

Submission for the Australian Law Reform Committee.

I have been supporting protective mothers in the family court since 2009, I have been working with and getting referrals from organisations and therapists particularly in cases where the protective mothers are not entitled to Legal Aid (due to the case lacking in merit) or cannot afford a solicitor to represent them.

These cases are horrific and destroying the lives of families including the children involved in these proceedings.

I submit that only a Royal Commission into the Family Law System will truly and accurately identify all the issues and shine a light onto what has been occurring for years within the Family Law System. This will allow the victims to be heard and not silenced, whilst uncovering the embedded culture of denial that exists within the system.

It will also allow the victims (including the children who are now adults) to come forward and speak out about what the system has done to them and how they have been affected. This will assist in the healing process for victims and allow accurate identification of issues.

I am aware that several Government departments as well as the Family Court have been made aware of the failures over the years and have chosen not to act, knowing leaving children in an 'at risk situation'.

Note- Any names that have been provided is from published material and is not breaching Section 121 of the Family Law Act.

Objectives and principles

Question 1

What should be the role & objectives of the modern family law system?

The role of the modern family law system should prioritise the voice of the child and keep them safe and protected from harm. This is currently impossible due to cross jurisdictional issues between the State departments, (Police & Child Safety) the Federal Court System and the Family Law Act.

Cases involving child protection is the responsibility of the State, neither department should be allowed by law to *'pass the buck'* to the Federal Court.

The current system is not child-focused, and does not achieve the best results, for either children or the criminal justice system, a system primarily designed for adult perpetrators, not child victims. It lacks coordination between police, child protective services, prosecution, mental health and medical agencies. Duplication of efforts, along with multiple unnecessary and traumatic interviews for children, is the norm in such cases.

Currently the courts are not getting accurate or timely information because both State Police and Child Protection Departments who abrogate their responsibilities to the Family court, who has no expertise or mandate to be the adjudicator on risks around child safety and who has insufficient information, expertise and case knowledge on which to make such an assessment.

The law needs to protect children first

I submit that Family Law Act, section 60CC 2(b), the need to protect the child from abuse, neglect or family violence should come before Section 60CC 2(a) The benefit to the child of having a meaningful relationship with both of the child's parents; **and....**

The word 'And' should be removed to say 'or'

The reversal of these laws will aid in assisting to to protect families as long as the court can recognise the difference between Child Sexual abuse and the false denials that the perpetrators provide.

Question 2

What principles should guide any redevelopment of the family law system?

The child's safety should come first, before a meaning full relationship. The court and court appointed specialists should understand that abusers will aggressively try to access children and misuse the court process to do so.

Children should be allowed to talk to the person making decisions regarding them. The current process of 'Chinese whispers' going via a third party consultant or a child lawyer is not providing accurate information to the decision makers.

The States/Territories responsibilities

'The dilemma for protective parents of children who have been abused that end up in the Family Court, is a criminal prosecution is unlikely to occur if; (a) the victim is young or suffers from a disability and lacks the maturity and sophisticated communication skills needed to cope with rigorous cross examination by barristers acting for the accused or, (b) there is insufficient evidence/ corroborative evidence available to get a conviction. The abusers may successfully seek the residence (formally referred to as custody) of their victims through the Family Court which was neither created, educated nor resourced to investigate such cases'.¹

To quickly and effectively address family violence; the solution is to put the onus of the assessment of risk to the child back to the States and Territories via comprehensive State

¹ Professor Freda Briggs AO, *Child Protection, The essential guide for teachers and other professionals whose worked involves children, Child abuse cases in the family court*, page 390.

generated reports. pursuant to the Australian Constitution's reserve powers given to the state to deal with child protection issues (which includes family violence).

Section 118 of the Australian Constitution states that:

“Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.”

The only decisions that should be left to the family law system are to decide divorce applications, parenting disputes, and the division of wealth when a couple separate, pursuant to the powers as articulated in the Commonwealth Constitution. Contact and access orders must and cannot therefore be made contrary to findings in the State courts.

Protective parents are currently losing residency after raising allegations of abuse, this has continued post the 2012 Family Law amendments. (Despite the friendly parent provision being revoked). If a parent ceases contact in order to protect the child, they are not believed and accused of alienation². Other parents who raise allegations are still forced to enter into a shared parenting arrangement.

