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Context of Submission

The *APF*² undertakes research and provides legal information addressing a wide range of aspects regarding advancing social or public welfare and the promotion of human rights. We are a highly collaborative charity and this has catalysed our considerable insight and expertise into how to improve the family court system.

The lifelong work of Emeritus Professor Freda Briggs³ has also been influential in the authors' contentions. Freda was an internationally respected child protection expert. Her achievements include the Inaugural Australian Humanitarian Award 1998, Senior Australian of the Year 2000 and the Officer of the Order of Australia 2005⁴. Freda focused on the efficiency of the family court and child protection systems in managing abuse and domestic violence prevention, child protection programmes and highlighted gaps in the system addressing the terms of reference of this inquiry.

Freda stated; " *We have, you know, lots of cases where we can show that the Family Court is not protecting children. And of course the Family Court itself does not have the capacity to investigate allegations of child abuse which now fill a lot of its time and of course the people in the Family Court are lawyers and you don't have people making decisions who are experts in child abuse or child development.* She then proposed; "*You need a court that can investigate in much the same way as a coronial inquiry; it can investigate all the evidence and it's even been suggested that you don't need lawyers as judges, you could have people who are experts in child abuse assisted by a legal officer which paradoxically is the system I worked with in London a long time ago, with the child's needs taking priority*"⁵.

This paper responds to Freda's call for increased expertise and investigation through the response to the fifth terms of reference.

The inherent tension between the right to contact and to protect from harm is threaded throughout family law and child protection legislation. This paper attempts to assist and improve the application of the protective measures detailed in legislation surrounding a child's best interests, balanced with the child's rights to spend time with each parent.

² Australian Paralegal Foundation, (*APF*), *Promotion of legal research and advocacy*. D.Jovica Chairman, M.Hudson Secretary/Educator, Woody Sampson Treasurer, sourced at; www.para-legal.org.au on 01/05/2017.

³ Frieda Briggs, sourced at https://en.wikipedia.org/wiki/Freda_Briggs on 26/04/2017

⁴ 'ibid'

⁵ Kirk, A, (2012), Royal commission should pave way for new court to deal with child abuse: Dr Freda Briggs. interview with Freida Briggs, sourced at <http://www.abc.net.au/pm/content/2012/s3631918.htm> on 26/04/2017.

The author supports the contention by Sudermann and Jaffe, (1999)⁶, who stated that; assessing the risk surrounding the parental relationship is more conducive to effective domestic violence management in family law reform, than telling victims to disregard the past. The Family Court and Child Protection systems are not adequately protective in practice, as the current family violence management lacks informed insight and rigorous methodology for risk assessment, protective practice and require effective strategies to enhance the victim's recovery.

Laing, (2000)⁷, states that victims of violence may be re-victimised by the legal system while attempting to escape the abuse. The financial and emotional damage inflicted through poor systemic management of family violence, is often visible through collateral homeless, mental health and societal issues. Charities such as Anonymous X⁸, a homeless support service, Sole Fathers and Sole Mothers United⁹, Berry Street¹⁰ and numerous other charities and NGO's, carry this burden. These issues often flow on to effect the children's optimal development, including education and well-being.

The author observes that western family court and child protective practices are struggling globally, with similar complex issues surrounding the identification and protective management of family violence. The repercussions of the western family court parental separation paradigm have been echoed through Sir Paul Coleridge's observation¹¹ that, "*Families do not recover from the fundamental shock it administers*". This High Court Judge stated that, "*Children dragged into such cases may never recover from the emotional upset, and the cost to society of clearing up the mess is calamitous*". It is reasonable to state that the current western system is adversarial. In complex matters involving family violence, it has on occasion, proven to be deadly.

⁶ Sudermann, M. and Jaffe, P. (1999), *A handbook for health and social service providers and educators on children exposed to woman abuse/family violence*, Family Violence Prevention Unit, Health Canada, Ottawa.

⁷ Laing, (2001), Director Australian Domestic and Family Violence Clearinghouse, *Domestic Violence-Emerging Challenges*, Paper presented at the 4th National Outlook Symposium on Crime in Australia, New Crimes or New Responses convened by the Australian Institute of Criminology, Canberra.
http://www.aic.gov.au/media_library/conferences/outlook4/laing.pdf

⁸ Anonymous X an NGO sourced at <https://www.facebook.com/AXMelbourne/> 16682 members as at 26/04/2016.

⁹ Sole Fathers United, https://www.facebook.com/pg/SoleFathers/about/?ref=page_internal, a not for profit community group with over 6143 followers as at 26/04/2017. And ⁹ Sole Mothers United, sourced at <https://www.facebook.com/Sole-Mothers-United-1387483861472202/> on 26/04/2017, an online community support group

¹⁰ Berry Street provision of pilot program teaching educators how to support trauma affected students in the northern suburbs of Victoria, 2017. Sourced at <http://www.childhoodinstitute.org.au/EducationModel> on 26/04/2017.

¹¹ Phillips, M, (2012), *Hallelujah, A Family Court Judge has told the truth about the damage divorce wreaks on children*, sourced at <http://www.dailymail.co.uk/debate/article-2137076/Hallelujah-A-family-court-judge-told-truth-damage-divorce-wreaks-children.html> on 30/04/2017

Many proposals throughout this submission are founded on globally accepted published literature, inclusive, (with full permissions), of the latest research and common sense legislative proposals of Barry Goldstein, the research director at Stop Abuse Campaign¹². He is an international leader in family court reform, expert domestic violence researcher and speaker. His ground-breaking legislation; *Safe Child Act*¹³, is currently tabled for consideration in Hawaii. It is informed through findings from modern research focusing on how domestic violence affects children, inclusive of the Adverse Childhood Experiences, (ACE study)¹⁴, from the Centers for Disease Control and Prevention, in addition to research referred to as the Saunders' study¹⁵, from the Department of Justice¹⁶.

This submission aims to promote truth in legislative interpretation, so that this accuracy can facilitate protective judgements, made in the child's best interests.

Pertinently, in regards to the third principle listed for this inquiry, the views presented represent thousands of victims of violence who have been affected by the Family Court System's response to violence and child protection. They are supported by the 3,600 plus members of the *Australian Paralegal Foundation*, over 14,500 members of the social media group *Luke's Army*¹⁷. They are supported by the 16,600 plus members of the homeless support organisation *Anonymous X*¹⁸ run by Sean Thornton in addition to *Sole Fathers United*¹⁹ Inc and the community group *Sole Mothers United*²⁰ and the Australian Legislative Ethics Commission²¹, (Alecomm). It is also endorsed by CEO's and members of numerous, NGO's, inclusive of AHPI²², and the Stop Abuse Campaign²³, who have also expressed their strong support for these views and proposed solutions, hereinafter collectively referred to as

¹² Stop Abuse Campaign website <http://stopabusecampaign.org/> accessed 22/4/2017 at [6.17].

¹³ Safe Child Act; http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, sourced on 30/04/2017, created and submitted to The House of Representatives, 29th legislature, 2017, State of Hawaii, H.B. no: 697 researched and designed by B. Goldstein.

¹⁴ Sourced at https://www.cdc.gov/violenceprevention/acestudy/about_ace.html on 01/05/2017

¹⁵ Saunders et al., *Saunders study*, U.S dept of Justice, (2012), sourced at <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf> on 01/05/2017

¹⁶ Sourced from <https://www.domesticshelters.org/domestic-violence-articles-information/the-safe-child-act#.WQX4RmcRXIW> on 01/05/2017.

¹⁷ Luke's Army a charity sourced from <https://www.facebook.com/LukesArmy/>, 14,500 members as at 08/04/2014 when administered under Michael Borusiewicz.

¹⁸ Anonymous X an NGO sourced at <https://www.facebook.com/AXMelbourne/> 16682 members as at 26/04/2016.

¹⁹ Sole Fathers United, https://www.facebook.com/pg/SoleFathers/about/?ref=page_internal, a not for profit community group with over 6143 followers as at 26/04/2017.

²⁰ Sole Mothers United, sourced at <https://www.facebook.com/Sole-Mothers-United-1387483861472202/> on 26/04/2017, an online community support group

²¹ Australian Legislative Ethics Commission, (Alecomm). A Community Advisory Service, Alecomm runs various community development programs, also providing education, support and advocacy to clients involved in the human services. sourced at <http://www.alecomm.com/> on 26/04/2017.

²² AHPI, Advocating for your health and privacy information, sourced at https://www.facebook.com/ahpi.net.au/on_26/04/2017, webpage: healthfamilylaw.net

²³ Barry Goldstein, Director at Stop Abuse Campaign website <http://stopabusecampaign.org/> accessed 22/4/2017 at [6.17]. Creator of the Safe Child Act; http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, sourced on 30/04/2017

‘Contributors’. These views are valuable. The Saunders’ study²⁴ found that, *“domestic violence advocates have more of the knowledge courts need about domestic violence than the professionals the courts usually listen to”*, (Goldstein²⁵, 2017).

These views represent, include (but are not limited to), the many thousand Family Court and Child Protection System participants and stakeholders in the above-mentioned organisations.

Introduction

This submission partially responds to the request by the Royal Commission into Family Violence Summary²⁶, (as published by WLSV, 2016), that the Australian Institute of Family Studies, (AIFS) ²⁷is provided with a framework to conduct research into the practices and assessments of family consultants.

This author addresses the fifth terms of reference and suggests that many of the proposals could be applicable for further critical analysis of anyone performing a similar function to family consultants, inclusive of court report writers, assessors, family dispute practitioners, and child protection workers/assessors by for example, the AIFS.

Past reports have often been more heavily weighted on the legal professional’s side rather than the victims’ voice. Looking for answers within a struggling system weighted with the very practitioners who are complicit and benefit from the current service delivery, limits public confidence with some conclusions from historic relevant inquiries. The current inquiry’s invitation for the victims and court participant’s voice via the questionnaire is a welcome inclusion of a balanced perspective.

The family and children’s courts have an opportunity to protect families from violence. To do this effectively the health and safety of victims of violence must be prioritised through protective legislation. The most dangerous cases are where contested cases are used to control and punish the protective parent as an extension of violence. These cases need to be managed much differently to consented proceedings if we are to efficiently protect against family violence.

The family courts are in current crisis because they are regarding myths and opinions over sound research and fact. They are not endorsing standards or principles or employing practices which meaningfully identify and interpret the truth of the matter. Family violence has been grossly mismanaged through the court system as it stands, with horrific consequences.

²⁴ Saunders et al., *Saunders study*, U.S dept of Justice, (2012), sourced at <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf> on 01/05/2017

²⁵ Goldstein, 2017 sourced at http://www.huffingtonpost.com/entry/the-safe-child-act-when-a-parent-does-more-harm-than-us_58b84bc1e4b051155b4f8c7f on 02/05/2017.

²⁶ Royal Commission into Family Violence Summary, sourced online at <http://www.womenslegal.org.au/files/file/SUMMARY%20RECOMMENDATIONS.RC.ALLSUBS.pdf> on 24/04/2017

²⁷ Australian Institute of Family Studies, sourced online at <https://aifs.gov.au/> on 24/04/2017

A persistent myth is that protective parents fabricate claims of violence. Goldstein²⁸, (2017), stated that the myth of protective parents making false claims of abuse is not supported in verifiable research as supported in the Ace²⁹ and Saunders' research³⁰. The Australian Institute of Family Studies³¹ highlighted an analysis of 10 years of reports of sexual assault (Lisak et al)., and found the actual figure of false reports to be around 2%-10%. The higher percentage included inconsistencies in data collection, including police reports where crime was detected but not proceeded with.

Goldstein³² continues; *"Court professionals were taught that contested custody involved "high conflict cases in which the parents were angry with each other and acted out in ways that hurt their children...these mistaken assumptions have been disproven by highly credible scientific research, but most courts continue to rely on these outdated and discredited practices that place children in jeopardy" and "The lack of training in post-separation violence leads courts to assume the risk ends when the relationship ends, and that older incidents of abuse do not matter. The lack of training in risk assessment means that courts have trouble recognizing the danger that victims face".* **To significantly minimise the risks that surround family violence, the courts must listen to the victims of violence and investigate thoroughly with sound methodology and trauma informed professionals, to inform protective orders.**

The myth of false claims has coloured the discretion employed throughout a majority of contested cases. Opinion's such as Justice Colliers³³, are part of the reason many violent parents are able to commit further family violence through access. Collier stated that; *"Allegations of child sexual abuse are being increasingly **invented** by mothers to stop fathers from seeing their children"*. Collier's views encourage the silencing of protective parents regarding reporting family violence. His view is not aligned to research done by the Leadership Council in the USA which has consistently shown that false allegations of sexual abuse are rare and that children tend to understate rather than overstate the extent of any abuse experienced.

Collier's assumption, and those of other court personnel with underlying bias, puts the safety of children at risk by ignoring red flags and promoting access arrangements which favour an abuser and provide a high risk level of contact with the child. This has resulted in orders which are not adequately protective in cases involving family violence and abuse.

²⁸ Goldstein, 2017 sourced at http://www.huffingtonpost.com/entry/the-safe-child-act-when-a-parent-does-more-harm-than-us_58b84bc1e4b051155b4f8c7f on 02/05/2017.

²⁹ Sourced at https://www.cdc.gov/violenceprevention/acestudy/about_ace.html on 01/05/2017

³⁰ Saunders et al., *Saunders study*, U.S dept of Justice, (2012), sourced at <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf> on 01/05/2017

³¹ Australian Institute of Family Studies sourced at <https://aifs.gov.au/publications/true-or-false-contested-terrain-false-allegations/export> on 02/05/2015

³² Goldstein, 2017 sourced at http://www.huffingtonpost.com/entry/the-safe-child-act-when-a-parent-does-more-harm-than-us_58b84bc1e4b051155b4f8c7f on 02/05/2017.

³³ Alexander, H, 2013, Gippsland Times *False abuse claims are the new court weapon, retiring Judge says*, sourced at <http://www.gippslandtimes.com.au/story/1620380/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says/> on 02/05/2017

Standard Family Court practices encourage parents to cooperate with each other. Any perceived alienation is regarded as poor co-parenting, deemed to be so offensive it often justifies a change of residence, often straight to the abusive parents home.

Gardner's (1999), discredited theory of 'parental alienation syndrome', (PAS)³⁴, which is not supported by research, has been used to support the concept that this type of alienation, (and watered down versions of its inferences, such as *alienation* in practice), is used through methods such as fabricating allegations for advantage in disputes. This is NOT supported by the reality and research, in most cases.

This standard practice greatly facilitates risk factors, where domestic violence is involved. The author states that where the estrangement is a protective measure, it is reasonable to state that this protective parent is acting in the best interests of the child.

It must be recognised as a legislative consideration, that a protective parent may prevent contact due to genuine concerns regarding family violence. Another favourite term for Family Court Report Writers to use against protective parents is *enmeshment*,³⁵ where it is inferred that a protective parent is limiting the healthy functioning and compromises the individual autonomy of the child.

It is reasonable to suggest that the protective parent is being appropriately vigilant, a common response to exposure to violence. These ridiculous labels need to cease and the Family Court needs to stop clutching at myths and opinions and start using sound trauma-informed research if it wants to get serious about managing family violence appropriately.

A predictable pattern has evolved in the family courts where protective parents who alleging abuse and family violence, (often with substantial collaborative evidence), are then attacked with claims of coaching and alienating the children.

Truth is ineptly sought through the appointment of a family report writer and often an independent children's lawyer, (ICL). These professionals are not experts as they are rarely adequately trauma informed or experienced in family violence issues.

On a regular occurrence it only takes approximately a one hour interview with each parent and child, to determine that the abuse did not occur as the child did not disclose the abuse in the artificial court environment with a stranger.

³⁴ Parental Alienation Theory, (PAS), The Judge's Journal, American Bar Association, sourced at http://www.americanbar.org/publications/judges_journal/2015/summer/parental_alienation_syndrome_30_years_on_and_still_junk_science.html on 02/05/2017

³⁵ Enmeshment as sourced at <http://psychologydictionary.org/enmeshed-family/> on 02/05/2017

The protective parents' mental health status is often depreciated and abuse claims are met with novel diagnosis of borderline personality disorders, depression, bipolar, etc., are commonly inferred or cemented. The ICL is only legally trained and rarely meets with the children. They are not adequately trauma informed or trained in the effects of family violence on child development and behaviour and usually concur with the family reporter. This results in judgements which are not protective.

This pattern has been highlighted in past submissions³⁶ and is so prominent in the family courts that lawyers are often quietly informing their clients not to disclose abuse. It is shocking that the concerns previously raised through the 27 year advocacy of the National Child Protection Alliance, NCPA³⁷ involving a body of academics, researchers, child protection experts, child advocates, lawyers, judicial officers, and protective parents, are still unresolved. The ignorance of surrounding issues has directly contributed to the current crisis and inability to manage family violence in the family court systems.

Goldstein, B³⁸ discussed that the discredited parental alienation syndrome, (PAS), and any watered down version of its name, limits the family court from protecting children from violence. He stated that; *"PAS by any name has caused courts to fail to believe true reports of abuse and therefore place children in jeopardy" ...and "Significantly, PAS is not used for any purpose other than helping abusers win custody or defeat reports of abuse"* .

