who has been investigating dysfunctionality in the Family Court since 2007.

I have become aware of the problems in the Family Court via parents who have made contact with me and through experts and research of the issues.

I have been recording interviews with children who are disputed in Family Court cases and who have disclosed sexual abuse or violence by the father or mother.

Please note, the problems appear to be centred around the reporting of abuse allegations by both mothers and fathers.

The dozens of cases I have seen demonstrate repeated failures by the Family Law system (Court, police, child safety, family report writers etc) to adequately protect children who disclose sexual assault or violence by a parent.

I have collated the facts of the cases in order to be able to characterise the usual sequence of events in these cases that frequently results in children being ordered by the Family Court to live with the alleged abuser.

Given the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse in December 2017, that victims suffer serious long term consequences from sexual assault, it is most important that the failings of the Family Court are swiftly rectified.

In the cases I have become aware of, the typical scenario is as follows:

1. A male targets a woman,
2. who is 30-35,
3. and who wants children, or more children.
4. The women are characterised by having good jobs, assets and having a faith or ethical base.
5. The relationships are frequently fleeting, and the couple usually are not married and sometimes never co-habit.

6. All the relationships (in which the offender is male) involve domestic violence towards the woman.
  7. The woman frequently leaves the relationship before, or shortly after, the baby is born.
  8. The mother then has little or no contact with the male partner until the father requests contact with the child.
  9. Frequently the mother seeks legal advice and is told she will not be able to prevent the father having contact.
  10. The lawyer advises the mother to sign consent orders rather than take on a costly legal case.
  11. Despite her earlier domestic violence victimisation, the woman agrees to producing the child for contact, hoping and believing the father would not abuse his own child.
- CONTACT
12. The child is produced for contact.
  13. The child's behaviour deteriorates.
  14. The mother is not sure what is happening until medical symptoms appear eg toilet training regression, unexplained angry outbursts from the child, rebellion, depression, and failure to thrive.
  15. The child's school progress stalls or regresses.
  16. The mother eventually realises the child is being sexually assaulted due to a direct or indirect disclosure by the child.
  17. The mother goes to police.
  18. Police interview the child.
  19. Police decide not to charge the alleged offender due to the Family Court case on foot and/or Police claim there is not enough evidence to lay charges.
  20. The child's symptoms worsen.
  21. The child discloses more or clearer particularisation of offences.
  22. The child becomes more depressed/suicidal.
  23. The mother is accused in the Family Court of 'coaching' the child.
  24. After years of costly, emotionally draining litigation, the court orders the child to live with the alleged offender.

Each of the following issues needs addressing as a matter of urgency:

1. Silence in the Court

Section 121 of the Family Law Act effectively silences abuse victims, protective parents and journalists. The judicial power of courts to determine with whom a child may, or may not, associate is a denial of their human rights – and is leading to harm and sometimes deadly outcomes for children.

2. Disclosures of abuse

Children usually don't verbally disclose abuse. Those who do, usually disclose abuse slowly and gradually. Protective parents frequent report being unsure what was happening to their child despite seeing symptoms. It was often 'too late' once the parent realised the criminal offences were occurring and they had often signed consent orders reluctantly.

3. Reporting abuse

When children do report abuse, they are most likely to be telling the truth. Research by Oatley found 97.5 per cent of reports to be substantiated. Reports of abuse made to police are often disregarded by police simply because there is a Family Court case on foot. In several cases, alleged offenders have filed a Family Court action within days or even hours of police seeking to arrest them for crimes against a child. Reports to Child Safety departments are frequently poorly handled. For example, in Queensland each single notification is assessed in isolation without all the evidence being collated to determine whether a child is at risk. In addition, child safety only steps in to protect if a child has no protective parent. If there is one protective parent, the department takes no action to support the child or the protective parent. This leaves the protective parent to try to mount a de facto criminal case that is frequently costly and ineffective and results in the protective parent losing custody of the child and the child being placed in the custody of the offender.

4. Failure to investigate or charge

Police are very reluctant to investigate or charge parents with criminal offences while there is a Family Court case in progress because police can only lay charges if there is a 'reasonable prospect of conviction'.

5. Lack of investigative power

The Family Court lacks resources and power to investigate crime. Instead, they leave victims without authoritative findings as to whether the offences have or have not occurred.

6. Safety v Relationship

The balance between child safety and relationship with both parents is frequently tipped in favour of relationship even when child safety departments have substantiated a risk of harm from one of the parents.

Section 60CC needs to be changed to prioritise safety over relationship in situations where there is a risk to the child.

7. Disbelief

Doctors, psychologists etc may believe the child but Family Court 'expert witnesses' who are less qualified or unqualified - frequently disbelieve the available evidence and perceive the protective parent as 'abusive' for taking their child for medical care to cope with symptoms of the abuse eg sleep problems, toilet training regression, unexplained violent behaviour, dissociative episodes etc.

8. The no-win quandary

Protective parents who believe their child's disclosures but who are at the mercy of lawyers who claim the abuse is not happening, are left in the invidious position of either withholding the child from contact and risking being jailed; or handing over the child for access and risking or knowing they will be abused. This is a disastrous position for the protective parent.

9. Cost

The cost to protective parents are multi-faceted: emotional distress to the child and parent; trauma of the child and protective parent; finance – some have paid over \$500,000 in legal fees; family relationships – offenders frequently groom the protective parent’s family to side with the offender; and time – researching the law, medical appointments etc.

10. Final orders - not so final

Even after years of fighting - and maybe winning - a custody battle, state child protection authorities may step in and ‘cold switch’ the child or children from one house to another *against* Family Court orders.

11. Dying for change - and reformative legislation

Many children who have reported abuse, who have not been believed, and who have been placed in the care of offenders, have been killed by their abuser. The death of innocent children is a totally unacceptable outcome for children who have had the courage to report abuse and to seek help from adults and authorities.

Thank you for your attention to these matters.

Yours sincerely

Dr Amanda Gearing