The family law system cannot quickly and effectively ensure the safety of people. The jurisdiction is fundamentally flawed. A major contributing factor is the cultural beliefs and the long term indoctrination by unspecialised “experts” against a proper and principled assessment of evidence that has with a culture of disbelief of allegations of family violence, including child abuse and child sexual abuse This culture of disbelief permeates all levels of the jurisdiction and has led to a distortion of the law where unless a parent has an overwhelming and documented history of family violence and/or child abuse, then parents of either gender will not be believed. Instead, they are treated punitively.

The refusal via Court Orders of Medical treatment/Therapy or reporting for Children

I submit that the children should not be denied medical treatment, therapy or the option of reporting sexual assault or violence it is a breach of human rights and the UNCROC.

² The term Parental alienation syndrome (PAS) is not used, instead other phrases such as alignment and rejection or not promoting a relationship with the other parent...

Many cases involving allegations of sexual assault whereby the court has made an order that denies the child from having therapy or medical attention pertaining to the sexual assault. In some cases it is even ordered for the protective parent not to make any further reports to the State Departments. Long after the court orders have been handed down, children are silenced and forbidden to talk out about the abuse. There is no follow up for these children who are brave enough to talk out in the first instance, then not believed by the family consultants, experts, children's lawyers and supervisors, they are then often sent to live with or spend time with the same person who abused them and denied therapy, counselling or further reporting of abuse. Silenced by systemic abuse and Commonwealth Court Orders.

Abolish using case of *Briginshaw v Briginshaw* in family court matters.

This case is used and referred to in nearly every case involving allegations of child sexual abuse. It is used in the context of the standard of proof required to make a positive finding of child sexual abuse. However this same standard of proof is not used for the counter allegations of 'emotional abuse' asserted and circulated the perpetrators. In reality if there was enough evidence for a criminal proceedings that is were the case would be, not before the Family Court.

Abolish the Magellan Court.

The Magellan program contains many flaws. The reports contains inconsistencies, omissions and inaccuracies. This inaccuracy is not helpful to any Judge or other person tasked to investigate the cases or in the best interests of the child. All information regarding child dealings with State Departments should be forwarded to the court via subpoena, not selected portions.

The Magellan Program was designed to bring together the Family Court, the relevant State department and Legal Aid in matters that involve allegations of serious harm to children. The program aims to expedite these matters through the court to ensure the safety of children. While cases are identified by their initial point of contact with the court via its Notice of Risk process. many cases that meet the criteria of Magellan are not referred to the Magellan register. If the case does go to the Magellan register just triggers another notification to the child protection department.

NB. The child protection agencies already has this information and this exercise is pointless.

The court will request a Magellan Report outlining the notifications and investigations. These reports are problematic, they only record selective notifications³ and will include the counter allegations made by the perpetrator. Many Magellan reports are missing the notifications of CSA by third parties pertaining to the assaults. The cross sharing of information between Child Protection and Magellan are often not accurate.

Access and engagement

Question 3

In what ways could access to information about family law and family law related services, including family violence services, be improved?

When a child discloses abuse within the family unit, the State departments *should not be allowed* to refer them directly to the Federal Court. When Child Safety departments tell protective parents *“The will not intervene as there is a parent willing and able to protect”*, Routinely parents are willing but unable to protect children within the Federal Court System. Once the Family Court has made orders the State Departments rarely intervene as they say *“The Family Court has investigated”* however when parents are in the Family Court they say *“Police and child protection are not doing anything - so why will we”*. This leaves a classic case of no accountability for any department.

Child protection is a matter for the State and Criminal issues are that of police. Child protection issues should not be dealt with by the family court. The family court should only deal with divorce and property matters, not child protection.

State Departments who document misleading information, omit or manufacture evidence should be charged.

³ Magellan reports are snippets of reports that are collated by the author of the Magellan Program.

Question 4

How might people with family law related needs be assisted to navigate the family law system?

Family law related needs should only include that of custody disputes not disputes involving child abuse or family violence. The family court should not be allowed to hear cases regarding allegations of child abuse.

Question 10

What changes could be made to the family law system, to the provision of legal services and private reports, to reduce the cost to resolving family disputes?