He strongly promoted the quality and reliability of the replicated, medically sound, ACE study,³⁹ (adverse childhood experiences), and Saunders' study⁴⁰, which combined focus on how domestic violence affects children and the management by the court systems, over PAS theories.

³⁶ National Child Protection Alliance, NCPA, (2015), Charles Pragnell-Chairman, web; <http://www.ncpa.org.au/>, submission to the Family Law Council Inquiry; Families with complex needs and the intersection of the family law and child protection systems, Sourced at <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/FLC-submissions/National-Child-Protection-Alliance.pdf> on 01/05/2017

³⁷ National Child Protection Alliance, NCPA, (2015), Charles Pragnell-Chairman, web; <http://www.ncpa.org.au/>, submission to the Family Law Council Inquiry; Families with complex needs and the intersection of the family law and child protection systems, Sourced at <https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/FLC-submissions/National-Child-Protection-Alliance.pdf> on 01/05/2017

³⁸ Barry Goldstein, Why Family Courts can't protect children, ACE v PAS, National organisation for men against sexism, (Nomas), Task Group Presentation on Child Custody, sourced at <http://nomas.org/family-courts-protect-children-ace-vs-pas/> on 01/05/2017

³⁹ Sourced at https://www.cdc.gov/violenceprevention/acestudy/about_ace.html on 01/05/2017

⁴⁰ Saunders et al., *Saunders study*, U.S dept of Justice, (2012), sourced at <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf> on 01/05/2017

He acknowledged that alienating behaviour is *bad* parenting, (if separation is promoted without safety concerns), however stated that PAS should not be managed through the courts as a diagnosable mental illness, and to treat it as such ignores the real issue of the abuse allegations. He highlighted that judges presented with this information had been favourable to a more sound researched based approach. Goldstein urgently requested the court system to adopt a credible research approach, he stated ; *"The courts must develop practices to review patterns to the outcomes of their cases so they can know when common approaches are failing to protect children. **They also need to work with professionals working in the outside world and not just custody who can make the courts aware of valuable new research and approaches.** We now have a specialized body of knowledge and expertise concerning domestic violence and child abuse. The failure to access this information is not neutral. The failure creates a bias in favour of abusers, makes it harder for victims to leave and shortens the lives of our children. No court that gives credence to PAS and ignores ACE can accomplish their job of protecting children"*.

The promotion of determinations significantly informed through the discredited PAS theory, and its inference through other labels, is a major gap in the system which limits effective court driven family violence reform. This submission comparably, presents ways to increase to validity of research and information to inform family reporter methodology and promote protective judgements.

An AIFS longitudinal study⁴¹ reported that approximately **20%** of parents were initially worried about their own and their children's safety as a result of continued contact with the other parent. These parents cannot expect appropriate support from the State to substantiate their claims once they enter the Family Court jurisdiction. Freda Briggs, AO, Emeritus Professor in Child Development, University of South Australia, summarised her research involving cases of abuse and stated that; *"Quite simply state services don't want to get involved when there is a case in the Family Court or a court order exists". .. "The consequences is that if no one at state level is confirming that abuse is occurring, the mother is labelled as delusional, suffering from Borderline Personality or Compulsive Disorders – she is then ordered to have treatment (even though she usually isn't mentally ill) and the children are handed to the father, who they reported for abusing them"*⁴².

The Full Family Court of Australia, held that *"... if there were a positive finding of abuse, only in the most extraordinary cases would contact with the perpetrator not*

⁴¹ AIFS, (2014), Australian Institute of Family Studies in the Longitudinal Study of Separated Families, *Post-separation parenting, property and relationship dynamics after five years*. Canberra: Attorney-General's Department. Qu, L., Weston, R., Moloney, L., Kaspiw, R., & Dunstan, J.

⁴² Dr. Freda Briggs The Silenced Epidemic Interview, Interview by Brook Hunter, sourced at <https://www.femail.com.au/dr-freda-briggs-the-silenced-epidemic-interview.htm> on 03/05/2017

be seen as exposing the child to an unacceptable risk of abuse. It was also held that supervised contact may still provide an unacceptable risk of disturbance, whether physical, emotional or psychological, to a child who is compulsorily brought into contact with a parent who has sexually abused him or her, or who the child believes to have sexually abused him or her, and the court has the obligation to protect children from such harm, (B and B, 1993)⁴³.

The AIFS research⁴⁴ demonstrated that **6.2%** still held safety concerns during the third survey, 5 years after separation, (wave 3), and that 2.3% of fathers and 7.6% of mothers had attempted to limit contact with the other parent with reports of safety concerns at wave 3 in the study, (AIFS, 2014⁴⁵). Freda Briggs, AO, Emeritus Professor in Child Development, University of South Australia. described that there is a need to either remove cases of abuse from the family court or increase the expertise of family report writers and remove the position of the independent children's lawyer, or else the prospects for involved children will be bleak, "*..as there is a high correlation between sexual abuse and later mental illness, suicide, drug abuse, relationship breakdown and of course some of the children will become sex offenders and create another generation of victims*".⁴⁶ Freda discussed sexual abuse in this instance; however the same applies to family violence investigations. There is a clear concern that an accurate assessment surrounding protective orders are necessary for the safety of children in family court matters.

An endorsement of Gardner's PAS syndrome colours the discernment of many family court judges who are untrained to make an educated psychological assessment. In the 'Reasons for Judgement', (E and R, 2001)⁴⁷, the judge stated; '*It may well be that the concept of parental alienation is the subject of ongoing debate between psychologists. In my view, whether there is or is not a syndrome described as "Parental Alienation Syndrome" is not the critical issue.*

The critical issue is whether in this particular case, the wife by her conduct consciously or unconsciously has, or is likely to alienate the child from the husband so that the relationship between them, if not destroyed, has been or will be severely damaged".

⁴³ (B and B, 1993), as discussed by Author Suzanne Jenkins, private practice, *Are Children Protected in the Family Court? A Perspective from Western Australia*, Paper presented at the Child Sexual Abuse: Justice response or Alternate Resolution Conference, convened by the Australian Institute of Criminology, Adelaide, May 2003, (Address for correspondence: PO Box 300, Scarborough WA,6922;s_jenkins@iprimus.com.au).

⁴⁴ AIFS, (2014), Australian Institute of Family Studies in the Longitudinal Study of Separated Families, *Post-separation parenting, property and relationship dynamics after five years*, (table A6 in the appendix). Canberra: Attorney-General's Department. Qu, L.,Weston, R., Moloney, L., Kaspiew, R., & Dunstan, J. (table A6 in the appendix).

Dr. Freda Briggs The Silenced Epidemic Interview, Interview by Brook Hunter, sourced at <https://www.femail.com.au/dr-freda-briggs-the-silenced-epidemic-interview.htm> on 03/05/2017

⁴⁶ Dr. Freda Briggs, 'ibid'

⁴⁷ E and R, 2001, as discussed by Author Suzanne Jenkins, private practice, *Are Children Protected in the Family Court? A Perspective from Western Australia*, Paper presented at the Child Sexual Abuse: Justice response or Alternate Resolution Conference, convened by the Australian Institute of Criminology, Adelaide, May 2003, (Address for correspondence: PO Box 300, Scarborough WA

These judges often rely on the inferences of the also inadequately informed family court report writers opinions such as the one which disregarded the child's views, used in this case;

The court appointed expert, in his report, stated, *'I do not think it is feasible to consider a three year-olds' wishes in relation to contact. At that age the child has no concept of what is best for him. He will only be repeating back what he feels those around him want him to say.'*

This judge, and family report writers consensus in the case study detailed is challenged in, Wallerstein & Tanke⁴⁸, who advise; *"children at a very young age have powerful feelings that do not necessarily reflect the feelings of the adults in their lives ... the courts and the legal profession in America have been overly committed to an implicit perspective of children as passive vessels of parental attitude and interest"*.

This illustrates, contrary to Colliers opinion⁴⁹, and authors such as Byrne⁵⁰, (1991), that in practice, an abuse allegation is not a useful 'weapon', to impede contact with the other parent in Family Court.

Pynoos et al⁵¹, (1996), describe the effects of traumatic experiences on the child which can diminish expectations about the world, and limits the child's very integrity and safety and security of interpersonal life. Tebbutt, Swanston, Oates & O'Toole described the persisting dysfunction of the trauma affected child where they reported that; *"Any contact at all with the abuser between the 18 month and the final follow up was associated with significantly higher depression scores and lower self esteem ..This finding highlights the need for parents and therapists to remain sensitive to the possible effects of the presence of the abuser even after a period of 5 years"*,⁵² (These conclusions are evident is the impartially accessed case study provided at the conclusion of this submission).

Despite a provision under the Family Law Act, 1975⁵³, that the State may investigate abuse and family violence, such claims are not prioritised. This is largely due to the uncertain residential arrangements involved in the family court proceedings and

⁴⁸ Wallerstein, J. S. & Tanke, T., 1996, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, Family Law Quarterly, 30, 2: 305,307,332.

⁴⁹ Alexander, H,2013, Gippsland Times *False abuse claims are the new court weapon, retiring Judge says*, sourced at <http://www.gippslandtimes.com.au/story/1620380/false-abuse-claims-are-the-new-court-weapon-retiring-judge-says/> on 02/05/2017

⁵⁰ Byrne, K., 1991. Allegations of Child Sexual Abuse in Family Law Matters: Use and Misuse of Expert Evidence in Family Law Amendment Act 1991 and The Expert Witness in Family Law. Leo Cussen Institute.

⁵¹ Pynoos, R. S., Steinberg, A. M. & Goenjian, A., 1996. *Traumatic Stress in Childhood and Adolescence: Recent Developments and Current Controversies*. In B. Van der Kolk, A. McFarlane & L. Weisaeth (Eds), *Traumatic Stress: The Effects of Overwhelming Experience on Mind, Body, and Society*, NY, Guilford, pg 332

⁵² Tebbutt, J., Swanston, H., Oates, R. K. & O'Toole, B. I., (1997). *Five Years after Child Sexual Abuse: Persisting Dysfunction and Problems of Prediction*, Journal of the American Academy of Child and Adolescent Psychiatry, 36, 3: 330-338.

⁵³ Family Law Act, 1975, 67za sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s67za.html on 01/05/2017

uncertain time period of child protective orders⁵⁴. This action is also hindered by the reluctance of state magistrates to invoke their protective powers of 68R. Consequently family violence issues are investigated by inexperienced, inadequately educated court personnel.

The key to effective reform is to integrate family violence experts into the court system, educate court personnel, implement principles, standards and protective legislation and research verified methodology so that they can accurately identify family violence and abuse risk factors to facilitate protective judgements.

Summary and Key Points

This submission, by nature, addresses the Royal Commission into Family Violence Summary⁵⁵, that made recommendations for including a victims voice in reform process, the author's survivor status and advocacy leadership, inclusive of a presentation at the National Family Violence Summit⁵⁶, (2017), is already achieved through the group structure of the *APF*⁵⁷, local and international collaboration with family violence advocates, expert leaders, legislators, ministers and valued *Contributors* to this paper. The nuances highlighted throughout this paper which identify gaps in the family court and child protection systems, highlight the insightful interpretation informed through experience, supported with verifiable knowledge and underlining the requirement for the key recommendations listed.

This paper contributes to the Royal Commission's⁵⁸ recommendation to the States to facilitate specialisation to determine standards, accreditation and an understanding of jurisdictional powers in the family court and child protection systems.

The author critically analyses gaps in the systems and aims to promote excellent practice throughout the family report writers' risk assessment framework. This is guided through providing informed direction to improve expertise, methodology, interpretation and validity of information, transparency and accountability required for a more accurate and protective process. The author provides efficient and credible recommendations to facilitate higher quality family reports to inform the Judge, and

⁵⁴ Family Law Council, Prof. Patrick Parkinson, paper presented at the child sexual abuse; *Justice response or alternate dispute resolution conference*, convened by the Australian Institute of Criminology, , Adelaide, 2003. Sourced at http://www.aic.gov.au/media_library/conferences/2003-abuse/parkinson.pdf on 01/05/2017

⁵⁵ Royal Commission into Family Violence Summary, sourced online at <http://www.womenslegal.org.au/files/file/SUMMARY%20RECOMMENDATIONS.RC.ALLSUBS.pdf> on 24/04/2017

⁵⁶ National Family Violence Summit, (2017), NFVS, held in Canberra, 28/02/2017 and 01/03/2017, facilitated by the Tara Costigan Foundation and sponsored by BaptistCare, <http://nfvsummit.com.au/the-summit/the-program/> and <http://nfvsummit.com.au/about/the-summit/>

⁵⁷ Australian Paralegal Foundation 'APF', *Promotion of legal research and advocacy*. D.Jovica Chairman, M.Hudson; Secretary/Educator, Woody Sampson Treasurer, sourced at; www.para-legal.org.au on 01/05/2017.

⁵⁸ Royal Commission into Family Violence Summary, sourced online at <http://www.womenslegal.org.au/files/file/SUMMARY%20RECOMMENDATIONS.RC.ALLSUBS.pdf> on 24/04/2017

their implementation will consequently improve the management of family violence and abuse.

This submission is also informed with promising international legislative incentives namely the Safe Child Act⁵⁹ which has been included where relevant.

This submission proposes in regards to the request of by the Royal Commission into Family Violence Summary⁶⁰, (as stated by WLSV, 2016), to enhance the participation of victims in influencing reform, that the State and territories facilitate a powerful and efficient advocacy peak advocacy network led by victims, (this author adds), survivors who are now warriors and who have insight into the gaps in the system to catalyse meaningful and protective, respectful liaison. This author and associated network of advocates and stakeholders are willing and able to lead the implementation of this recommendation in Victoria.

Response to Terms of Reference⁶¹

How the capacity of all family law professionals—including judges, lawyers, registrars, can be strengthened in relation to matters concerning family violence.

Capacity of Judges

State and territory Judges are reluctant to use the protective power of '68R' in their capacity to protect victims from family violence

The family law council's response to the coroner⁶², Judge Gray, relating to the findings of the investigation into the death of Luke Batty⁶³, acknowledged that the Family Law Amendment, (Financial Agreement and Other Measures Bill, 2015⁶⁴), included the 68R⁶⁵, provision in the FLA⁶⁶, affecting 68T⁶⁷, to allow state and territory

⁵⁹ Barry Goldstein, Director at Stop Abuse Campaign website <http://stopabusecampaign.org/> accessed 22/4/2017 at [6.17]. Researcher and designer of the *Safe Child Act*; http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, sourced on 30/04/2017

⁶⁰ Royal Commission into Family Violence Summary, sourced online at <http://www.womenslegal.org.au/files/file/SUMMARY%20RECOMMENDATIONS.RC.ALLSUBS.pdf> on 24/04/2017

⁶¹ TOR no 5; how the capacity of all family law professionals—including judges, lawyers, registrars, can be strengthened in relation to matters concerning family violence.

⁶² Family Law Council response to Coroner, Judge Gray, sourced at http://www.coronerscourt.vic.gov.au/resources/47cb7c59-0f09-4411-b927-ae6e5b0b3b34/20140855+response+family+law+council_luke+batty.pdf on 26/04/2017.

⁶³ Gray, (2015), State Coroner, Judge Gray, Coroners Court of Victoria, finding-085514 Luke Geoffrey Batty, Sourced on <http://www.coronerscourt.vic.gov.au/home/coroners+written+findings/findings-+085514+luke+geoffrey+batty> on 25/04/2017

⁶⁴ Financial Agreement and Other Measures Bill, 2015, <https://www.legislation.gov.au/Details/C2015B00201>

⁶⁵ Consolidated Acts, Family Law Act, 1975, (68R), http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s68r.html

⁶⁶ Family Law Act, 1975, sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/ on 26/04/2017.

courts to vary or suspend an interim intervention order without the previous automatic 21 day expiry. This excellent provision, which protects the safety of the people listed on the order, until a time noted by the court or until a further court order is made, is often unfortunately not yet understood or regarded in practice by state and territory magistrates.

I hold a copy of an interim order where the magistrate simply did not know what to put on the order regarding this amendment and left the relevant area of the intervention order blank. The protected person had requested that this Judge suspend the family court order. The judge verbally told the protected person to go back to family court. She did not make a clear inclusion on the intervention order detailing whether the family court order was revoked or suspended or any clear expiry pertaining to such. This left the protected person in limbo and senior police involved in this case who read the intervention order, were unsure of whether this order had indeed suspended or varied the family court order. There is a provision in the law here which offers a level of protection which is rarely utilised. State and territory judges must be provided with a guidebook outlining capacity under their jurisdiction to exercise the FLA, 68R amendment and encouraged to support victims of violence through including this direction on intervention orders. This may potentially reduce repeated proceedings in family court if the state or territory direction is not contested.