The Court ordering it's own evidence from an external person, who has limited contact with the parties and relies on a small, selected amount of evidence with a reported conclusion. They conduct interviews (usually in less than one day) with parties and rely on piecemeal information provided to them by the "not" so Independent Children's Lawyers.

The court is ignoring, minimising or omitting the evidence from the people that have regular contact with the children including teachers, social workers, doctors and psychologists and others in the community.

I oppose the recently announced 10.7 million dollars of funding for further consultants. This funding is misdirected and will just continue to support the failings of the current system. These reports are highly relied upon with no accountability, proper testing methods and are not backed by evidence.

The interviews from consultants are not recorded and parties are prohibited to record for their own records to protect their lawful interests. The writers of the reports often lack the specialised training in violence, perpetrator tactics and child protection issues including those who have suffered trauma, yet they are heavily relied upon and considered gospel.

In the family court these report writers are not governed to comply with industry standards or compliance, they have total immunity. Most charge excessively with some reports exceeding \$20,000. This can either be paid for by legal aid or victims have to try and find money to pay for a hired gun report.

There is no consequences for misleading reports, errors or detrimental recommendations in findings. *This all happens in total secrecy just like family violence.*

I submit that immunity should cease and professionals tasked to assess children must comply with industry standards. Family Consultants and court appointed 'experts' have a duty of care to the children that are before the court and should be held accountable for the evidence they provide, manufacture, omit or change.

All interviews carried out should be recorded, this includes interviews with the child. This will ensure that interviews have been conducted in a professional manner, with the child's demeanour and body language taken into consideration, without leading questions and no personal interpretation. These recordings should be made available to the relevant State department including child protection as well as the court for further investigation.

Question 11

What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?

Currently *some* legal representatives are part of the problem within the system. Deals are being negotiated between legal representatives without full and frank disclosure to the clients.

1. Self represented litigants should be able to access the subpoena room without delay. In some cases the court officials working in the subpoena room will only allow for self represented litigants to view the subpoenas with a 3 week delay. In many cases subpoenas are only allowed to be copied by the Independent children's lawyers.

2. Extempore hearings and decisions should not be allowed to take place on untested evidence. This includes untested “expert” reports or on the ‘hear say’ of a Children Lawyer.

Question 12

What other changes are needed to support people who do not have legal representation to resolve their family law problems?

The court needs to differentiate between ‘family problems’ and ‘child abuse cases’. If a matter involves allegations of child abuse it should not be labeled a ‘custody issue’ or a ‘family problem’, it is not. It is a child protection matter.

Parents who are left to protect children often end up spending hundreds of thousands of dollars to end up self representing anyway. The onus of protecting a child is left to the protective parent. This parent has usually suffered violence and had the courage to leave the relationship and is left to navigate through (often two) courts, many letters from the children’s lawyers and the other sides solicitor. Often these emails are written in an intimidating or bullying fashion without the consideration of the child.

A support system to assist parties navigate through the court as a self represented litigant is needed. This needs to include assisting with the administration and hearings.

Question 13

What improvements could be made to the physical design of the family courts to make them more accessible and responsive to the needs of clients, particularly for clients who have security concerns for their children or themselves?

Currently the courts are set out in a manner of which both parents gather at the entrance of the court door to attend mentions and hearings. A two door approach is needed to assist with intimidation tactics used by abusers.

During the hearings parties should be charged with contempt of court if ridiculing, belittling or intimidation is used.

Question 14

What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?

It is very difficult for a protective parent to have to explain to a child after they have disclosed abuse that they are now ordered by law to see the perpetrator. It is further difficult to say to the child "I believe you but you have to go and see your abuser".

We encourage children to speak out and when they do children are often removed from the protective parent and have to live with the abuser.

Question 15

What changes could be made to the definition of family violence, or other provisions regarding family violence, in the Family Law Act to better support decision making about the safety of children and their families?

Listed above in question 1 and 2 and in addition -

Cease consent orders in cases involving child or parent safety. The majority of matters in family law are resolved by agreement between the parties and relatively few are determined by a judicial officer.⁴

⁴ SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS FAMILY COURT OF AUSTRALIA
Answer by Mr. Foster to Question No. AE16/020 Senator Madigan, 9 February 2016.

The current frameworks do not prevent the coercion of parents of either gender in circumstances where child protection, including family violence, are issues in contention. The coercion or duress placed on parents to come to “consent orders” has been sustained and well documented since 1994.⁵ In 2014, 20 years later, the Chief Justice “warns lawyers against custody case pressure”.⁶ However, anecdotal evidence continues to emerge this is still occurring and despite the repealing of this section (117AB), the Explanatory Memorandum states that section 117 still allows for costs to be ordered “where the court is satisfied that the first party knowingly made a false allegation or statement in the proceedings.”⁷

Just last year (2015 to 2016) 66% of family law applications were settled by consent.⁸ While this may appear “efficient”, it does not bode well for victims of family violence in the context of a jurisdiction that operates within a culture of disbelief.

Quote from Professor Patrick Parkinson;

*“...In the last few years, I've noticed more and more cases where when the court's being persuaded, usually by an expert report writer, that the abuse hasn't happened, they've switched the care from the mother to the Father and have cut off all contact with the mother, which is the most draconian remedy imaginable, and I'm seriously worried about this trend in the cases. It's not what we used to do. We used to put child protection first, and I think it is based upon a certainty about what has occurred, which is not justified by a serious examination of the facts, in some of these cases. It may have been in a few cases, but **I think it has become all too common and what some lawyers now tell their clients is, "If you make these***

⁵ *Equality Before the Law*, Report No. 67, 31 January 1994, Australian Law Reform Commission, at 2.15 & 2.24.

⁶ Berkovic N, ‘Chief Justice warns lawyers against custody case pressure’, 20 October, 2014, *The Australian*, at <http://www.theaustralian.com.au/business/legal-affairs/chief-justice-warns-lawyers-against-custody-case-pressure/news-story/1ee7651e9622b2e26a071849b3d0850f>.

⁷ Explanatory Memorandum, 2010-2011, Hon Robert McClelland MP, Family Law Legislation amendment (Family Violence and Other Measures) Bill 2011, Item 43: Section 117AB, paragraph 78, p. 15.

⁸ Family Court Annual Report, page 43. Consent orders made 66% of cases (13,458)

allegations, you risk losing the care of your child," and that may mean the allegation's not made, at all and children remain at risk of serious harm.^{9,10}

Another relevant report is authored by Bravehearts' [Abbey's Project](#) paper on the family law system (2016).

Legal practitioners are governed by the FAMILY LAW RULES 2004 in relation to Consent, parenting orders and allegations of abuse or family violence, RULE 10.15A, if giving an oral application to the court for consent orders they must;

(a) must advise the court whether the party considers that the child concerned has been, or is at risk of being, subjected to or exposed to abuse, neglect or family violence;

(b) must advise the court whether the party considers that he or she, or another party to the proceedings, has been or is at risk of being subjected to family violence;

Legal practitioners are not adhering to these rules. Possible reasons could be;

1. They are aware by raising the allegations, the protective parents is truly at risk of losing residency of the child or children and/or
2. They are not prepared to run the trial rather settle for consent and receive the same money without fighting and/or
3. It is an expectation that legal practitioners will have the ability to relieve the court of its case load it is regarded highly within the profession.
4. The fear to damage their reputation and career progression if they challenge the system.

In some instances it can take days for legal practitioners to break down clients. They use harrowing tactics to get the parties to come to consent, albeit they have been made under duress, these consent orders have a notation written on the bottom removing the allegations.

Many parents have filed complaints with the Legal Services Commission however we are not aware of a successful case.

⁹ Quote Patrick Parkinson, Transcript ABC Radio National Interview, Background Briefing 14 June 2015, Page 34.

¹⁰ Abbey's Project- Bravehearts Paper On The Family Law System, 2016, Suffer the Children Trouble in the Family Court by Jess Hill pg 200

This behaviour from legal practitioners needs to cease. They have a duty of care as an officer of the court that violence forms part of the case. Legal practitioners should be struck off for pushing clients to consent with knowledge of violence.

Question 18

What changes could be made to the provisions in the Family Law Act governing spousal maintenance to improve the clarity and comprehensibility of the law for parties and to promote fair outcomes?