The Family Law Council's interim and final reports on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems*, (2015 and 2016), highlighted the safety concerns regarding separate Federal family Law and State and Territory Family Violence and Child Protection jurisdictions. The council's reconsidered its recommendation of using one court, (documented in 2002 in their report; *Family law and Child protection*), and inferred that the complexities inclusive of the shared parenting amendments in 2006, family violence amendments in 2012, and increased FVO's and CPS issues were too extensive for one jurisdiction. To alleviate this complexity, a direct way to simplify jurisdictional issues and promote safety is to apply, in practice, 68R through States and Territory courts which now have the capacity to share this power with the family courts. This will simplify the court process for victims of violence with the potential to end further court action.

The *Safe Child Act*⁶⁸ currently under consideration in Hawaii leads the way to provide effective Australian legislation in relation to how family courts should manage family violence. This trauma-informed Act is a new approach, based on current sound research and designed by Barry Goldstein⁶⁹.

⁶⁷ Consolidated Acts, Family Law Act, 1975,(68T),
http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s68t.html

⁶⁸ Safe Child Act; http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, sourced on 30/04/2017, created and submitted to The House of Representatives, 29th legislature, 2017, State of Hawaii, H.B. no: 697 researched and designed by B. Goldstein.

⁶⁹ Barry Goldstein, Director at Stop Abuse Campaign website <http://stopabusecampaign.org/> accessed 22/4/2017 at [6.17].

This Act as described by Goldstein⁷⁰; “ *includes a provision for an early hearing just for these most dangerous abuse cases which is limited to evidence concerning reports of abuse. Abusers routinely use a variety of less important issues to distract attention from domestic violence and child abuse. Their issues do not matter if reports of abuse are true because the harm to children from exposure to domestic violence and direct child abuse is so much greater. If the court finds abuse, there is no need to proceed on the case because the research is clear that the safe parent must have custody so the children can receive necessary treatment and abusers should initially be limited to supervised visits until they can prove to the court that they have changed their behaviour. Since deliberately false reports by mothers occur less than 2% of the time, this early hearing that is likely to take only a few hours or less will resolve most cases that now take many months or years*”.

This submission strongly supports a rigorous promotion of the protective powers of 68R through mandating appropriate use in permanent protective orders. The author also suggests an adoption of the *Safe Child Act*⁷¹, where contested cases flagged with family violence concern are first considered in a State court hearing, limited to the allegations of abuse and domestic violence. This is secondary to a final intervention order hearing where complex matters and findings of fact can be thoroughly investigated further with a more defined focus on the *safety* as well as best interests of the child.

The findings from this case can then inform a protective direction of family court judgements. The benefit of this process is that it facilitates an accurate assessment of family violence risk factors. This has the potential to reduce the time and costs involved in family court proceedings as cases can commence with a foundation of findings of facts provided by the State court. It can reduce costs for parties and enable their finances to be better directed towards the children, promoting their best interests. The most important benefit will be the reduction in family violence through its facilitation of protective judgements.

Expertise of Judges

There is an urgent need to provide a guidebook for Judges which includes a comprehensive understanding of the following six critical areas of knowledge⁷². This will enable them to identify risk factors surrounding family violence to facilitate more accurate and protective judgements. Any judge who hears a case involving the issue of domestic violence and/or child abuse as part of judicial responsibility, must receive specialized training regarding the family violence informed practices and the

⁷⁰ Barry Goldstein, Director at Stop Abuse Campaign website <http://stopabusecampaign.org/> accessed 22/4/2017 at [6.17].

⁷¹ Safe Child Act; http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, sourced on 30/04/2017, created and submitted to The House of Representatives, 29th legislature, 2017, State of Hawaii, H.B. no: 697 researched and designed by B. Goldstein.

⁷² Barry Goldstein’s Safe Child Act Provisions sourced at <http://barrygoldstein.net/important-articles/safe-child-act-on-02/05/2017> and amended to included an extensive understanding of why parental alienation theory must not be applied.

hopeful adoption of the inclusion of Goldstein's provisions⁷³, (detailed later in this submission). They should also receive retraining concerning prior practices, such as understanding the dangers of applying the discredited PAS⁷⁴ theory, which have not worked to sufficiently protect children.

Independent children's lawyers, (if they must be appointed, contrary to Freda Briggs and the authors contentions, detailed in this submission), must also receive specialized family violence training and retraining. Family Violence experts such as Goldstein have suggested that Judges, ICL's and report writers must comprehensively understand the critical areas of knowledge⁷⁵, pertinent to this required education inclusive of;

1. Knowing what behaviours are associated with higher risk of lethality or injury;
2. Domestic violence dynamics;
3. The effects of domestic violence on children;
4. Recognizing domestic violence; including the PAS research discussed through this submission.
5. Victim narratives.

This education must be presented by domestic violence advocates and/or other similar experts knowledgeable about the safety practices described herein and current scientific research. The state should provide additional funding to domestic violence agencies and informed advocates, to serve as domestic violence experts in court, and to help train court professionals.

Research Informed Practice to drive Reform

Judges are limited in their capacity to reflect on the protective success of judgements to inform improved practice. The State Government **must** create a national data collection and evaluation framework that can assist departments, courts, police, services and programs to review, monitor and measure and improve their impact in addressing and responding to family violence. This could be implemented through the Australian Institute of Family Studies or similar. This will facilitate a discussion to compare the risks and benefits of possible outcomes. This will limit the risks endorsed through the current subjective process. This will also improve accountability of any subjective opinion used as they will be expected to align with the conclusions of the evaluations. Insufficient accountability of Judges directly impacts the critical analysis, reflection and discussion required to improve practice and facilitate protective judgements.

⁷³ Barry Goldstein's Safe Child Act Provisions sourced at <http://barrygoldstein.net/important-articles/safe-child-act> on 02/05/2017

⁷⁴ Parental Alienation Theory, (PAS), The Judge's Journal, American Bar Association, sourced at http://www.americanbar.org/publications/judges_journal/2015/summer/parental_alienation_syndrome_30_years_on_and_still_junk_science.html on 02/05/2017

⁷⁵ Critical areas of knowledge, Goldstein, 2017 sourced from <http://barrygoldstein.net/important-articles/safe-child-act> on 02/05/2017

Section 121⁷⁶ of the Family Law Act, 1975 is not fit for purpose as it was designed to protect the litigants privacy, however its function in practice, limits public knowledge and review regarding the activities of the family court. As a consequence it puts victims of violence at further harm through not addressing gaps in the system that permit perpetrators to manipulate legislation to commit further harm. It limits the public capacity to identify and repair this legislation or application of such. This section also limits the judiciary's capacity for informed reflection of practice, in managing proceedings involving family violence.

In the interests of natural justice, section 121 must be sensibly amended to permit reasonable review and media scrutiny. This will endorse transparency and accountability for effective review of practice. This approach will be valuable for the promotion of effective and protective judgements surrounding family violence issues.

Issues surrounding the capacity of Family Reporters⁷⁷

A major gap which hinders the courts ability to congruently uphold its *paramount consideration* surrounding the child's best interests as stated in the Family Law Act 1975 (Cth) 'FLA' S.60CA⁷⁸, in matters concerning family violence, is the quality of family reporters and their reports. The author aims to highlight areas of concern which limit the courts capacity to determine and consequentially protectively act efficiently on the gravity of all abuse and family violence allegations.

The capacity of family reporters is limited through their expertise and quality and interpretation of reports. This paper highlights gaps in the system which require improvement and proposes recommendations to meet this immediate need.

Expertise of Family Reporters

The assumption that family reporters are experts in determining and providing accurate reports on the best interests of the child, and level of parenting capacity that provides for the child's emotional and psychological needs, is flawed. This is a critical acknowledgement where family violence is an issue. The current process often results in judgements made which are not adequately protective. This public perception has been repeatedly reinforced through horrific cases, inclusive of Luke Batty⁷⁹, (Hurley, et al., 2014), and Tara Costigan⁸⁰, (Morris, M., 2016).

The effective function of a family reporter is limited through their capacity, legislated requirements and conferred immunity, to fulfil their responsibilities to an acceptable standard. Their reports are often inadequate and not fit for purpose, where they are

⁷⁶ FLA, 1975, section 121, sourced at

http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s121.html on 02/05/2017.

⁷⁷ For the purposes of this report, 'Family Reporters' or 'family consultants' are inclusive of the following titles; Family court Report Writers/Dispute Practitioners/ Family reporters /assessors /practitioners/consultants or performing a similar function such as a child protection worker.

⁷⁸ Family Law Act, 1975 (Cth) 'FLA' S.60CA.

⁷⁹ Gray, (2015), State Coroner, Judge Gray, Coroners Court of Victoria, finding-085514 Luke Geoffrey Batty, Sourced on <http://www.coronerscourt.vic.gov.au/home/coroners+written+findings/findings-+085514+luke+geoffrey+batty> on 25/04/2017

⁸⁰ Rv Rappel, (2016) ACTSC 295, decision date 07/10/2016, file no.SCC204 of 2015.

formulated through a subjective investigatory process, and consequently do not assist the judge to make accurate decisions.

This is a consequence of the lack of the informed, unbiased investigatory rigor and expertise required to adequately consider the nuances of family dynamics, participant behaviour, relevant and complex issues, (such as family violence, substance abuse, child welfare developmental stages and needs), and therefore family reporters are not, in the authors view, 'experts' at determining what factors or inferences are to be drawn from their investigation for the children's best interests.

The family workers' report quality has been witnessed by advocates as lay opinion, coloured by the descriptive, emotional state of the often professionally and experientially under qualified, family reporters' fragmented understanding of conflict, trauma or relevant neuroscience, in particular, the brains pathological influence on abusive behaviour.

Repeated complaints by collective *Contributors*, have echoed a lack of thorough unbiased, investigative method and disregard of recommended court and professional codes and practices. This often includes an insufficient consideration of the influence of the extended family, historic abuse and cultural, physical, mental health of all parties, or the educational and social issues, affecting involved children. These complaints include perceived biased and/or manipulated evidence, surrounding the quality, omission and/or addition of evidence.

The interpretation of hearsay during proceedings is often reported as fact, by the family writer, as reported to numerous advocates for reform. Family reports have commonly been reported to numerous advocates to lack the validity, created through accepted science methodology, throughout their assessment of participant behaviour and consequential determined capacity.

This creates a public perception that some family reporters 'cherry pick' the inclusion of subjective evidence. Many reports contain subjective notions of parental care recommendations, despite the contrary directed in similar reports through the "*Case management in the Care Jurisdiction*" report by Mitchell CM, in 2007⁸¹. These recommendations, often informed via a conduit of discrepancies and grossly incomplete investigations, potentially colouring the judges' discretion, resulting in orders which further enable abuse and are not adequately protective.

AHPI, (Advocating for your Health and Privacy Information), have raised similar concerns in their recent submission to the Prime Minister. They state; ***"In all of my client's cases, I am able to establish that the assessments written by these 'experts' are inaccurate, incomplete and misleading..."*** AHPI refuted the expertise of report writers to have a sufficient understanding of family violence and their observations were further supported by providing relevant case studies.

⁸¹ Mitchell, CM, (2007)., Scott Mitchell CM, 'The Children's Court of New South Wales Practice Direction No. 28: Case management in the Care Jurisdiction' (12 September 2007).

⁷ Royal Commission into Family Violence (Victoria), summary and recommendations, 978-0-9944440-1-1, published March, 2016. RANZCP, Victorian branch submission no; 0395.001.0001

The author and *Contributors*, support *AHPI's* recommendations to provide an unedited audio visual recording of participant interviews to each party. In addition, we strongly concur with *AHPI's* recommendation to substantially raise the report writer's approved standard of family violence training and experience to include a higher standard of continuous, specialised knowledge. A regular, voluntary, professional development exercise conducted at a domestic violence shelter, advocacy or similar support group must be mandatory for anyone in the role of assessing and/or considering abuse issues, including Judges and ICL's. This will assist in the development of consistent valuable insight and guidelines for Judges to consider pertinent to investigations and determinations.

This author adds that an insight of neuropsychology must be included in this training and guidelines developed for Judges, as detailed in further in this report. The Royal Australian & New College of Psychiatrists⁸². (*RANZCP*), submitted to the recent family violence commission, that the low standard of training limits optimal management with family violence issues by medical and psychiatric professionals.

Australian Standards of Practice for Family Assessments and Reporting (Standards)

The family courts collectively developed and released *Australian Standards of Practice for Family Assessments and reporting*⁸³. The language throughout this report highlights an unacceptable level of broad expectations to assessors. The standards do not apply to preliminary assessments by Family Court report writers, such as child inclusive conferences, mediation or case assessment conferences. This presents an immediate issue as these early observations are used to inform judges and ICL's during proceedings.

This supports the contention that an incomplete report is acceptable to the family court. This report has the objectionable potential to pre-empt, and possibly inaccurately inform the considerations of the Independent Children's Lawyer, (ICL), and Judge.

These standards permit excessive discretion of experts⁸⁴ through using the word '**should**'. For example, this is used regarding practitioner's eligibility with the Australian Association of Social Workers or registration with the Australian Health Practitioners Regulation Authority, (*AHPRA*), and to meet respective requirements⁸⁵. In any case all family court writers whether registered or not with AHPRA are

⁸² The Royal Australian & New College of Psychiatrists, '*RANZCP*', Victorian Branch Submission, Subm., 0395.001.0001, sourced t <http://www.rcfv.com.au/getattachment/563D575B-0370-4BFD-BDDF-9387E9805F7D/Royal-Australian-and-New-Zealand-College-of-Psychiatrists> on 26/04/2017.

⁸³ Australian Standards of Practice for Family Assessments and reporting, February 2015.

⁸⁴ For example, reports by family consultants employed by the Family Court as well as reports by other experts and report writers: *Family Law Rules 2004* (Cth) pt 15.5; *Family Law Regulations 1984* (Cth) reg 7. Relevant experts: Ch 15 expert, Reg 7 report writer not employed by Court, family consultant employed by court.

⁸⁵ Ibid at Principles for family assessors S.2(c).

covered under the Health Practitioner Regulation National Law (Victoria) Act 2009⁸⁶ and can be prosecuted in VCAT (In Victoria or similar tribunals in other states) by the Psychology Board of Australia for breaches of this national law.

To suggest a practitioner *should* meet appropriate standards instead of ***must*** meet professional standards is irresponsible, and does not afford reasonable duty of care to court participants. This creates a situation where the Court relies on reports that could be sub-standard and the participants only recourse now is to take action against the report writer separately in a tribunal for breaches of their code of conduct, in the meantime the damage is done and the outcome is the Court has considered (and heavily weighted) unreliable evidence in making its decisions which could be characterised as an error of law.

The same issue applies where the standards suggesting that practitioners *should* commit to *accuracy* and *objectivity*⁸⁷. It also applies where they *should* conduct interviews with children away from influential adults. *The standards* would be improved with the word '***Must***' throughout the total report. There is notably no professional court directed disciplinary procedure or transparent accountability for practitioners who do not follow the standards. These absolutely ***must*** be added.

The *Standards*⁸⁸, suggest that family reporters *may* consider whether there are unresolved criminal or state welfare proceedings. Historic proceedings are not included in the principles at all.

This absolutely ignores the significance of historic violence and relevant character traits that would highlight risk factors. This is a major gap in the family court system and legislation should be amended immediately, to mandate significant weight to historic violence or significant welfare risks. Situations where the past violence has significantly affected the other parent or any children must be more weighted than shared responsibility.

Once more this can be characterised as compromising the rule of law and denial of natural justice⁸⁹ when the Court is considering (and heavily weighting) unreliable evidence and ignoring relevant evidence. Whether the legislation intended this or it is the outcome, the validity of such decisions and even constitutionality of them is cast into doubt.

⁸⁶ Health Practitioner Regulation National Law (Victoria) Act 2009 Sourced at http://www.austlii.edu.au/au/legis/vic/consol_act/hprnla2009517/ on 26/04/2017

⁸⁷ Ibid at Conducting Assessments S.11(a).

⁸⁸ Ibid at S.27. Where family violence is identified as an issue in a matter, the assessor must conduct an expert family violence assessment as part of their report. They should use commonly accepted interpretive frameworks for family violence.

⁸⁹ Australian Broadcasting Tribunal v Bond(1990) 170 CLR 321, 342.

When a statute empowers a public official to adversely affect a person's rights or interests, the rules of procedural fairness regulate the exercise of the power unless excluded by plain words⁹⁰

"...if an officer of the Commonwealth exercising power conferred by statute does not accord procedural fairness and if that Statute has not, on its proper construction, relevantly (and validly) limited or extinguished any obligation to afford procedural fairness, the officer exceeds jurisdiction, in a sense necessary to attract the prohibition under s75(v) of the Constitution⁹¹."

Granting *gratia arguendo* that a judge of the Family Court⁹², or a justice of the Federal Court of Australia⁹³, is not an officer of the Commonwealth merely highlights the irregularities that occur in the Family Law arena.

Failure to protect legislation; Another Dangerous Gap in the System

The *Standards*, discussed above, do not outline a detailed structure or scientifically sound basis to adequately determine whether abuse has occurred or to what extent and under what conditions. This is also evident in Child Protection legislation found in Child Youth and Families Act⁹⁴ commonly known as the '*failure to protect laws*'.