The Court needs to recognise that abusers will often seek residency for children for a few reasons.

1. To continue abusing, the child and other parent
2. To gain access to financial assets
3. To not pay child support

If the money issue was completely omitted this would assist with safety issues within the family.

Resolution and adjudication processes

Question 20

What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes?

Remove Children's Lawyers, (except in cases where both parents have a pre-diagnosed mental or physical disability. Cases where Children's lawyers are appointed routinely have unnecessarily delays.

Question 21

Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?

Currently 66% of cases are being settled by consent (2015 to 2016).¹¹ Therefore most cases have already been inadvertently diverted. However as the negotiations occur at the court, clients are still paying full legal bills without going to trial.

The only variable would need to be the cases that involve violence, which should not proceed before the family court.

Question 23

How can parties who have experienced family violence or abuse be better supported at court?

Judges and Legal professionals including Independent Children's lawyers should no be allowed to use belittling or disbelieving comments as they do in matters regarding family violence.

A need for an independent agency to investigate official complaints against Judges, not via an appeal process which is assessed by peers.

Attached at Annexure "A" is a survey that was completed by protective mothers in 2014, this was sent to Dianna Bryant Chief Justice of the Family Court and was never acknowledged. Further to this, a copy was sent to the Parliamentary inquiry into a better family law system to support and protect those affected by violence, who chose to not publish it, despite there was not identify information.

¹¹ Family Court Annual Report, page 43. Consent orders made 66% of cases (13,458)

Question 24

Should legally-assisted family dispute resolution processes play a greater role in the resolution of disputes involving family violence or abuse?

No, matters involving violence should be that of a criminal court.

Question 25

How should the family law system address misuse of process as a form of abuse in family law matters?

The Family Court currently operates on the “balance of probabilities” with the Judiciary having total discretion as to what evidence they choose to accept or not. In theory this sounds great, however the Judge, Registrar or other Stakeholders can choose NOT to accept evidence of a criminal nature and can choose to use its discretion to accept the counter allegations with no evidence.

Protective parents encounter situations whereby the ICL’s have and are omitting relevant evidence of abuse from the brief presented to the court or other stakeholders. They have asked witnesses or parties to destroy evidence pertaining to the abuse. They have threatened parties to remove allegations or they will have the child removed, they have committed perjury and influenced and tampered with witnesses. They routinely order children not to have therapy or seek assistance for abuse. These tactics are a perversion of justice, criminal and are carried out at the detriment of the child safety they should be addressed via the criminal system with no accountability.

Perpetrators of violence routinely commit perjury, tamper with evidence or witnesses as well as other criminal behaviours, including family violence and sexual assault with absolutely no consequences within the Family Court System.

In same cases the Judges advise abusers not to answer incriminating questions or protective parents to destroy evidence.

This process empowers the abusers and leaves the victims unsafe and unprotected. In many cases this entices the abuser to continue using the court proceedings and the children of the relationship to re-victimise. This is unacceptable and does not act in the safety of the victims.

Other stakeholders like family consultants, experts, supervisors, witnesses, lawyers and independent children's lawyers should also be subject to enforceable criminal sanctions for acts of omitting evidence, perjury, witness tampering or perversion of justice. Currently the family court can order criminal like sanctions to a protective parent which is not based on evidence rather a discretionary bases and choose to ignore the criminal evidence.

Evidence that is circumstantial or inconclusive due to the child's age or development should rely on the "Balance of Probabilities, in addition to the criminal act.

Children's experiences and perspectives

Question 34

How can children's experiences of participation in court processes be improved?

Children that have been abused by a parent should not have to have supervised contact with the abuser. Government funded supervision centre staff are trained to promote a meaningful relationship at all costs. This is at the detriment of the child.

Question 35

What changes are needed to ensure children are informed about the outcome of court processes that affect them?

Children should be informed during the entire proceedings. I am aware of children who have disclosed abuse after the court hearing to consultants explaining the orders and no

further action has been taken to protect the children. This process will be referred to by the children who have endured being pushed into contact as 'Brain washing sessions'. Supervisors routinely tell the children that the abuse did not occur.

Question 36

What mechanisms are best adapted to ensure children's views are heard in court proceedings?