This legislation does not clarify, act or direct local agencies to manage investigations in accordance, to the objective standard of the *reasonable man* test, or accepted community standards, to what extent or conditions alleged emotional, medical neglect, or the often misused *failure to protect* reasoning, is deemed significant enough to require change of child residence arrangements. It broadly directs report writers to interpret general frameworks without specifying an exact procedure considering protective circumstances. This is discussed further in the proceeding *interpretation of significant harm* section.

The differences between how a legal body or child protective service compared with a domestic advocacy or shelter view family violence protective measures and assess *risk* are vastly differentiated. An advocacy usually supports a trauma-affected family and encourages resilience and resolve from trauma. Child protection services, '*CPS*', in practice, offer little support, if any, are intrusive and commonly aim to remove children affected by family violence, instead of genuinely supporting the family. This destroys lives! A more efficient and humanitarian approach, in consideration of UNCRC⁹⁵, would be for the family courts and child protective service to support a protective parent and uphold the child's rights, in leaving the risk situation and in

⁹⁰ *Annetts v McCann* (1990) CLR 596 at 598.

⁹¹ *Re Refugee Review Tribunal; Ex Parte Aala* (2000) 204 CLR 82 at 101 [41].

⁹² *Judiciary Act 1903* (Cth), s 39B(2)(b).

⁹³ *Re Jarman; Ex parte Cook* (No. 1) (1997) 188 CLR 595.

⁹⁴ Child Youth and Families Act 2005, S.162, SS.1c-f.

⁹⁵ UNCRC, (1989b) Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html> [accessed 21 April 2017] ratified in Australia in 1990, Section 9 of the Children and Young Persons (Care and protection Act, 1998), NSW.

rebuilding the **intact** family, not removal of children from their primary protective carer, which inflicts extensive further trauma for all involved.

More specific protective direction is urgently required through amending the *failure to protect* legislation such as the Children Youth and Families Act, (sec, 162), 2005 (Vic)⁹⁶. The child protection system commonly misuse this legislation against vulnerable protective parents who have experienced violence, this includes past relationships which have ended. Child protection workers commonly use this legislation for often unsubstantiated *clairvoyance* via its ability to also *predict* violence or neglect. These '*predictions*' are often enough to separate protective parents from their children.

The *failure to protect laws* and similar legislation is being applied contrary to intent and must be amended immediately so that they are not used against protective parents who have taken genuine measures to leave a violent relationship or have a historically violent past relationship. It would be more conducive to support a parent through this process than removal. This legislation is often cited as the reason why victims often do not seek support for family violence issues from the welfare system.

Child protective services and family courts must be proactive in using and interpreting legislation which helps victims break the cycle of violence. One recommended amendment to the Children Youth and Families Act, 2005⁹⁷, is that it should permit a separate identification of the protective and the abusive parent, if applicable, so that protective parents of victims of violence are not subjected to unreasonable child removals.

Lang, (2000), supports that effective management of domestic violence in the child protection system promotes empowerment of the protective and victimised parent, and to resist separating the child from this parent as this parent understands the trauma children face⁹⁸. This parent is best placed to assist in the child's recovery

Best Interests of the Child

The FLA, 1975 Act prioritises the *best interests* of the child to be a paramount consideration⁹⁹, in relation to the making of a parenting order. It details how the court determines best interests with greater weight applied to protection from harm, or exposure to abuse or family violence than parental responsibility including contact¹⁰⁰. The interpretation and application of the '*best interests*' consideration is absolutely

⁹⁶ Children Youth and Families Act, 2005 S.162.

⁹⁷ Children Youth and Families Act, 2005 S.162, (c), (d),(e), & (f).

⁹⁸ Laing., L (2000), "*Progress, trends and challenges in Australian responses to domestic violence: a background paper to the Issues Paper Series.*" Australian Domestic Violence Clearinghouse.

⁹⁹ Family Law Act, 1975, (best interests are the paramount consideration), section 65 AA and 60CA. http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s65aa.html,

¹⁰⁰ Family Law Act, 1975, (how the court determines best interests), section 60CC, sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html on 30/04/2017

critical in contributing to a Judgement which is protective and does not cause further harm in matters involving family violence.

“Contrary to popular misconceptions, children do not need both parents equally. They need their primary attachment figure more than the other parent and they need the safe parent more than the abusive one. This last statement is an objective conclusion based on valid scientific research while the misconception is based on subjective opinion uninformed by current research. There is, of course a benefit for children to have both parents in their lives, but this benefit is negated if the parent engages in domestic violence or child abuse”, (Goldstein¹⁰¹, 2017).

The FLA, 1975, (60CG), asks the court to consider the risk of family violence consistent with the best interests of the child which; *‘(a) is consistent with any family violence order; and (b) does not expose a person to an unacceptable risk of family violence¹⁰²*. It includes the capacity to include **safeguards** in respect of 1b, however this legislation is not adequately protective as it leaves this safeguard as an option. It also does not detail or recommend a sound guideline for appropriate safeguards under varied circumstances. Safeguards should be a mandatory inclusion if a family violence order is active or there is evidence of any risk, historic or as identified through the risk assessment process.

To help facilitate accurate and protective judgements for families affected by family violence, Goldstein’s provisions¹⁰³ as adapted from the Safe Child Act, must be included in the definition of appropriate **safeguards** in 60CG and mandatorily applied throughout the construct of family court orders, (full permissions granted to the author). The FLA, 1975, *Best Interests* consideration must include the following safety inclusions;

To Improve the Safety of Children involved in Child Custody Cases;

1. The paramount concern of all child custody decisions must be to provide complete safety when determining the best interests of the children.
2. Whenever domestic violence or child abuse is raised as an issue either during or before a child custody matter is litigated any professional who provides advice or recommendations to the court must have substantial training and experience about family violence and child abuse to fully understand safety issues including behaviours that are associated with higher lethality or injury risks; domestic violence dynamics; effects of domestic violence on children; ability to recognize domestic violence and research about victim narratives.

¹⁰¹ Goldstein, 2017 sourced at http://www.huffingtonpost.com/entry/the-safe-child-act-when-a-parent-does-more-harm-than-us_58b84bc1e4b051155b4f8c7f on 02/05/2017.

¹⁰² FLA, 1975, 60CG, Court to consider family violence, Sourced online at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cg.html at 30/04/2017

¹⁰³ Barry Goldstein’s Safe Child Act Provisions sourced at <http://barrygoldstein.net/important-articles/safe-child-act> on 02/05/2017

3 A post graduate degree in mental health such as psychology, psychiatry or social work absent specialized and approved training shall not be considered proof of domestic violence expertise. A court shall not refuse to qualify an individual as a domestic violence expert because the witness does not possess a post graduate degree, if the witness can demonstrate expertise based upon training and experience.

4. In any custody case where either domestic violence or child abuse is raised during the litigation process, even where a court may have already heard and determined there is not significant enough domestic violence to warrant a restraining order, and in which there is no substantial basis to believe the parties or children have a significant mental health impairment likely to interfere with parenting ability, courts should not order a mental health evaluation. The court may appoint a domestic violence expert to help the court understand the significance of evidence related to domestic violence and must permit parties to present evidence from a qualified domestic violence expert.

5. Courts shall look to current, valid scientific research concerning domestic violence to help inform its decisions in all cases where domestic violence or child abuse is raised during the course of custody. Courts shall not permit practices or approaches that do not have scientific bases and are not accepted practice within the specialized field of practice of domestic violence and child abuse. Professionals who engage in practices based upon such unscientific beliefs shall not be qualified to participate in custody cases where domestic violence or child abuse is raised.

6. In cases in which allegations of domestic violence are supported by substantial evidence, the safe or safer parent shall receive sole custody, absent clear and convincing proof that the parent creates an imminent and significant safety risk to the children. The parent who has committed violence shall be permitted only supervised visitation pending a risk assessment by a domestic violence/child abuse professional. In order for the abusive parent to obtain unsupervised visitation, the parent must complete at least a six month accountability program, accept full responsibility for past abuse, commit to never abusing the children or future partners, understand the harm the abuse caused and convince the court that the benefit of unsupervised visitation outweighs any risk. Termination of all contact should be considered upon proofs of failure to comply, as it will present the children with a known dangerous circumstance.

7. A parent shall not be penalized for making a good faith complaint about domestic violence or child abuse.

8. Courts shall not use approaches developed for “high conflict” cases designed to encourage parents to cooperate in any contested custody case if there have been allegations of domestic violence and or child abuse, which have been supported with an expert report opining there is a reasonable risk to children and shared parenting shall not be permitted in these cases absent voluntary consent of both parties.

Consent must be determined to be without coercion or undue pressure.

9. In cases in which there are allegations of domestic violence, a history between the parties that includes restraining orders, criminal charges or other evidence of possible domestic violence, early in the proceeding is provided to the family assessor or other neutral professional the court, (or state court as proposed), for the purposes of conducting an evidentiary hearing to determine if one of the parties has engaged in a pattern of domestic violence. If the court finds domestic violence and the non or less abusive parent is safe, the court shall award custody to the safe parent and if appropriate, supervised visitation to the abusive parent, in consideration of conditions in point 6. A finding denying the allegations of domestic violence shall not prevent the court from considering additional evidence of domestic violence later in the case.

10. In any case in which the trial judge engaged in or tolerated gender biased practices or permitted practices or approaches based on myths, stereotypes or other bias, an appellate court shall not defer to the judgment of the trial court.

11. In any case involving allegations of child sexual abuse, any professionals asked by the court for a risk assessment or evaluation must have specialized training and experience of a minimum of two years after completing training working with children and expertise in child sexual abuse.

Investigators shall take sufficient time to develop a trusting relationship before expecting the child to speak about the allegations. It shall be recognized that children frequently recant valid allegations of child abuse so a recantation shall not by itself be treated as absolute proof the allegations were false. No negative inference(s) may be drawn from a decision by a prosecutor or child protective agency not to file charges against a named perpetrator of domestic violence or child abuse and shall not be treated as proof the allegations are untrue.

Given the difficulty of proving valid complaints about child sexual abuse, judges who make a finding that the allegations were deliberately false must demonstrate they considered not only if the allegations are true but other common circumstances such as violation of boundaries, inadequate information to determine the validity of the allegations and mistaken allegations made in good faith.

In cases in which a court determined sexual abuse allegations cannot be proven, the court shall consider new evidence in the context of the evidence previously considered. No decision shall be made by a court absent a full evidentiary hearing with the parent having a right to have an expert of their choosing heard by the court. No preference and no deference shall be given to any expert selected by the court and identical standards of review and credibility shall be applied by the trial court.

* These provisions are designed to correct common present practices that have been shown to work poorly for the protection of children. The law seeks to encourage family court professionals to look to current, valid, scientific research to inform their decisions and stop using the outdated and discredited practices

described in the legislative history. The use of such flawed practices in prior decisions shall be considered a change of circumstance that entitles the parties to request the court to reconsider arrangements that were created based upon flawed practices.

The Child's Views

The current Family Law Act, 1975 outlines how the child views are respected, inclusive of the availability that a child's **interests** may be represented by an independent children's lawyer, (ICL)¹⁰⁴. It is further detailed in 68L, (5), that this ICL **may**, under specified order, find out the child's views.

This legislation is an inadequate representation of the intent of 60CC,(3),(a)¹⁰⁵, which highlights a consideration of the child's views. The weighting of these views should be assessed and recommended by an independent trauma informed professional, (which could be a letter from the family's school counsellor etc), prior to provision to the judge. In any event the ICL is not an expert in interpreting a child's view. An ICL is a legal professional not a trauma informed counsellor or neuropsychologist, which have a much higher capacity to determine influencing factors which may contribute to this view. The inclusion of the ICL in regards to presenting a child's view, should be limited to legal reasoning and issues of domestic violence and trauma to be delegated to trauma informed professional that can produce a report for the Court.

Goldstein's *Safe Child Act* proposal¹⁰⁶, to prioritise inclusion of the following; *If a child is of sufficient age and capacity to reason, so as to form an intelligent preference¹⁰⁷, the child's wishes as to preferred residence shall be considered and be given due weight by the court, is supported by the author for inclusion into section 60CC,(3),(a)¹⁰⁸.*

Similar concerns surround the employment of an ICL to determine *best interests*. Legal professionals do not have the expert capacity required to meaningfully interpret the trauma affected behaviour and response or child developmental stages which influence the child's views. This inadequacy limits the ICL's ability to make adequately protective determinations. There is a provision in 60CD, (2c), for the Court to consider the child's views by other means it deems appropriate. The latter should promote and detail, corroborative evidence such as a child's diary, drawings,

¹⁰⁴ Family Law Act, 1975 (child's interests represented by a independent children's lawyer), Section 60CD,(2b), sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cd.html on 30/04/2017

¹⁰⁵ Family Law Act, 1975, Section 60CC, relevant views of the child to be given weight, according to capacity, (3a), sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html on 30/04/2017

¹⁰⁶ Goldstein, Barry, (2017), The Safe Child Act, sourced at http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, for further information; <https://www.domesticshelters.org/domestic-violence-articles-information/the-safe-child-act#.WNX4lr2FFNG> sourced on 30/04/2017.

¹⁰⁷ Gillick v West Norfolk and Wisbech AHA [1985] UKHL 7". British and Irish Legal Information Institute. 1985. Retrieved 19 February 2017 – Commonly referred to as the 'Gillick Competence Test'.

¹⁰⁸ Family Law Act, 1975, Section 60CC, relevant views of the child to be given weight, according to capacity, (3a), sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s60cc.html on 30/04/2017

disclosures to educators and other relevant professionals. This should also be considered to hold more weight than the opinion of the ICL, if one must be used.

The Independent Children's lawyer adds an unnecessary cost to proceedings. They merely replicate the functions of the current Family Law Act, which provides for the child's best interests, they replicate the function of the family court report writer who obtain and examine documents, they replicate the role of the party's representatives who can mediate between the parties and cross examine witnesses themselves. They are rarely viewed as sincere intermediaries and are commonly reported by *contributors* to this inquiry, to escalate conflict or take sides with the family reporter. The role of an independent children's lawyer is redundant unless there are specific legal issues affecting the best interests of the child and otherwise should be removed from all future proceedings.

The FLA, 1975, (60Ce), states that the child's views are not required at all. This has the risk of overlooking the child altogether. This should be amended to include that they are mandatorily invited and if offered by the child, weighted with developmental and emotional intelligence considerations.

*A child, (who very recently turned 18years), has provided her views and experience which provides valuable reflective insight, at the completion of this submission.

As her now adult status is new, her recollection of her experience is still fresh and viewed with a youthful perspective. This is a valuable, reflective insight, as it directly corresponds with the accompanying case study, reported by the protective parent. This young person's voice', highlights the family courts inadequate capacity to effectively manage family violence issues in contested cases. It demonstrates the ripple effect of decisions which decreased the child's quality of life, sense of security and increased the level of risk and harm that eventuated. The author is optimistic this inquiry will be a conduit to amend legislation to significantly encourage and promote a child's voice through proceedings. This is reasonable as the decisions made and consequences of such directly affect their life.

Capacity of the court to provide educational best interests of the child through proceedings involving family violence

One major gap that has been grossly overlooked, when considering the best interests of the child while managing family violence through the court system, is the child's educational considerations. The resilience and recovery of a trauma-affected child must be supported through the courts if that child is the subject of proceedings which involves family violence. One way is to support the child's educational development. At present there is minimal capacity for the court system to provide this important function. There is significant and sound research available to support that a trauma affected child has specific learning needs, responses, capacity and requires intensive, individualised attention. The management and quality of a child's education must be included as a significant factor in the child's *best interests* in the FLA, (1975), to contribute to the *whole* development of the child. This must be

addressed through the appointment of a teacher and family violence trained, **integrated educational manager**, in the Family and Children's courts. This position will permit the much needed specialised and informed liaison with schools to promote the educational support and welfare needs of violence affected children. This role could oversee the ability of court affected students who are victims of violence to access school support. It is relevant that the Education system requires trauma-informed teachers across the board and learning assistance for all students that are victims of violence. The Family Court and Education systems need to collaborate to provide this necessity and relevant funding to manage family violence in our communities should be directed towards this goal.

The legislation highlights this 'paramount consideration' of best interests, however in practice *Contributors*' support that the best interests of the child are not protectively upheld due to insufficient standards, principles and methodology and interpretation of risk assessment of family reporters, resulting in judgements which may cause further harm. One area where gaps in the system can be improved is the interpretation of what constitutes significant harm and how this is viewed and applied in Family Law and Child Protection law.

Interpretation of Significant Harm

There is a notable gap in the child protection system where the agreed policy definition of *significant harm as seen in NSW 'MRG'*¹⁰⁹, for example, is not adequately contextualised compared with the recognition of identifying the *risk of significant harm*, considering a number of factors, as determined through the Children and Young Persons (Care and Protection Act), (CPA, 1998, no.157) 'CPA'¹¹⁰.

The agreed policy definition of *significant harm* means to a significant extent, serious enough to warrant a response by a statutory authority. It is further clarified as; '*not minor or trivial*'. It is also defined as reasonably expected to cause a *substantial* and *demonstrably* negative impact on the child's welfare or safety. This definition must be considered in context of whether a parent or both parents are willing and able to implement adequate protective measures.

The Queensland CPA¹¹¹, states that to reasonably suspect that a child is in need of protection, there is a probable, (not possible), expectation of harm¹¹², and that there is no parent available that is able and willing to protect the child from harm. The Australian Institute of family studies supports this where they state; "Further, it is common for a child to be defined as being "in need of protection" **only** if they do not have a parent "able or willing" to protect them", (AIFS, 2016). This needs to

¹⁰⁹ NSW; MRG, (2017), Childs Story Reporter, Mandatory Reporter Guide sourced online at <https://reporter.childstory.nsw.gov.au/s/> on 21/04/2017.

¹¹⁰ Children and Young persons (Care and Protection Act), (CPA, 1998, no.157).

¹¹¹ Children and Young persons (Care and Protection Act), (CPA, 1999, section 10, part 3, Div 1 (10).

¹¹² Qld, (2015), Practice guide: The assessment of harm and risk of harm, pg 3 sourced at <https://www.communities.qld.gov.au/resources/childsafety/practice-manual/pg-assess-risk-of-harm.pdf> on 26/04/2017

underline all considerations of whether a child should be deemed in need of protection.

This same act also states, (CPA, 157, Ch3, part 2, sec 23, 1d). that ; "(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm." The latter must be amended with the inclusion that this must **only** be applied if the parent **has not** commenced adequate protective measures in agreement with police, (not based on child protection determined protective measures) and is not able or willing to protect. It is critical the protective measures are informed and approved by a specialised domestic violence advocacy or police unit. These bodies are best placed to add impartiality to the child protection process.

The policy definition alone doesn't consider protective factors and a directive to consider these with adequate interpretation of the CPA¹¹³. The defined *possibility* of significant harm used alone without consideration of protective factors listed in the Act, may produce a contrary prediction. These factors are significant variables, which when absent, nullifies the hypothesis through lack of procedural rigor, as supported by Kuhn.¹¹⁴

The risk assessment may be improved through highlighting the willingness and ability of the parents through its inclusion in local agency assessment and protocol definitions.

Parental willingness and ability is also relevant where a ¹¹⁵Care and Treatment Order for a Child, is enforced by a designated medical officer. The risk assessment practices must be substantially reviewed to assess if medical intervention is immediately required. This decision must be made by an impartial health regulator and consider prior judgements made through courts, parental capacity, availability and genuine consideration of sound research and medical history supporting the parents knowledge and beliefs, and detail conditions applicable for the child to be deemed 'at risk'.

If there are no pending criminal charges it is reasonable that viable options should be provided to the parents and discussed prior to any removal from parental care. In addition, if a designated medical officer reasonably suspects harm or risk of harm to a child and is likely to leave the facility and suffer harm if immediate action is not taken, the legislation¹¹⁶ instructs that this officer must inform and if requested, provide a copy of the Order to the parents asap, this designated officer **must** also tell parents they can go to a doctor chosen by the parents¹¹⁷, (unless the parents may

¹¹³ Ibid.

¹¹⁴ Kuhn, Thomas, (1962), pg, 197a, 66-76, (1970), pg, 202., The Structure of Scientific Revolutions, International Encyclopaedia of Unified Science, ed. Neurath and Carnap.

¹¹⁵ Public Health Act, 2005, Div 6, s197, sourced at

<https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubHealA05.pdf> on 29/04/2017

¹¹⁶ Public Health Act, 2005, 'ibid', Div 6, s200, 1a, 1c

¹¹⁷ Public Health Act, 2005, 'ibid', Div 6, s200, 1e

be charged with a criminal offence in relation to the child or this provision may expose the child to harm). This is often not happening in practice.

The Queensland Child Protection Act, (1999)¹¹⁸, or any child protection act, should not prevail over this order, as they are not the medical experts nor should it be used to avoid producing the Care and Treatment Order to the Child Protective Services. This current status quo provides excessive authority to the Child Protective Services which does not allow for correct checks and balances. It is relevant that in this case a Judge had already determined that there would be no need for a child protective order prior to the hospital involved obtaining custody of the child.

These issues were publicly discussed in the case of *Chase*¹¹⁹ with the parents subject to the Amber alert by the Queensland Police Service on 28th April, 2017. It was disappointing to see that the hospital involved in this case were adversarial and dictated what advocate the parents could use for mediation. The hospital refused to provide names of staff of a designated medical officer, (breaching the Public Health Act, 2004, (204)¹²⁰, or provide a Care and Treatment Order, including reasons for extension of this Order. It is pertinent that Child Protection Act's do not contain clauses that can be maliciously interpreted to prevent disclosure to the parents, such as section 191, and 189D where non disclosure currently doesn't affect the validity of proceedings, and S.193 which prevents media scrutiny in the public interest, limiting accountability, as seen in the Queensland Child Protection Act¹²¹. These Acts, and similar legislation urgently require sensible amendment. Full disclosure is in the best interests of the child and an expectation of natural justice.

The Child Protection and Family Law legislation must be amended to reflect that parents are the **Competent Child Authority**¹²² with their children's matters. They have never conferred jurisdiction to the state or Family Law Courts. This status quo must remain, under the jurisdiction of the Commonwealth Central Authority, unless evidence is supplied to a criminal standard that credible reasons are provided and accepted in a court of law, that the parent/s have had their status revoked.

Legislation which encroaches on questionable constitutional issues, relating to the absence of state conferred powers, in the FLA, 1975, 111CG¹²³ which allow the family courts to assume child protection jurisdiction must be further investigated and amended to comply with our constitution as required. This provision to regulate the implementation of the Convention may affect the operation of State and Territory

¹¹⁸Child Protection Act, 1999, <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildProtectA99.pdf>

¹¹⁹ NewsMail, Amber Alert: Boy, 4 taken from Children's hospital, sourced at m.news-mail.com.au on 30/04/2017

¹²⁰ Public Health Act, 2005, part 3, div 6, (204).

¹²¹ Child Protection Act, 1999, Ch 6, Div 3, sec 191. Sourced at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/ChildProtectA99.pdf> on 30/04/2017

¹²² Competent Child Authority as defined in the international Child Protection Convention definition as seen in the Family Law Act, 1975.

¹²³ Family Law Act, 1975 sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s111cg.html on 30/04/2017.

law, contrary to the intent section 111CZ, (2a)¹²⁴. The Family Law Act's child welfare power, inserted into 67ZC of the Act in 1983, may not support jurisdiction to support the making of child protective orders by the family courts. As this directly affects the capacity of judges to work within a child protective framework this must be reviewed.

Inclusion of the Child's Rights

If the various state, for example, NSW mandatory reporter guidelines, (*MRG*), were compulsory, instead of just recommended, then it is possible that the critical analysis mentioned would value the protective factors during an assessment. The *MRG*, however, still lacks in its recognition and promotion of the *Charter of Rights*¹²⁵. The obligation to uphold the ***Charter of Rights in NSW***¹²⁶, designed so that children in substitute care could receive the benefit of the UNCRC provisions, is upheld through the Charter of Rights Section 162, (3), of the *CPA*. This states that the minister must ensure compliance by any designated agency and authorised carer to uphold the conferred rights¹²⁷. Legislative compliance and risk assessment accuracy could improve through promoting the child's voice and rights provided through the Charter of Rights and mandating this through compulsory assessment protocol and significant application through the current Child Youth and Families Act.

The obligation to uphold the *Charter of Rights*¹²⁸ so that children benefit from the UNCRC provisions, and to increase rigor and validity of investigations through the inclusion of a child's voice, must be included in all relevant protective legislation involving youth, inclusive of **all** legislation listed in the *Child protection legislation in Australian states and territories, (AIFS, 2), 2014*, and the Family Law Act, 1975, (cth). An age appropriate brochure such as the one found in FACS, (2015), must then be provided to each child in care and explained by a legal representative. A national inclusion of the Charter of Rights into this legislation will provide a more humanitarian response to children who have experienced violence or other abuse and this in turn will support resilience and recovery from trauma.

Family Violence Best Practice Principles

Directives for family reporters to consider, the *Family Violence Best Practice Principles*¹²⁹, or the Policies of the Western Australian Family Court are grossly inadequate, as these guidelines also do not address the nuances of violence.

¹²⁴ Family Law Act, 1975, section 111CZ, (2a), sourced at

http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s111cz.html on 30/04/2017

¹²⁵ OCG, (2014), Office of the children's guardian, Information sheet 1, standard 1., sourced online at; www.kidsguardian.nsw.gov.au/ArticleDocuments/451/Informationsheet1.pdf.aspx on 21/04/2017.

¹²⁶ Section 162 (3) of the Children and Young Persons (Care and Protection) Act 1998 provides that each designated agency and authorised carer has an obligation to uphold the rights conferred by the Charter of Rights.

¹²⁷ OCG, (2014), Office of the children's guardian, Information sheet 1, standard 1., sourced online at; www.kidsguardian.nsw.gov.au/ArticleDocuments/451/Informationsheet1.pdf.aspx on 21/04/2017.

¹²⁸ OCG, (2014), Office of the children's guardian, Information sheet 1, standard 1., sourced online at; www.kidsguardian.nsw.gov.au/ArticleDocuments/451/Informationsheet1.pdf.aspx on 21/04/2017.

¹²⁹ Bryant, et al, (2016), The Family Violence Best Practices Principles, 01/12/2016, revision of 3.2, <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/family-violence-best-practice-principles>, sourced online on 14/04/2017. ISBN 978-1-920866-02-0

A committee of Judges, Justice's and a family consultant revised abovementioned *Best Practice Principles*, to guide court personnel in cases which involve children and claims of abuse. This is merely a voluntary checklist tool that family reporters *may* consider, if they wish.

The inadequacy of these *principles* may be consequential to the fact that domestic violence advocacy groups or victims of violence were not invited to help revise and directly help write these revisions. If they had they may have included the following;

The consideration that court personnel '*may*' get a family violence expert to conduct a report (as stated in the principles option 34), is manifestly inadequate. These experts **must** be employed to accurately assess risk factors surrounding all allegations, to conduct an informed investigation. Family reporters, without sufficient expertise make grave errors in their interpretation of fact, discussed further in this submission. In addition it must be mandatory that family violence and mental health advocates are permitted to participate in report writer interviews and support any party where abuse allegations are raised.

The *principles* lack insight into issues surrounding violence and are misleading in their stereotyping of victims. They state that a consideration in testimony could be that victims may present as unemotional and flat and have difficulty with recall. This distracts the court personnel from what could also be a cold, detached, narcissistic, controlling perpetrator who has developed a capacity to lie and occasionally trips up on fabrications. There is a plethora of research rebuking the assumption in the *principles* which state that "*Diminished parenting capacity for adult victims of family violence is not uncommon*", it is supported that children commonly do not view their victimised parent as diminished in capacity¹³⁰, and are often viewed by children as their greatest source of support¹³¹. This highlights the lack of insight the family court hold in relation to family violence issues through its own recommendations.

This author imagines that Judge Hughes, Justice Bryant and the other co-creators of these *principles*, may agree that when the court interprets the personality types and capacity incorrectly, and the perpetrator successfully pretends to be the victim, there is an unacceptable room for error.

The latter consideration supports an inclusion of neuropsychology throughout the family court investigatory process. Most family workers do not possess the required depth of neuroscience or regard of humanitarian empathy to apply meaningful interpretation to the motivations or behaviour behind parental conflict. They lack the insight to determine the accuracy of accusations. They lack capacity to accurately interpret the consequential trauma affected behaviours of victims and the narcissistic often sociopathic vexation of perpetrators.

¹³⁰ Levendosky, A. A., S. M. Lynch, et al., (2000), "*Mothers' Perceptions of the Impact of Woman Abuse on their Parenting*" *Violence Against Women*, 6,(3): 247-271.

¹³¹ Blanchard, A., F. Molloy, et al., (1992). "*I Just Couldn't Stop Them*". Western Australian Children Living with Domestic Violence: A study of children's experiences and service provision. Perth, The Curtin University School of Social Work for the WA Government Office of the Family.

The current approach predictably contributes to the family reporter employing inappropriate, highly inaccurate, scientifically unfounded, subjective opinions. These workers commonly postulate suggestive, speculative conjecture, in the form of a null hypothesis with little pre-determined significance. Their standard of evidence barely obtains a level of a working hypothesis or accepted scientifically sound theory.

The standard of probabilities supports this unethical investigatory method through a lowered evidential burden compared with a criminal court or even civil court, with the rules of evidence in the family court being considerably lower than even contained in the Civil Procedure Act¹³². In fact, the *principles*¹³³, highlight that the court doesn't require independent confirmation, (via for example, police or medical reports or corroborative evidence) of family violence abuse allegations, to accept that it occurred. Courts can also no longer award costs against a party who knowingly fabricated evidence. This environment is not conducive to truth or justice, and could be characterised as repugnant to the rules of natural justice.

The *principles* are contradictory where they quote a case where the full court of the family court stated that abuse victims do not have to "...*subject themselves to medical examinations, which may provide corroborative evidence of some fact, to have their evidence of assault accepted*", *Amador & Amador* (2009), 43 Fam LR 268)¹³⁴.

This is inconsistent with family court practice directions when the court orders medical examinations and psychiatric evaluations of allegedly abused children and adults. It also increases the possibility of false allegation and vexatious claims being used by the actual perpetrator to further control the real victim. In this sense the court system may inadvertently or neglectfully endorse the abusers, coercive controlling violence to induce compliance and submission in the real victim. There are no protective measures for this scenario listed in the *principles*, (Bryant et al., 2016), which identify this commonly reported issue by *Contributors*.

The author's view is that the *principles*, compound risk assessment issues through not adequately differentiating to court personnel the difference in weighting expected between untested interim orders and permanent protective orders.

Accountability and Complaints Process

The accountability and complaints process regarding the quality of family court report writers is inadequate. As these reports are heavily weighted in contributing towards the judges' life altering decision it is imperative that they are accurately informed, interpreted and neutrally presented to the judge. If this process is questioned then in the interests of natural justice and procedural fairness, a transparent and accessible complaints and accountability process must be available to court participants.

¹³² Civil Procedure Act, 2010 (Vic).

¹³³ Bryant, et al, (2016), The Family Violence Best Practices Principles, 01/12/2016, revision of 3.2, <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/family-violence-best-practice-principles>, sourced online on 14/04/2017. ISBN 978-1-920866-02-0.

¹³⁴ *Amador & Amador* (2009), 43 Fam LR 268).

It is notable that many family court report writers have attempted to avoid scrutiny of their practices and resist AHPRA's current investigatory process. In a submission¹³⁵ signed by Dr Jennifer Neoh, secretary of the APS Family Law and Psychology Interest Group she represented her members rejection of AHPRA's commencement of investigations during legal proceedings.

They claimed that there was a need to screen for vexatious litigants, without providing any basis that a significant number of complainants fell into this designated category. They requested that complaints are screened by someone with family law and forensic investigation experience, setting a standard in the latter which they often do not afford their own interviewees.

They stated that '**the court is our client**', highlighting understood bias throughout their current practice. The representative Doctor inferred that the '**health model is not appropriate**', in the legal context of the family court. It is not appropriate or lawful that they state that they cannot work within the law while facilitating their function.

The proposals throughout this submission will assist them to perform their duties lawfully. They also demanded an independent and separate process, again, another request they do not practice themselves as they have clearly stated their loyalty to the court.

I will ignore their emotional, unsubstantiated justifications for their requests which clearly show contempt for the body of clients they are servicing. However, what is important here is that they reject transparency and accountability of their processes.

If a litigant is not satisfied that due process and procedure has been afforded to a family report it is reasonable that there is a simple complaints process through AHPRA during proceedings. The danger of not endorsing this process may result in sub-standard reports which inform judgements.

This is not acceptable and can put families at risk of further abuse and violence. This group complained that their report writers were forced to stand down from cases while under investigation. I draw your attention to this protocol being employed in many professions and the government has a duty of care to insist that accepted professional practice is upheld across all professions. They should not be above the law. The author recommends that AHPRA is exempt from section 121 under the family law act, 1975 to facilitate rigor in their investigations of court report writers and anyone performing a similar function. **Notably, this family reporter representative stated that, "It is well recognised that the family court arena poses specific challenges that are outside the expertise of most psychologists".** They admit this so listen to them here. Then they threaten AHPRA with the incompetence lawsuits that may well be more applicable to themselves.

¹³⁵ Submission by the Australian Psychological Society, (APS), Dr J. Neoh, Secretary APS Family Law and Psychology Interest Group, on behalf of members, (2011), to the Senate Standing Committee on Finance and Public Administration References-Inquiry into the administration of health practitioner registration by the Australian Health Practitioners Regulation Agency, (AHPRA).