Children and young people should be allowed to talk to the Judge in person if they wish. The Children's Lawyer should not be allowed to omit any information regarding the child's views or evidence pertaining to the child.

Question 38

Are there risks to children from involving them in decision-making or dispute resolution processes? How should these risks be managed?

There are risks by NOT allowing the children to be involved in decision-making. Children are young people, they should not be disregarded.

Question 40

How can efforts to improve children's experiences in the family law system best learn from children and young people who have experience of its processes?

We can learn a lot of the Royal Commission into Child Sexual abuse for institutionalised abuse, however a Royal Commission is needed into the Family Court in order to be accurate on exactly what is needed for the children and the experiences they have lived and continue to live.

The recent AIFS study into separated families¹² should reveal some additional information however this will depend on the experience of the children interviewed and the scope of the questions asked.

Professional skills and wellbeing

Question 41

What core competencies should be expected of professionals who work in the family law system?

1. Professionals (including solicitors) are under a duty of care to accurately report on violence and issues relating to child abuse.
2. Professionals found omitting or misrepresenting the truth or bulling the should be immediately dismissed and not be allowed to continue to work in the family law for child protection matters.
3. Independent Children Lawyers found to omit, mislead, commit perjury or enable child abuse should be struck off the register with fines payable, making it a criminal offence.
4. Independent children lawyers should have a minimum education of a diploma in child development, protection, intervention

Court Experts

If someone is in the family court that is reporting on issues of abuse, they **MUST** show that they are a specialised expert in the field. Experts should not be relied up for the mere purpose that they 'have hundreds of reports for the court therefore they must be an expert'. This is not the case.

In 2016, Senator Heffernan raised this issue at the Legal and Constitutional affairs Legislation Committee on Tuesday, 9 February 2016. He said:

¹² <https://aifs.gov.au/projects/children-and-young-people-separated-families>

“I want to go to an issue that has raised the matter medico-legal report writer, Dr Christopher Rikard-Bell, told ABC National in June 2015 that he has written over 2000 reports in years 25 year career. These were to assist the court. He said he is often called by the court to assess allegations of physical and sexual abuse. Arts he then went on to say that he is not specifically trained in child sexual abuse and/or assessments. As I understand it, evidence rules require specialised knowledge by training, skills or experience. Years in Tibet public profile of the clinical work do not reflect specialisation in child sexual abuse assessment. Contrary to accepted research, this particular gentleman believes 90% of Family Court child sexual abuse cases are an unfounded. This confirmation bias is reflected in his practice of asking a child, in front of the alleged perpetrator, about any worries of fears concerning that parent. I think that is barmy. This is cruel and contrary to accepted clinical practice.

Dr Ricard-Bell nominated Richard Gardner as a role model, and is very relevant. That Family Court publicly decried parent allegation theory that Gardner invented when he relabelled child sexual abuse symptoms and signs of a mother alienating a father from a child are no good reason. Gardner said:

... The child has to be helped to appreciate that we have in our society and exaggeratedly punitive and moralistic attitude about adult-child sexual encounters.

And

Older children may be helped to appreciate that sexual encounters between an adult and child are not universally considered to be reprehensible act. The child might be told about other societies in which such behaviour was and is considered normal.

If the Family Court is going to rely on Dr Rickard – Bell's opinion to assess child sexual abuse, and his opinions are not based on specialised knowledge and the clearly out of step with research, how can this be in the child's best interests?¹³

¹³ Sen. Heffernan, Proof Committee Hansard, Senate Estimates, Tuesday, 9 February 2016, Legal and Constitutional Affairs Legislation Committee, pages 54 & 55.

Government departments and the Family Court is aware of this information, they have failed to act with knowledge he is still practising in the family court, still removing children from protective parents and there has been no retrospective follow up for the children he has placed at risk.

Question 42

What core competencies should be expected of judicial officers who exercise family law jurisdiction? What measures are needed to ensure that judicial officers have and maintain these competencies?

Judges should have a training in child abuse, domestic/family violence, incest and perpetrator tactics. The implementation of quality training on violence, sexual assault, emotional abuse and perpetrator tactics to the community in it's entirety.

This needs to be implemented into the community as a matter of urgency.