This body of family reporters and associates have clarified that they do not believe AHPRA's investigatory process is adequate. On this the author concurs and requests more transparency and independence during the complaints process surrounding report writers. Accountability and sanctions are a community expectation and should be written into legislation for efficient reform. This request is not under the threat of legal action that this psychological membership inferred, it is in the interests of natural justice to contribute towards decisions that are truly in the best interests of the child which contribute towards judgements which reduce the risk of violence.

There is a genuine requirement for oversight of psychological services employed in the family court and child protection system. In *Seymour v Psychology Board of Australia* (2012), VCAT 1942, a review of a decision of professional performance and standards, under the Health Practitioner Law, (Vic) Act, (2009), it was found that conflict of interest was a factor in services provided.

We support *AHPI's*¹³⁶ views that the Australian Health Practitioner Regulation Agency 'AHPRA', must efficiently improve their complaints process. *AHPI* is Australia's leading advocacy which independently assesses and critiques family reports and it is strongly recommended this respected agency would be an excellent intermediary step prior to AHPRA investigations. This author adds that *AHPRA* urgently must implement a combined family violence advocacy department integrated with trauma trained lawyers, impartial investigators and relevant independent experts, such as *AHPI*, who must critically analyse and conduct this process.

This must regard high transparency and accountability with sanctions taken against below standard court report writers. This must be inclusive of any professional performing a similar function or in wilful compliance with the report writer, inclusive of independent children's lawyers, if they knowingly use inadequate reports to support their contention, and do not highlight disagreement with poor practice or unsubstantiated conclusions. To uphold the public perception of justice, this must also provide a compensatory scheme developed for party's if negligence, bias, procedural errors etc., are found.

The current status quo regarding family reporters rejection of scrutiny, capacity and methodology, suggest that there appears to be absence of acceptable community standards, accountability and common sense which would not pass any objective *reasonable man*¹³⁷ test.

In the interests of restoring public faith in the family court justice system all court conferred immunity pertaining to family court report writers and any person

¹³⁶ AHPI, Advocating for your health and privacy information, sourced at [https://www.facebook.com/ahpi.net.au/on 26/04/2017](https://www.facebook.com/ahpi.net.au/on%2026/04/2017), webpage: healthfamilylaw.net

¹³⁷ Law Teacher, the essay professionals, *Negligence-breach of duty*, sourced at <https://www.lawteacher.net/lecture-notes/tort-law/negligence-breach-lecture.php> on 28/04/2017

facilitating a similar function, pertinently child protection workers, must be revoked, AHPRA must be exempt from section 121 and any relevant legislation in the family court rules, (2004)¹³⁸, so that they can conduct thorough investigations to promote natural justice. Professionals who are found to conduct substandard reports must be made accountable and sanctioned with affected litigants adequately compensated.

Selection of evidence to inform family reports; inclusion of neuropsychology

In response to community and stakeholder concerns such as those discussed at the National Family Violence Summit, (NFVS, 2017), and also the Royal Family Violence Commission, (recommendation 189¹³⁹), the Victorian Education Department has directed an increased focus on considering how family violence and trauma affects behaviour.

The *Respectful Relationships*¹⁴⁰ program promotes positive attitudes and behaviours, includes professional practices, culture, and community liaison with the goal of preventing family violence, (Andrews, 2016). Professional training, support and learning has been funded in pilot programs in some schools, to provide an insight incorporating an understanding of violence prevention and surrounding **neuropsychological factors**¹⁴¹. This also improves the professional practice of educators teaching the respectful relationships program. They have welcomed domestic violence support and advocacy services, (such as Berry Street¹⁴², White Ribbon¹⁴³, and Sole Fathers United¹⁴⁴), who liaise with and inform educators to provide insight into how professionals may best understand and respond to trauma responses and promote respectful relationships with trauma informed teaching and learning capacity.

The family court and child protection service report writers would benefit from a similar informed approach as their nature and function involves understanding and appropriately responding to the dynamics of violence prevention, the neuropsychology of trauma affected or violent/abusive behaviour and parental capacity, in particular the ability to learn new positive behaviours where necessary.

¹³⁸ Family Court Rules, (2004) http://www.austlii.edu.au/au/legis/cth/consol_reg/flr2004163/ sourced online on 28/04/2017

¹³⁹ Family Violence the plan for change, the 227 Recommendations, sourced at [http://www.vic.gov.au/familyviolence/recommendations.html#filters\[SearchKeywords\]=189](http://www.vic.gov.au/familyviolence/recommendations.html#filters[SearchKeywords]=189) on 28/04/2017

¹⁴⁰ 'ibid'

¹⁴¹ Bidita Bhattacharya, (2013), Bengal Journal of Psychiatry, Vol. 19, No. 1, Neuropsychological factors; *Neuropsychological assessment: An Overview*, Sourced from http://bengaljournalpsychiatry.org/wp-content/uploads/2015/09/Bidita-Bhattacharya_04.pdf (inclusive of trauma responses, behavioural analysis), sourced on 28/04/2017

¹⁴² Berry Street provision of pilot program teaching educators how to support trauma affected students in the northern suburbs of Victoria, 2017. Sourced at <http://www.childhoodinstitute.org.au/EducationModel> on 26/04/2017.

¹⁴³ White Ribbon Schools Program <https://www.whiteribbon.org.au/stop-violence-against-women/what-white-ribbon-does/schools-program/>

¹⁴⁴ **Sole Fathers United**, https://www.facebook.com/pg/SoleFathers/about/?ref=page_internal, a not for profit community group, provision of respectful behaviour class discussions, at local schools in north-west Victoria, 26/04/2017.

This author proposes that the investigatory process and subsequent family reports exhibit a striking apathy to the comprehension of neuropsychology required, in formulating a conclusive report. An application of this science, namely a study of the brains integration with behaviour¹⁴⁵, is pertinent to improving an understanding of which parent holds the highest capacity to fulfil the child's best interests¹⁴⁶. As family reporters are partially tasked with assessing behaviour relating to the capacity of parents, a solid comprehension of the neuropsychological branch of neuroscience influencing behaviour is pertinent.

Francis Martin, a cognitive psychologist, recognised the limitations of using a singular cognitive approach in understanding brain function and its influence on cognition. She stated that using additional fields inclusive of neuroscience focused on neuropsychology and physiology will provide; "*an improved interpretation of body, brain and mind*". She followed with, "*..Until this happens, I suspect that there will be little real progress in this field*"¹⁴⁷.

The inclusion of specialised behavioural neuropsychology, is superior to a basic therapeutic or singular cognitive approach as it facilitates a more accurate identification of the evaluation of cognitive and behavioural functional capacity, as stated by Martin, (2017). The therapeutic approach is merely a responsive service which may help individuals understand and learn skills to control their actions¹⁴⁸. The latter focuses on altering behaviour where an inclusion of neuropsychology permits meaningful interpretation of behavioural analysis.

This promotes insight into the influence of language, attention, memory, perception, motivation, mood, life quality and personality styles on the participants thinking process, emotional responses and cognition which drive reasoning and behaviour. It includes a baseline for subsequent evaluations for comparison of capacity relative to peers for the rigor required through verification. A neuropsychological approach to family reports can also provide an understanding of whether proposed remedies and treatments may affect mental health and behaviour. The latter approach is best suited to the function of an accurate family report.

Required knowledge in contested cases, such as an adequate comprehension of the automatic responses of the primitive brain¹⁴⁹, influencing the automatic fight, flight, freeze responses and behaviours of perpetrators and victims alike, are noticeably absent from family reports. Family reporters rarely offer informed insight, regarding the interconnectivity of the reptilian brain with the limbic system within the

¹⁴⁵ UNC, (2016), UNC School of medicine, *The Department of Neurology*, University of North Carolina Chapel Hill, sourced online at, <https://www.med.unc.edu/neurology/divisions/movement-disorders/npsycheval>

¹⁴⁶ 'ibid'

¹⁴⁷ Martin, Francis., (2017), *Working in Cognitive Psychology*, Australian Psychological Society, sourced at <https://www.psychology.org.au/Content.aspx?ID=3824>, on 25/04/2017.

¹⁴⁸ Manning, (2009), *What is Therapeutic counselling?* ., Manning Psychological Services. Sourced online at <http://www.manningpsych.com/Therapeutic> Counseling on 25/04/2017

¹⁴⁹ Karen Saakvitne, K, (2013), Fight, flight, freeze response, <http://trauma-recovery.ca/impact-effects-of-trauma/fight-flight-freeze-responses/> sourced on 28/04/2017

mammalian brain, linking emotions, and behaviour, which may also reveal relevant psychotic symptoms or cognitive defects in parents under scrutiny.

Family reporters do not sufficiently consider the conscious neocortex, which controls purposeful behaviour, executive decision making and is responsible for voluntary action. The structural health and any presence of disease regarding the interconnectivity and functions of these systems are relevant. The subconscious drivers which influence the emotions, thoughts and resultant voluntary action can highlight the motivations and behaviours of parenting capacity, abuse allegations, and flag historic and potential risk factors. It could also assist in the identification and proposed management of underlying trauma.

An inclusion of neuropsychology in family reports can contribute more valuable information for assessment pertaining to various conditions, such as clinical depression, schizophrenia, autism, anxiety, risk taking and violent behaviour and drug and alcohol abuse. The identification of some factors may influence parental capacity and highlight a need for consideration of protective measures.

An approach mandating that family reporters (and experts performing similar functions), possess substantial and scientifically sound neuropsychological based and trauma informed qualifications and experience, will provide the judge with a higher quality and more accurate assessment for consideration.

Methodology which Informs the Family Reporter

When provided with information it is critical that a family reporter possess the skills to employ a consistent methodology which validates the gathered knowledge.

The *Standards*, should not endorse the substandard scientific method used throughout parent-child observations, without insisting on critical analysis and replicated results, as detailed in Spradley¹⁵⁰. These views fail to meet a scientifically sound test for valid conclusions, as observations are not measured against a control situation, nor consider extensive variables, (such as an artificial court environment and increased court-induced stress in participants), which cannot be adequately measured or replicated through a solely qualitative approach.

The acceptance of an excessively and incompletely applied qualitative method used to conduct the family report is an inadequate means to obtain an accurate portrayal of the family dynamic.

The *standards* do not address the appropriate delivery or responses of questions asked during a practitioner's interview. The writer is aware that some parents have been directed to answer strictly with closed answers; (i.e, yes or no responses). An improved approach would be for parents to be given a standard document including a questionnaire to complete. This document must be created by an experienced family violence advocacy association in conjunction with a police response specialised unit. This will remove the verbal interaction between family reporters and the family involved and will improve evidence standards, transparency,

¹⁵⁰ Spradley J., (1980), Participant Observation, Fort Worth.

and accountability and minimise the risk of an inexperienced assessor from employing inaccurate discretion.

A mixed methodology is recommended for the collation of information to improve interpretive accuracy. The collaborative triangulation and peer review that Creswell¹⁵¹, describes, adds reliability to subjective information. This is not currently promoted in family courts information gathering.

The required level of interpersonal skills and sensitivity required for this type of data collation, as described in Jorgensen¹⁵², is also not mandated for in the *standards*. This flawed method reduces the credibility of the conclusions and therefore shouldn't be generalised¹⁵³.

This method has little value to help formulate an **accurate** hypothesis by the practitioner and encourages a subjective opinion. This potentially inaccurate opinion has an unacceptable probability of misleading the judge, influencing an order which is not adequately protective.

Thomas Kuhn, (1922-1996), widely accepted as one of the initiators of social science, a physicist and philosopher, wrote one of the most cited academic books in history, *The Structure of Scientific Revolutions*¹⁵⁴. In his *incommensurability thesis* he proved that “*theories from various origins reduce comparability*”. He highlighted that observations may be influenced by prior belief and experiences, resulting in varied translation and meaning of information. He stated that two observers viewing the same scene will not form the same theory-neutral observations. Stanford¹⁵⁵, documented that *Kuhn's account; “argues that resisting falsification is precisely what every disciplinary matrix in science does”*.

The same principle must apply in acceptance of a practitioner as a valid ‘expert’ in the social science he helped found. *Kuhn* stated that the “**fault in empirically acquired information and anomaly of inadequate variables cast doubt on the underlying theory**”. He followed this by calling a widespread failure to recognise this is a **crisis**, (*Kuhn*, 1970a, 66-76). The current consensus in the *standards* and courts to endorse scientifically unsound investigative methods, which result in the collation of often unverifiable information to inform judgements’, is the aetiology of the current crisis in the family courts.

¹⁵¹ Creswell J.W., and Miller DL. (2000), Determining Validity in Qualitative Inquiry. *Theory Into Practice*, Vol: 39: 124-130.

¹⁵² Jorgensen D. (1989), *Participant Observation; a methodology for human studies*, Newbury Park, Calif.: Sage Publications.

¹⁵³ McCall G and Simmons J. (1969), *Issues in participant observation; a text and reader*, Reading, Mass.: Addison, Wesley Pub. Co., LeCompte, M and Goetz J. (1982), *Problems of Reliability and Validity in Ethnographic Research*. *Review of Educational Research*, Vol: 52: 31-60.

¹⁵⁴ Kuhn, Thomas, (1962), pg, 197a, 66-76, (1970), pg, 202, *The Structure of Scientific Revolutions*, *International Encyclopaedia of Unified Science*, ed. Neurath and Carnap.

¹⁵⁵ Stanford, (2013)., *Stanford Encyclopaedia of Philosophy*., Thomas Kuhn, First published Fri Aug 13, 2004; substantive revision Thu Aug 11, 2011, sourced online at <https://plato.stanford.edu/archives/fall2013/entries/thomas-kuhn/#4.2> on 13/04/2017.

Meaningful Interpretation of Information-Critical Analysis Skills

It is insufficient to merely improve the neuropsychological content and include quantitative verifiable methodology without considering the interpretation of this information. The collated information must also be insightfully interpreted.

Mandating a requirement for court report writers to obtain post graduate skills in critical analysis of information and research, to meaningfully interpret evidence, rather than reporting with a subjective opinion of collated information, will promote accuracy through reducing inaccuracies in discretion or understanding. This nuance is a pertinent consideration towards positive and just reform.

There is a significant difference in the insight gained through unbiased critical analysis and meaningful interpretation, using accepted research methodology, compared with simply attending courses to be given information on content, for example, on the dynamics of violence. A family reporter should present an account which underlines the validity and verification of the contentions made. They must avoid interpreting meanings in language merely to focus a *fit* to a predetermined idea. An awareness to critically consume information with informed critique is conducive to quality research; its credibility is influenced by the amount of bias¹⁵⁶.

Visible Truth

There is room for a subjective interpretation during a family reporters' address where body language may be an indicator of the writer's confidence regarding understood or presented *truth*. Some reporters have exhibited commonly accepted visible indicators of misleading conduct and/or lack of conviction through their body language during their address. This includes visible shaking, stuttering, flustered and diminished congruence and demeanour contradictory to verbal accounts. There has been witnessed in particular, a notable lack of eye contact. To uphold transparency in the content and adequate weight of communicated information, report writers, (and anyone performing a similar function such as the independent children's lawyer), should approximate equal time to physically face the party's and the Judge during any address.

A judge with a trained eye could note the standard of confidence and delivery in their weighting of such a report. A body language analysis outsourced independent expert report could also be useful during the family reporter's address.

¹⁵⁶ Fitzgerald, T., (2011). La Trobe University, Bundoora. EDU5RME. Semester two. Lecture delivery.

The following case studies highlight gaps in the system which are catalysed through issues discussed throughout this submission;

Case study 1-Reflection by a Protective Parent;

The current status quo endorses significant and unacceptable gaps in the family court system, evident in the following case study...

A highly credible protective parent relayed that during interviewing both parties and children on the morning prior to a hearing, the family reporter stated to the protective parent that she was “**confused and didn’t know what to think**”. (It is relevant to add that this protective parent was strictly informed to only answer with closed answers; that is, strictly yes or no responses. The parent’s reflective perception is that the family reporter was struggling with her conscience, rather than the balance of probabilities at this point.

The protective parent was employed in stable employment, volunteered in the community, had provided extensive evidence of high capacity parenting, while successfully completing academic studies as a sole parent for years, was the long-term primary carer, had no DHS or criminal record, and had rebuilt much resilience after separating from the perpetrator of abuse many years prior to proceedings.

Compare the above with the other party. There was undisputed extensive, police-documented violence with historic substance abuse issues and a serious criminal record, acknowledged by the court. This parent had remarried. Despite the character of the ‘historically abusive’ other party, his hearsay of the protective parent’s accused neglect was admitted as fact, although not substantiated by the proceeding court invited DHS investigation. The Judge had stated words to the effect that that; **DHS gets it wrong a lot of the time.**

This same family reporter was **absolutely adamant**, (verbally at least but not physically in her body language), later in the day, after lunch, with no further discussion, or much time for deliberation, that the protective party she originally expression confusion to, should lose rights to have the children live with her full time. The independent children’s lawyer concurred.

This successfully influenced the judge to **reverse** residence arrangements for the children, inclusive of their long term school and sporting commitments. This occurred despite a separate independent, unbiased report by a specialist, much more experienced, trauma informed, behavioural child psychologist, strongly providing an extensive report with **significantly** contrary conclusions to the family reporter with recommendations in favour of the protective parent. When the Judge was reminded that the father had only originally put in a residential reversal motion for one child, and that the two younger children involved had indicated that they were happy to stay with the protective parent, this judge used the exact description; “**Collateral damage**” to describe the status of the younger siblings.