Not just to the Court other stakeholders including parents, early childhood educators, teachers, therapists, psychologists, medical and legal professionals). Those involved with children or child protection related issues in the community or professionally should have knowledge and understanding of Late Professor Freda Briggs AO, who received an honorary Doctor of Letters degree from the University of Sheffield for outstanding research, publications and contributions to education relating to child abuse and child protection. Professor Freda Briggs authored many books on child protection and was featured in many articles related to child protection issues, including; Smart Parenting for safer kids and Child Protection, the essential guide for teachers and other professionals

whose work involves children. I submit that these books should form the base mandatory requirement for all people involved in child protection issues.¹⁴

Question 43

How should concerns about professional practices that exacerbate conflict be addressed?

Accountability for professional practices including professional Lawyers, Family Consultants & Court appointed experts. All professional parties should record either via audio or video to protect them from any false allegations and to prevent and deter dishonesty amongst professionals.

Participants should be at liberty to record interviews, for clarification of conversation and to protect their lawful interests including hearings and trials.

All Child Interviews should be recorded

It should be standard proceedings to ensure that the child's voice is heard that all family consultants/report writers and 'experts' interviews should use video recordings for both parents and the child/ren to give 100% transparency.

Governance and accountability

¹⁴

Books

- Briggs, F. (1986) *Child sexual abuse: confronting the problem* Melbourne: Pitman. [ISBN 978-0858963870](#)
- Briggs, F. (1993) *Why my child?: Supporting the Families of Victims of Child Sexual Abuse* Sydney: Allen & Unwin. [ISBN 978-0788155437](#)
- Briggs, F. (Editor) (1995) *From victim to offender: How child sexual abuse victims become offenders* Sydney: Allen and Unwin. [ISBN 978-1863737593](#)
- Briggs, F. (Editor) (1998) *Children and families- Australian perspectives* Sydney: Allen and Unwin. [ISBN 978-1863736268](#)
- Briggs, F. and Hawkins, R.M.F. (1998) *Dare to Support Your Kids: A drug education programme for parents* Wellington: DARE Foundation.
- Briggs, F. and Hawkins, R.M.F. (1998) *Dare to Make Change* Wellington: DARE Foundation.
- Briggs, F. and Potter, G. (1999) *The early years of school: teaching and learning* Melbourne: Addison-Wesley Longman. [ISBN 978-0733901706](#)
- Briggs, F. and McVeity, M. (2001) *Teaching Children to Protect Themselves* Sydney: Allen & Unwin. [ISBN 978-1864489927](#)
- Briggs, F. (2000) *Developing Personal Safety Skills in Children with Disabilities* London: Jessica Kingsley Publishers. [ISBN 978-1853022456](#)
- Briggs, F. (2002) *To what extent can "Keeping ourselves safe" protect children?* PUB L 169. New Zealand Police, Wellington.
- Briggs, F. (2012) *Smart Parenting for Safer Kids* Melbourne: JoJo Publishing. [ISBN 978-0980871005](#)
- Briggs, F. (2012) *Child Protection: The Essential Guide* Melbourne: JoJo Publishing. [ISBN 978-0987463579](#)

Question 45

Should s 121 of the Family Law Act be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of families and children?

Yes, s 121 of the Family Law Act should be discontinued and ceased immediately.

Currently the family law system operates in a place of secrecy allowing perpetrators of violence and abuse to get away with crimes. The general public is unaware of the truth, victims would like to talk out and are not allowed.

The notion that s121 protects children is untrue. Even when a child has grown up and is adult they are still not allowed to discuss the case.

Family violence is carried out behind closed doors, the secrecy of the crimes is hidden. The Family Law System operates the same way (Behind closed doors). Victims are unable to speak out, they are unable to go to the media and are not allowed to talk about the system failures or any events that have occurred.

The system is unable to be reported on, media is not allowed to identify any party without an order of an Order of the Court. If the media doesn't have a name they are unlikely to run a story.

This suppression and secrecy has for 42 years created a system that is unaccountable.

There are "exceptional circumstances" for reporting on family law cases, which are usually granted in cases with missing children. It is unlikely that the Court will release an order to report on failings within the system. So the public does not know as the media can't report on it, so we have a population almost entirely ignorant of the facts about what's happening to children affected by Family Law or in denial.