The new residential parent attempted to kill the protective parent and attacked the children within a year of this “**unprecedented order**”, as the Judge called it, while also noting the gasps of horror from the public in the courtroom. There are now long term intervention orders in place.

The protective parent and children are still recovering from the missed opportunity the family court had to protect them all. The father continued his destruction later severely attacking his own wife, then pouring petrol on himself threatening to ignite it, in the presence of children. She now also has a protective order. It has been confirmed to the specialised, police domestic violence unit managing him, that he is addicted to ice. He continues to drive a semi-trailer, as part of his employment in our community. The protective parent is busy repairing the ‘Collateral Damage’ that the family court inflicted on the children.

(Case no. is available to be forwarded to the Attorney-General if requested).

CASE STUDY 2 – A CHILDS VIEW

A child, (who very recently turned 18years), gave her views to an independent legal professional in an impartial interview. As her now adult status is new, her recollection of her experience is still fresh and viewed with a youthful perspective. This is a valuable, reflective insight, as it directly corresponds with the accompanying, previous case study, reported by the protective parent. This young person’s voice’, highlights the family courts inadequate capacity to effectively manage family violence issues in contested cases. It demonstrates the ripple effect of decisions which decreased the child’s quality of life, sense of security and increased the level of risk and harm that eventuated. The discretion used by the Judge in this case has resulted in this young person requiring intensive trauma-informed counselling. The author is optimistic this inquiry will be a conduit to amend legislation to significantly encourage and promote a child’s voice through proceedings. This is reasonable as the decisions made and consequences of such, directly affects their life.

A Child Victim of the Family Court system

At the time her parents split up, *Kat (15years old)* was a happy child, doing well in school, having positive self esteem and good relationships with friends and family. She was feeling stressed from the break-up of her parents and was told she had to meet with a family report Court writer for an assessment. This assessment took a total of 10 minutes, ten minutes that changed her life forever.

Prior to the day of meeting the Family report court writer, her father had coached her what she had to say...”He was brainwashing me, trying to get me to say all this bad stuff about mum which wasn’t true” and when I met with the family report court writer she diagnosed me with depression after 5 or 10 minutes. That was *Kat’s* only meeting with anyone for an assessment.

Kat believed she did not have an Independent Child’s lawyer to represent her interests, (as he had not spoken to her), and based on that 10 minute meeting the Family report Court writer made a recommendation that *Kat* live with her father.

The outcome of that changed *Kat's* life forever, once she was there with her father his abusive character came to the surface and the abuse her mum experienced, now *Kat* witnessed the domestic violence on a regular basis between her father and his new wife, often *Kat* would be coming between her father and his wife to prevent further physical abuse which resulted in her being assaulted and "thrown into the wall". This happened every couple of days and now *Kat* was experiencing guilt from what she was coached to tell the family court report writer which resulted in anxiety and for the first time *Kat* was feeling really depressed. I told my father I was thinking of harming myself and did not want to live anymore.

On top of the domestic violence which occurred "every few days" *Kat* was exposed to her father and his wife's drug addiction problem, they were on "ice". As a result *Kat* and the other children in the household were neglected, they were not given dinner and had to fend for themselves. They were not parenting at all and *Kat* although she did not get into drugs herself as a minor when she went out she would drink alcohol excessively and get drunk to forget what was happening at home.

As a result of the abusive environment *Kat* found herself in, although many times she told her father she wanted to go be with her mother, he would not let her, he became abusive towards her and *Kat* was too frightened to go see her mother or even talk to anyone about the predicament the Courts had placed her in.

Kat now has difficulties with relationships and finds it hard to trust people, as the trust she placed in her father and the Courts was abused to the point she found herself living in this nightmare, suffering with anxiety and depression, *Kat* now 18 years of age, an adult, cannot bring herself to have a meaningful relationship.

Reflecting back now, **BUT FOR the decision of the Court**, *Kat* feels she "would have finished school, had a car now...I would have been happier ...I wouldn't have anxiety all the time, I wouldn't be scared, I can't even walk around by myself I'm too scared."

It wasn't till the last incident of domestic violence when the ambulances came and 7 police cars turned up, that *Kat* finally found the courage to tell her father she wanted to go, her father grabbed her and threw her into the wall and resumed his physical attack on his wife, the scene was so traumatic that it finally became *Kat's* chance to get out and go home to her mother.

The adjustment even with counselling has been difficult, to see her brothers and mum living a normal life, a happy family, a sense of family, a home where her and her siblings are nurtured, loved and encouraged was as wonderful as it was heartbreaking for *Kat* to think of the abuse and neglect she had suffered all this time, **BUT FOR** those 10 minutes with that family Court report writer, she could have had a normal life.

Now as an Adult, *Kat*, if she could, she would pursue legal action against the family court report writer and the Court for the decisions that were made for her as a minor that have left her torn and broken with depression and anxiety she faces today, but with her mothers' love and support and (specialist family violence), counselling she is trying hard to live a normal life again.

Conclusion

Issues involving participating state jurisdiction reluctant to invoke 68R powers, family reporter expertise, standards, principles, accountability, complaints process, inclusion of neuropsychology, capacity to critically analyse and meaningfully interpret using unbiased quantitative information the judges' capacity to employ reasonable discretion, and financial wastage through the employment of independent children's lawyers, must be improved through legislation. The standard of family reports is pertinent to minimise poor judgements which cause further harm, which has proven catastrophic in too many family violence cases. The appointment of an **Integrated Education Manager** in the court system is also valuable to facilitate the best interests of the child's development, resilience and recovery from family violence.

Key Recommendations;

1. Refine the language to mandate compliance in the *Australian Standards of Practice for Family Assessments and reporting* (Family Courts, 2015). Use language to legislate for **exact** expectations to family reporters and anyone performing similar functions which they are accountable to and appropriate sanctions can be enforced if not complied with. All the language stating '**should**' must be changed to '**must**', in particular, where *accuracy* and *objectivity* is mentioned and where interviews with children are to be held away from potentially influential adults.
2. Include a significant consideration of professional character references and relevant community participation history in family reports.
3. Include consideration of the influence of the extended family, historic/current violence, sexual abuse and cultural, physical, mental health of all parties, and the educational and social issues, affecting involved children in **all** family reports.
4. Family reporters **must** request and consider a report from the school year level coordinator relating to each parents involvement and support of the child's education and known extra- curricular activities. This must also be provided for in relevant education welfare legislation.
5. Mandate for a significant consideration of **historic** violence and historic criminal history inclusive of current status, throughout family reports and proceedings.
6. Corroborative evidence to be included in the *FLA*, 1975, as a minimum standard for evidence of abuse claims.
7. Apply *standards*, (referenced above (1)), to preliminary assessments.
8. Permit party's to answer either open and/or closed answers during interviews.
9. Permit interview participant's to complete a written detailed questionnaire in lieu of a formal verbal interview as an option. A copy will be immediately provided to each party and will be the only communication relied upon for that particular interview.
10. A family violence advocate provided at the courts cost, or any independent family violence advocate of the participant's choice, must be permitted to

- attend and record relevant notes throughout all report writer interviews, if family violence, neglect or sexual abuse allegations are raised.
11. A mental health advocate must be provided at the court's cost, to assist any participant who requests mental health support during family report writer interviews.
 12. Each Family Court must employ a sufficient number of family violence and mental health advocates to adequately support and manage the daily hearing list.
 13. The document referred to in (9) is to be created by an experienced impartial advocacy association, (for example; Berry Street, White Ribbon or the Australian Paralegal Foundation), in conjunction with a specialised police domestic violence unit and one legal representative.
 14. All participants in verbal interviews are to be provided with, or permitted to record an unedited visual and/or auditory recording of participant interviews to be retained by participants for transparency, and to protect the participants' legal interests.
 15. Refine the language to mandate compliance, accountability and protective measures for victims of violence, inclusive of significant consideration that the victimised parent are often viewed by children as their best source of support and valuable for the child's recovery, throughout the *Family Violence Best Practice Principles*, (Bryant et al, 2013., 2016), and the relevant Policies of the Western Australian Family Court
 16. Revoke court conferred immunity for Family Reporters and anyone performing a similar function
 17. Full disclosure of possible conflicts of interest are to be listed clearly under the heading of any family reporters report, inclusive of past relations with legal personnel involved in proceedings.
 18. Create a list of appropriate sanctions for Family Reporters who do not comply with the abovementioned *standards* and *principles*, inclusive of a three strike rule. Create a professional court directed initial disciplinary procedure with transparent accountability and sanctions for practitioners who do not follow the standards.
 19. All family reporters and similar practitioners must meet AHPRA and respective professional registration requirements.
 20. Family reporters, and anyone performing a similar function, must conduct further education. This includes an understanding of relevant neuropsychology in relation to family violence, and includes gaining an insight of domestic violence through regular voluntary work at a domestic violence shelter or professional development from an independent family violence support group. A thorough understanding of quality, reliable, replicated, medically sound, ACE study,¹⁵⁷ (adverse childhood experiences), and Saunders' study¹⁵⁸, which focus on how domestic violence affects children and the management by the court systems, should be mandated. The

¹⁵⁷ Sourced at https://www.cdc.gov/violenceprevention/acestudy/about_ace.html on 01/05/2017

¹⁵⁸ Saunders et al., *Saunders study*, U.S dept of Justice, (2012), sourced at <https://www.ncjrs.gov/pdffiles1/nij/grants/238891.pdf> on 01/05/2017

- reasons PAS theories are discredited also needs to be understood. The dangers of focusing on alienating behaviour when abuse is alleged must be understood. These experts must also gain additional training in relation to critical analysis of information, and interpretation of information, in particular, with a demonstrated understanding of bias,
21. Social workers and court psychiatrists must not personally diagnose or provide inference, any participant with a **new** mental health disorder that was not documented to be significantly indicated or present prior to court proceedings.
 22. Independently obtained, medical, psychiatric, educational, sporting records, character references and criminal or substance abuse records, obtained from relevant professionals to be combined and reflective of status quo prior to proceedings to carry at minimum 75% of the weight of a family reporters conclusions.
 23. An independent family violence advocacy group in liaison with a police family violence unit and one legal representative to create an **exact checklist** of appropriate, qualitative home study requirements, provided to each party, where if a party meets these need the home must be deemed satisfactory regarding the best interests of the child.
 24. Any ordered home study investigation must meet specific criteria, (inclusive of an independent witness from a domestic violence advocacy), created and documented by the creative stakeholders, (listed in 23) pertaining to a genuine requirement to conduct a home study.
 25. Any conclusions drawn from a home study investigation, (see 23), must be agreed to by the independent domestic violence advocacy witness to be considered valid.
 26. Home study investigations must not occur twice within a 3 month period unless there is a significant reason for an exception. These reasons are to be documented by the creative stakeholders, (listed in 23).
 27. Family report writers, and any person performing a similar function, must present conclusions which can be verifiable and reasonable, (according to the accepted standard of the reasonable man test), and in consideration of trauma and family violence informed insight the report writer must possess.
 28. A mandate for the inclusion of an independent advocacy department led by *AHPI*, to examine and critically analyse family reports, to encourage validity, (accountability, impartiality, transparency and justice regarding humanitarian, legal, sound consistent methodology and professional expertise). This assessment is submitted with the family report for the courts consideration.
 29. Revoke the costly and inefficient inclusion of independent children's lawyers in all family court proceedings.
 30. In respect of (29), the family courts should document and make publically available on their websites, the percentage of cases where the independent children's lawyer has concurred with the report writer's recommendations in relation to who the child lives with.
 31. Conduct reflective, impartial longitudinal, verifiable research, using a questionnaire after 1, 2 and 5 years, surrounding the quality of the child's

- welfare regarding protective judgements. This research must be independently analysed to improve practice.
32. Sensibly amend section 121, without permitting the use of names, or addresses, to permit public discourse and accountability. Permit exemptions for *AHPRA* and *AHPI* for investigations.
 33. Remove the derogatory, subjective, language in the *Family Violence Best Practice Principles*, (Bryant et al, 2013, 2016), which claims that adult victims of family violence commonly have a diminished parenting capacity. This scientifically unsound consideration, must be replaced this with the contention that any proven violent abuser has a diminished capacity to parent.
 34. The definition of an abusive, neglectful or violent parent (for the purposes of 30), needs to be substantially defined and put into the FLA, 1975, inclusive of a minimum evidentiary standard for purposes of classification.
 35. Protective parents are to be recognised and defined as the *competent child authority* in accordance with the international *Child Protection Convention* provisions described in the FLA, (1975), in relation to the status of their child/children. This status should not be revoked unless there is a verifiable evidence that such parent has committed an act or behaviour, which significantly affects the child's best interests according to *community standards*, (see 33)..
 36. **Community standards** must be included in the FLA, (1975), as pertaining to the reasonable expectations and standards of the general public. Findings and judgements may be tested in proceedings, through an independently, randomly selected voluntary sample of 12 members of the public.
 37. **Community standards**, (as described in 36), must have significant jurisdiction and weighting in the judges consideration, over a report writer and also a child protection authorities stance if they conflict.
 38. The status of the long-term primary care-giver and/or protective parent to be clearly defined and detailed in the current Family Law Act, (1975). This status should be given significant weight in family reporter's considerations, relating to decisions regarding residence of the child
 39. It should be mandated in the current Family Law Act and associated *Principles*, (see 29), that a change of school and/or extra-curricular activities is not in the best interests of a child and this should be avoided unless there are significant risk issues.
 40. It should be mandated in the Family Law Act and associated *Principles*, (mentioned in (29)), that the child's relationships with extended family members and cultural considerations must be considered and given appropriate weight when determining residential arrangements.
 41. The affect and body language and verbal delivery of a family report writer or any person conducting a similar purpose should be considered towards weighting of any associated report.
 42. Australian Health Practitioner Regulation Agency, (AHPRA), must efficiently improve their complaints process using an integrated family violence advocacy led department, (as described in this response to the terms of reference), to hold report writers and child protection workers accountable to

the family law act and relevant child protection legislation, inclusive of mentioned *standards* and *principles*, and relevant protocols and procedures with corresponding court conferred immunity removed from relevant legislation.

43. A compensatory scheme must be initiated in a similar manner to VOCAT. This is independent from the court, informed, but not funded via AHPRA. It may be each states designated equal opportunity and human rights commission, (such as VEOHRC in Victoria), as recommended through the Royal Commission into Family Violence, 2016. This will have a separate department, specifically for court participants who have experienced further violence, or have been significantly deprived of their natural parental rights, or rights to spend time with their parent/s, as a consequence of grossly inaccurate family reports, where for example; significant negligence, bias or procedural disregard, is established. This must be a transparent process, independent of the court appellant system at no cost to the applicant. This may be funded through the removal of the independent children's lawyers throughout the family court system.
44. Amend the Child Youth and Families Act, 2005, (Sect 162, (1c, 1d, 1e, 1f), to reflect the words mother or father, not parents (plural), and not both, *mother* and *father* in one point either, (as CPS legal department have stated to the author that they can't use discretion to amend their files to reflect one parent as this statute presently stands.
45. Child protective services and the Australian State and Federal Courts are explicitly instructed, through clear legislative provisions, that they are not to apply the Child Youth and Families Act, 2005, (Sect 162, (1c, 1d, 1e, 1f.), to victims of physical, emotional or psychological violence who have taken adequate measures to protect the children, leave the risk situation and/or did not facilitate any alleged abuse.
46. *Protective parent* is to be defined in Child Protection Legislation to concur with no.35, of these recommendations.
47. Protective parents are not to have their children removed by child protective services by, unless a criminal standard of abuse or neglect is alleged and reasonably corroborated, by someone independent of child protective services, or appropriate supportive measures have been unsuccessful and it is determined by a significant community standard (as detailed in 36), in the presence of and with the participation of the parent, that this parent does not have capacity to adequately parent the child. In these cases kinship care must be prioritised as appropriate unless it is deemed inappropriate via mentioned community standards.
48. Child protection services must financially and psychologically support trauma/family violence affected families instead of prioritising the removal of children. This financial support will extend to educational and food/clothing resource support, short-term respite for the whole family and parenting resilience classes.
49. Legislate mandatory training for all family reporters and child protective workers which must include a two hour video of the impact of violence on

protective parents and children, inclusive of methods to support resilience and recovery of victims. This video is created from the victim/survivor perspective. The creation of this video is to be directly and equally funded by the Family Courts, Family Circuit Court and Child Protection Services and must be created by an independent, victims support network such as Berry Street, The APF or AHPI.