Section 121 serves as a gag to the victims and protects the perpetrator of the family violence and abuse. That the damage done to the victims lasts for their lifetime and has escaped the public gaze.

Even when a child exceeds the age of 18 and wishes to discuss the failings or details about the case or talk about injustices that they have experienced, they can't. They are

still prohibited from identifying themselves. This is violation of the human rights of the child.

We have made them suffer and then gag them forever.

Section 121 FLA should be abolished and proceedings fully reportable, including State and/or Federal bodies, (including experts/family consultants and medico practitioners) that govern professional misconduct and process within the Family Law System under the Public Interest Disclosure Scheme. This will allow more opportunities to speak publicly and transparency in to the decision making process.

Question 46

What other changes should be made to enhance the transparency of the family law system?

- 1) A Royal Commission into the family law system, in its entirety including areas of child sexual abuse, domestic violence will provide you accurate information on exactly what is needed to protect children.
- 2) Subpoenas issued to the family court, need to be page numbered and scanned prior to viewing. Legal representatives (including Independent child lawyers) and self represented litigants should only view the scanned copies. This will eliminate the “missing pages” and files out of order, jeopardising the safety of the children within proceedings.
- 3) Every court order should be published currently judgements are selectively chosen. Not all Judgements are published, this has been confirmed by the Family Court Deputy Principal Registrar, stating, *“it is not possible for all family law decisions to be published”* with many people suggesting they are cherry picked; many are sealed and never seen. This is contrary to the media statement from Family Court Chief Justice Diana Bryant¹⁵.

¹⁵ Media Statement to ACA, Monday 30th January 2017; “Since becoming Chief Justice in 2004, I have ensured that all judgements are published (with appropriate protection of identity) so that the public can see how the judges decide the cases before them. Connecting the cases complained of with the published judgements is part of that transparency.”

- 4) Judgment written that do not accurately report the proceeding or the evidence submitted should be reviewed by a third party and re-written.
- 5) Cases that go before the court and are signed off by a Judge as 'consent orders' should still be published.
- 6) It should be standard proceedings to ensure that the child's voice is heard that all family consultants/report writers and 'experts' interviews should use video recordings for both parents and the child/ren to give 100% transparency.
- 7) Transcripts of court proceedings should be of no charge to clients. Auscript is currently contracted by the family court and federal court and sole provider for transcripts. The outrageous pricing prohibits victims to purchase transcripts and hinders the ability for them to appeal decisions. It is not permitted for anyone to record court proceedings and it is being reported that the transcripts are missing words that have been said in court. To overcome this issues, parties should be allowed to record the proceedings or the court hearings are covered with closed circuit CCT. This will allow 100% transparency. If a client wishes to obtain copy of the transcript it will cost approximately \$1,200 per day. Between 2013-2014 the family court contracted Auscript for services costing \$3,664373.77¹⁶

Question 47

What changes should be made to the family law system's governance and regulatory processes to improve public confidence in the family law system?

- 1) The family law Judges should have to use the evidence laws, meaning if there is evidence available they must accept it. The part about in discretion should not mean

¹⁶ Family Court - Senate Order on Agency Contracts listing relating to the period 1 July 2013 to 30 June 2014. http://www.familycourt.gov.au/wps/wcm/connect/39768c5b-5c7e-465f-ac66-bababb8617f8/Senate+Order+2013-2014+FY+Final.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=39768c5b-5c7e-465f-ac66-bababb8617f8

to reject evidence that would otherwise be submitted. If a Family Court Judge chooses to use evidence in their discretion this should mean above and beyond.

- 2) An external independent complaints process needs to be implemented.
- 3) Children need to be followed up after final orders are made. This follow up should be done over a period of years (not just the usual 30 days given before the ICL is dismissed. The Family Court of Australia and the Federal Circuit Court of Australia does not collect data on “how many children are involved in or affected by Family Court judgements”¹⁷. In orders where a 65L report is ordered to check the compliance of the orders, if a child discloses abuse during this appointment, there is no obligation or provision for the family consultant to report the abuse to the Judge, Registrar or the state departments particularly after final orders have been handed down.

¹⁷SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS FAMILY COURT OF AUSTRALIA
Answer to Senator Madigan’s Question No. AE16/020, 9 February 2016.