50. The obligation to nationally include the *Charter of Rights*¹⁵⁹ so that children benefit from the UNCRC provisions, and to increase rigor and validity of investigations through the inclusion of a child's voice, must be included in all relevant protective legislation involving youth, inclusive of all legislation listed in the *Child protection legislation in Australian states and territories, (AIFS,2), 2014*, and the Family Law Act, 1975,(cth).
51. A national inclusion of the *Charter of Rights*¹⁶⁰ will provide a more humanitarian response to children who have experienced violence or other abuse and this in turn will support resilience and recovery from trauma .An age appropriate brochure such as the one found in FACS, (2015), must be provided to each child in care and clearly explained by a legal representative.
52. Amend the Children Youth and Families Act, 2005 S.162, (c), (d), (e), & (f) to differentiate between a protective parent and/or an abusive parent. Do not apply this part of the Act to a protective parent as noted in the draft considerations of this act. Do not use the plural term **parents** if this is not applicable. This Act is not valid if applied to a victim of violence or his/her children if this person is actively working protectively and cooperating with police measures initiated or in place.
53. A child should be defined as being *in need of protection only* if it is proven to a reasonable standard, (community standards as defined in 36 or a civil standard), that they do not have a parent with the capacity or intent to protect them. This must underline all considerations of whether a child should be deemed in need of protection. This must be nationally inserted into all child protection legislation and the family law Act 1975, (cth).
54. Repeal the legislation in the Children Youth and Families Act, 2005, Section 162 (3) inserted by no.52/2013, s.6, where the court can predict events to occur or not occur, even where the court is not satisfied that these predictions will or will not occur.
55. In reference to 54, insert legislation into the Children Youth and Families Act, 2005, Section 162, (3), which clearly states that courts must be satisfied to a civil standard that events may or may not occur.
56. This submission proposes, in regards to the recommendation by the Royal Commission into Family Violence Summary¹⁶¹, that the State and territories facilitate a powerful and efficient advocacy peak advocacy network led by victims, (this author adds), survivors who are now warriors and who have insight into the gaps in the system to catalyse meaningful, protective, ~~respectful liaison~~. This author and associated network of advocates and

¹⁵⁹ OCG, (2014), Office of the children's guardian, Information sheet 1, standard 1., sourced online at; www.kidsguardian.nsw.gov.au/ArticleDocuments/451/Informationsheet1.pdf.aspx on 21/04/2017.

¹⁶⁰ OCG, (2014), Office of the children's guardian, Information sheet 1, standard 1., sourced online at; www.kidsguardian.nsw.gov.au/ArticleDocuments/451/Informationsheet1.pdf.aspx on 21/04/2017.

¹⁶¹ Royal Commission into Family Violence Summary, sourced online at <http://www.womenslegal.org.au/files/file/SUMMARY%20RECOMMENDATIONS.RC.ALLSUBS.pdf> on 24/04/2017

- stakeholders are willing and able, to lead the implementation of this recommendation in Victoria. We sincerely offer and recommend the employment of our collateral knowledge and experience for this purpose.
57. State and Territory Judges are to be further educated regarding their capacity to vary or suspend family court orders and encouraged to appropriately use these measures when **interim** intervention order is active, without the previous 21 day expiry, in accordance with the Family Law Act, 68R amendment, 2015.
58. State and Territory Judges are to be further educated regarding their capacity to vary, suspend or revoke family court orders and mandated to appropriately use these measures when a **permanent** intervention order is active, without the previous 21 day expiry, in accordance with the Family Law Act, 68R amendment, 2015.
59. Contested family court cases flagged with family violence concerns are first considered in a State court hearing which is limited to the allegations of abuse and domestic violence. This is secondary to a final intervention order hearing where complex matters and findings of fact can be thoroughly investigated further with a more defined focus on the *safety* as well as best interests of the child, in accordance with the *Safe Child Act*¹⁶². The findings from this case can then inform a protective direction of family court judgements.
60. The Family Law Act amendment in 68R, 2015 must extend to orders made by the County Court, Supreme Court and all Ministerial orders relating to child protection. State and Territory Judges are to be given capacity to vary or suspend **child protection orders** and encouraged to appropriately use these measures during proceedings where parents have evidence of abuse, arising from the *parens patriae*¹⁶³ jurisdiction of the state including child protection services or carers where there is a need to protect the child from abuse.
61. The intervention of the key recommendation 60, automatically initiates new proceedings determining the validity and need for a child to be deemed in need of protection by Child Protection Services, and/or removal by the state. The safety and best interests of the child should then be weighted between the state and a return to the parent/s home.
62. The risk assessment practices where a ¹⁶⁴Care and Treatment Order for a Child, is enforced by a designated medical officer, must be substantially reviewed to assess if medical intervention is immediately required. This decision must be made by an **impartial** health regulator and consider prior judgements made through courts, parental capacity, availability and genuine consideration of sound research and medical history supporting the parents knowledge and beliefs, and detail conditions applicable for the child to be deemed 'at risk'. If there are no pending criminal charges it is reasonable that

¹⁶² Safe Child Act; http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, sourced on 30/04/2017, created and submitted to The House of Representatives, 29th legislature, 2017, State of Hawaii, H.B. no: 697 researched and designed by B. Goldstein.

¹⁶³ Cornell University Law School, Sourced at https://www.law.cornell.edu/wex/parens_patriae on 30/04/2017

¹⁶⁴ Public Health Act, 2005, Div 6, s197, sourced at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubHealA05.pdf> on 29/04/2017

viable options should be provided to the parents and discussed prior to any removal from parental care.

63. Where a ¹⁶⁵Care and Treatment Order for a Child, is enforced by a designated medical officer legislation¹⁶⁶ instructs that this officer must inform, and if requested, provide a copy of the Order to the parents prior to the child's removal from the parents custody. This designated officer **must** also tell parents they can go to a doctor chosen by the parents¹⁶⁷, (unless the parents are reasonably likely to be charged with a criminal offence in relation to the child or this provision may expose the child to harm). It must be mandated that parents receive a hard copy of the ¹⁶⁸Care and Treatment Order and are formally informed in writing of the provision to use a preferred doctor prior to any removal of the child into the designated medical officers' care or anyone performing a similar function and purpose.
64. Review all Child Protection Act's to provide open disclosure to parents concerning any information requested pertaining to their child. Revoke legislation such as the Child Protection Act, 1999, (ch, 6, div 3, 191), where the potential to maliciously avoid disclosure is unacceptable, and open to corrupt behaviour not in the best interests of the child. If it is deemed that disclosure to parents would not be in the best interests of the child this needs the oversight of a detailed police report explaining reasons for this determination.
65. Revoke Family Law Act, 1975, Section 60CD, (2b,) as discussed in this paper.
66. Amend the Family Law Act, 1975, Section 60CD, (2c), to be a mandatory consideration for determining a child's views.
67. Amend the Family Law Act, 1975, Section CE to mandate an invitation for the child to provide views weighted with developmental and emotional intelligence considerations.
68. Mandate for the use of a safeguard in the FLA, 1975, (60CG), in all instances where a family violence order is active, or there is evidence of any risk, historic or as identified through the risk assessment process, do not leave safety as an option.

¹⁶⁵ Public Health Act, 2005, Div 6, s197, sourced at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubHealA05.pdf> on 29/04/2017

¹⁶⁶ Public Health Act, 2005, 'ibid', Div 6, s200, 1a, 1c

¹⁶⁷ Public Health Act, 2005, 'ibid', Div 6, s200, 1e

¹⁶⁸ Public Health Act, 2005, Div 6, s197, sourced at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PubHealA05.pdf> on 29/04/2017

69. Detail and recommend a sound guideline for appropriate safeguards for inclusion in the FLA, 1975, (60CG), under varied circumstances. These must be created in conjunction with domestic violence shelters, specialised domestic violence police units and legal representatives.
70. The State Government **must** create a national data collection and evaluation framework that can assist departments, courts, police, services and programs to review, monitor and measure and improve their impact in addressing and responding to family violence.
71. Subjective opinions used in any family report or child protection report must concur with the conclusions of the evaluations, (detailed in key recommendation 70), to be considered valid.
72. Goldstein's provisions¹⁶⁹ as adapted from the *Safe Child Act*¹⁷⁰, must be included in the definition of appropriate **safeguards** in the Family Law Act, 1975, (60CG), and mandatorily applied throughout the construct of family court orders.
73. Appointment of an **Integrated Education Manager** in the courts, as discussed in this submission.
74. Education department to train all teachers with how to teach and assess trauma/family violence affected students. These teachers can then liaise with the Integrated Education Manager and parents and help support affected student needs more effectively. This will help facilitate recovery from family court managed family violence issues.
75. Eliminate the terms and inferences of **alienation** and **enmeshment** from all family reports as their misuse has commonly contributed to judgements which are not protective.

¹⁶⁹ Barry Goldstein's Safe Child Act Provisions sourced at <http://barrygoldstein.net/important-articles/safe-child-act> on 02/05/2017

¹⁷⁰ Safe Child Act; http://www.capitol.hawaii.gov/session2017/bills/HB697_.HTM, sourced on 30/04/2017, created and submitted to The House of Representatives, 29th legislature, 2017, State of Hawaii, H.B. no: 697 researched and designed by B. Goldstein.

Bibliography

AIFS, (2014), Australian Institute of Family Studies in the Longitudinal Study of Separated Families, *Post-separation parenting, property and relationship dynamics after five years*. Canberra: Attorney-General's Department. Qu, L., Weston, R., Moloney, L., Kaspiw, R., & Dunstan, J.

AIFS, (2016), Australian Institute of Family Studies, *Australian legal definitions: When is a child in need of protection?* Child, family, community, resource sheet, (CFCA Resources April, 2016), sourced on 24/04/2017, online at; <https://aifs.gov.au/cfca/publications/australian-legal-definitions-when-child-need-protection>

AIFS,(2), (2014), *Table 1. Child protection legislation in Australian states and territories*, sourced online at <https://aifs.gov.au/cfca/publications/australian-child-protection-legislation>, on 23/04/2017

Andrews, D., (2016), *Promoting Respectful Relationships in our schools and Kinders*, The Hon, Daniel Andrews MP, sourced online at <http://www.premier.vic.gov.au/promoting-respectful-relationships-in-our-schools-and-kindergartens/>, on 24/04/2017.

Au. & NSW LRC, (2010), Australian and New South Wales Law Reform Commissions, *A National Legal Response*, Chapter 16.

Care and Protection Act, (1988), Children and Young Persons (Care and Protection) Act 1998, (NSW), (the Care Act) No 157, Assented to 14.12.1998.

(CPA), 2015, Child Protection Practitioners Association of Queensland, Submission, 24 April 2015, as reported in the Family Law Council's final report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (2015).

Bryant, et al, (2016), *The Family Violence Best Practices Principles*, 01/12/2016, revision of 3.2, <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/family-violence-best-practice-principles>, sourced online on 14/04/2017. ISBN 978-1-920866-02-0

Chisolm, (2014), *The Sharing of Experts' Reports between the Child Protection System and the Family Law System*, Professor Chisholm, Attorney General's Department, issuing body web (copy 1) intranet library catalogue/01017031, sourced from FLC, 2015.

Creswell J.W, and Miller D.L., (2000), *Determining Validity in Qualitative Inquiry*. Theory into Practice, Vol: 39: 124-130

FACS, (2015), NSW Department of Families and Community Services, *Charter of Rights* Booklet, concept design by Peter Sheehan, (www.petersheehan.com), Artwork used on page 11 by B. Jarrett, ISBN 0 7310 4394 4, Programs and Service Design, NSW Department of Family and Community Services, Locked Bag 4028, Ashfield NSW 2131

Family Courts, (2015), Developed by the Family Court of Australia, Family Court of Western Australia and Family Circuit Court report, *Australian Standards of Practice for Family Assessments and Reporting* – (February 2015) sourced online <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/asp-family-assessments-reporting> on 14/04/2017

Fitzgerald, T., (2011)., La Trobe University, Bundoora. EDU5RME. Semester two. Lecture delivery.

FLC, (2015), The Family Law Council's interim report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (June, 2015). Described by the Full Court of the Family Court, in *Amador & Amador*, (2009) 43 Fam LR 268

Jorgensen, D. (1989), *Participant Observation; a methodology for human studies*, Newbury Park, Calif.: Sage Publications

Hurley et al, (2014)., Hurley, D., Dowsley, A., Dowling, J., & Hadfield, S. (14.02.2014). *Killer dad Greg Anderson's parents speak*. Herald Sun. Sourced online on 20/04/2017, from <http://www.heraldsun.com.au/news/law-order/killer-dad-greg-andersons-parents-speak-and-friends-reveal-his-anger-at-police-and-luke-battys-mum/story-fni0ffnk-1226826516956>

Kuhn, Thomas, (1962), pg, 197a, 66-76, (1970), pg, 202., *The Structure of Scientific Revolutions*, International Encyclopaedia of Unified Science, ed. Neurath and Carnap.

The Family Law Council's final report on *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (2016).

LeCompte, M., and Goetz J., (1982), *Problems of Reliability and Validity in Ethnographic Research*. Review of Educational Research, Vol: 52: 31-60.

Martin, Francis., (2017), *Working in Cognitive Psychology*, Australian Psychological Society, sourced at <https://www.psychology.org.au/Content.aspx?ID=3824>, on 25/04/2017.

McCall, G., and Simmons J. (1969), *Issues in participant observation; a text and reader*, Reading, Mass.: Addison, Wesley Pub. Co.

MIA, (2004),., *Minister for Immigration, Multicultural and Indigenous Affairs v B*, (2004) 219 CLR 365.

Mitchell, CM, (2007)., Scott Mitchell CM, 'The Children's Court of New South Wales Practice Direction No. 28: Case management in the Care Jurisdiction' (12 September 2007)

Morris, M, (2016)., *Tara Costigan struck down with axe as she fled 'pure evil' ex-partner, sister says*. ABC news sourced on 21/04/2017 at <http://www.abc.net.au/news/2016-07-19/tara-costigans-sister-describes-horrific-murder-by-marcus-rappel/7216258>

NFVS, (2017), National Family Violence Summit, held in Canberra, 28/02/2017 and 01/03/2017, facilitated by the Tara Costigan Foundation and sponsored by BaptistCare, <http://nfvsummit.com.au/the-summit/the-program/> and <http://nfvsummit.com.au/about/the-summit/>

NSW; MRG, (2017), Childs Story Reporter, Mandatory Reporter Guide sourced online at <https://reporter.childstory.nsw.gov.au/s/> on 21/04/2017

NSW, (2017), *Child story reporter, significant harm definition*, sourced at <https://reporter.childstory.nsw.gov.au/s/article/ka4280000004zmNAAQ/Significant-harm-policy-definition> on 21/04/2017

OCG, (2014), Office of the children's guardian, *Information sheet 1, standard 1.*, sourced online at; www.kidsguardian.nsw.gov.au/ArticleDocuments/451/Informationsheet1.pdf.aspx on 21/04/2017.

Spradley J., (1980), Participant Observation, Fort Worth.

Stanford, (2013)., Stanford Encyclopaedia of Philosophy., *Thomas Kuhn*, First published Fri Aug 13, 2004; substantive revision Thu Aug 11, 2011, sourced online at <https://plato.stanford.edu/archives/fall2013/entries/thomas-kuhn/#4.2> on 13/04/2017.

QTR, (2015), Queensland Special Taskforce on Domestic and Family Violence, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (abrev. 'Queensland Taskforce Report').

UNC, (2016), UNC School of medicine, *The Department of Neurology*, University of North Carolina Chapel Hill, sourced online at, <https://www.med.unc.edu/neurology/divisions/movement-disorders/npsycheval>

UNCRC, (1989), United Convention on the Rights of the Child, opened for signature 20 November 1989, (entered into force 20 September 1990).

UNCRC, (1989b) Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), ratified by the Commonwealth in 1990 Section 9 of the Children and Young Persons (Care and protection Act, 1998). NSW.

WLSV, (2016), Women's Legal Service Victoria, Royal Commission into Family Violence Summary of Recommendations, Submission 3, Multi-jurisdictional Issues, Strengthening Family Violence Frameworks in the Family Law System, Family Consultants, no.16), sourced at <http://www.womenslegal.org.au/files/file/SUMMARY%20RECOMMENDATIONS.RC.ALLSUBS.pdf> on 24/04/2017

Contributors

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Luke's Army an NGO sourced from <https://www.facebook.com/LukesArmy/>, 14,500 members as at 08/04/2014 when administered under Michael Borusiewicz.

Anonymous X an NGO sourced at <https://www.facebook.com/AXMelbourne/> 16682 members as at 26/04/2016.

Sole Fathers United, https://www.facebook.com/pg/SoleFathers/about/?ref=page_internal, a not for profit community group with over 6143 followers as at 26/04/2017.

Sole Mothers United, sourced at <https://www.facebook.com/Sole-Mothers-United-1387483861472202/> on 26/04/2017, an online community support group

Australian Legislative Ethics Commission, (Alecomm). A Community Advisory Service, Alecomm runs various community development programs, also providing education, support and advocacy to clients involved in the human services. sourced at <http://www.alecomm.com/> on 26/04/2017.

AHPI, Advocating for your health and privacy information, sourced at [https://www.facebook.com/ahpi.net.au/on 26/04/2017](https://www.facebook.com/ahpi.net.au/on-26/04/2017), webpage: healthfamilylaw.net

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