A Better line of inquiry to inform the Committee

The areas of concern, processes to be improved upon, gaps to be eliminated, or troubling questions and consequences of judgements that exist , in theory and practice, directs this inquiry to the pertinence for meaningful understanding and deliberate investigation.

This involves the **thoughtful selection of questions to inquire and inform the committee.** This awareness must prioritise the stakeholders' level of demonstrated expertise and proven successful management of family violence issues.

This includes an awareness of any vested interests of stakeholder contributions. It must consider whether the stakeholder is proposing reforms which fit the purpose of this inquiry or are misguiding the committee with self serving interests.

The gaps in the family court system largely surround the following issues, (expanded upon in submission 8). Each issue listed has questions, which if asked, will provide insight towards reform;

There is an urgent need for trauma-informed training for family consultants to facilitate higher quality family reports, and more protective judgements.

There is an urgent need to promote excellent practice throughout the family report writers' risk assessment framework. This must be guided through providing informed direction to improve expertise, methodology, interpretation and validity of information, transparency and the accountability required for a more accurate and protective process.

The author in submission 8, provides efficient and credible recommendations to facilitate higher quality family reports to inform the Judge. This implementation will consequently improve the management of family violence and abuse, and facilitate more protective judgements.

During the Attorney General and Social Services Department's verbal submission, Ms Sharon Claydon MP asked if the proposed 17 new court-based family consultants would have to have specific training in family violence. Ms Esther Bogaart, (from the family violence taskforce in the Attorney General's Department), informed the inquiry that there are **no mandatory domestic violence training or cultural expertise requirements** for family consultants, but anticipated that this specialised training is intended be included in the $180,000 set aside to fund training over two years.

Question 1. Why are Family violence experts not adequately utilised to investigate family violence matters in the family court, family circuit court and child protection system?

Question 2. Considering the Australian Institute of Studies evaluation statistics of 2015, which state that family violence occurs in 36% of court matters and child abuse in 22%, and lack of participation for the previous voluntary '*Doors'* training program, is it reasonable that there are no mandatory training requirements for family violence training and experiential expertise?

Question 3. Is it reasonable that only $180,000, (delivered over two years), of the 10.7 million, (available over 4 years), allocated to the courts for additional family consultants is spent on '*training improvements'*?

Considering these training improvements are still being developed, the answers to the following Questions could be provided to further relevant verbal submissions, and possibly taken on notice by Ms Bogaart;

Exactly what training improvements are to be supported?

Who is developing the curriculum?

Will the educators developing this training include family violence experts? And if so;

How will the family violence expertise of trainers/teachers be determined?

Does this training include the development of sound, researched backed, family violence inclusive curriculum?

Will this proposed training include improved methodology and skills for the family consultant to meaningfully interpret and critically analyse information, provided during the assessment process?

Will this training help the court consultant develop practices to improve and review patterns with the outcomes of their cases, so they can know when common approaches are failing to protect children?

How will this proposed training improve the transparency and accountability processes of family consultants?

Will this training involve training family consultant supervisors, employed to monitor the consultants' application of expertise acquired throughout training, protocol and impartiality?

Family Violence experts state that Judges, ICL's and report writers must comprehensively understand the critical areas of knowledge[2], to be adequately trained in family violence, inclusive of;

1. Understanding relevant neuropsychology to inform 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 discredited PAS theory
5. Victim narratives.

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

With regard to no. 3, the effects of violence on children,;

Question 3b. What training does relevant legal personnel and consultants undertake in understanding the effects of trauma in children?

Question 3c. Do family court personnel understand that forcing a child who has been a victim of serious abuse into contact with the perpetrator, (including supervised contact), will re-traumatise that child?

Question 3d. Why are some court social workers, psychologists and a retired judge, permitted to publically perpetrate the myth that most allegations of abuse are false, despite sound research to the contrary?

Question 3e. Are social workers, psychologists and judges adequately trained to comprehend the extent of emotional damage inflicted, when victims of abuse are not believed?

Question 3f. Why are many ICL's endorsing the restriction of access to a parents' choice of medical professional for their child, especially when they are not medically qualified to assess a child's medical needs?

Question 3e. Why are family courts often ordering parents and children to see court chosen psychologists, where there is supporting documentation that they have not experienced any mental health issues prior to proceedings, and where this is not necessary?

The Doors[3] preliminary screening tool has been mentioned, (through the Family Law Council's verbal submission), as a previous voluntary training consideration for family consultants. This was not intended to provide any formal diagnosis or recommendation or as a substitute for assessment.

Question 4. Will proposed training include a comprehensive understanding of family violence issues, inclusive of the critical areas of knowledge above, in addition to improved preliminary screening, to help facilitate an accurate assessment?

[3] Detection of overall risk screen, (Doors), http://www.familylawdoors.com.au/research/

Constituents state that family consultant trauma-informed training must be presented by domestic violence advocates and/or other similar experts knowledgeable about safety practices and current scientific research.

Question 5. Is it possible that the courts may provide additional funding, or redistribute the 10.7 million provided for the additional family consultants, to domestic violence agencies and informed advocates and to help train family consultants in critical areas of family violence knowledge?

Question 6. With consideration to the timeframe involved in developing, delivering and hopefully assessing family consultant training, is it possible that funding from the 10.7 million may be allocated to provide immediate family violence experts, to assist family consultants during assessment?

Ms Claydon wisely inquired regarding the practical impact of employing the 17 additional family consultants on the courts. Ms Bogaart replied that this would provide more consultants, (qualified social workers and psychologists who specialise in child and family matters after separation), to provide the following functions;

Ms Bogaart stated their function is to help with the caseload and triaging and early finalisation to help with complex matters sooner. They can identify violence and risk issues to mitigate further trauma and risk through lengthy processes by bringing these issues to the courts attention early.

Question 7. Past and present chief judges have publically stated that the family court cannot adequately investigate abuse issues, how will expediting this process support victims of violence and abuse?

The Australian Paralegal Foundation submitted that current family reports often contain; "*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". This highlights a requirement to focus on methods which support a more accurate report.

Question 8. An accurate assessment is vital to inform protective determinations. How does the family consultant validate their recommendations?

Question 8b. Why are the family courts, in practice, still endorsing the friendly parent provision 5 years after the 2012 amendments, through often removing children from parents that raise allegations of abuse?

Question 8c. How is it possible for the courts to differentiate between vexatious counter allegations from genuine abuse claims?

Question 8d. Why is a parental alienation claim often prioritised, in practice, over the capacity of a protective parent raising family violence and abuse is allegations?

Question 8e. Why are report writers and ICL's, often recommending that judges order children to live with documented abusers?

Question 9. In the interests of procedural fairness, transparency and accountability, can an unedited audio visual recording of family consultant interviews be provided to each party?

The family courts collectively developed and released *Australian Standards of Practice for Family Assessments and reporting*[4]. The language throughout this report highlights unacceptably broad expectations which permits often inappropriately applied discretion by consultants.

[8]Australian Standards of Practice for Family Assessments and reporting, February 2015.

Question 10. Do you agree that where the *Australian Standards of Practice for Family Assessments and reporting*[5] suggest that family consultants *should* commit to *accuracy* and *objectivity*[6] and where they *should* conduct interviews with children away from influential adults, and where consultants *may* consider whether there are unresolved criminal or state welfare proceedings, (ignoring historic violence altogether) this does not adequately support an accurate or protective assessment?

Question 11. Would the courts support the replacement of the words 'should' and 'may' with the term 'must' in the *Australian Standards of Practice for Family Assessments and reporting*[7], to facilitate more accurate family reports?

Question 12. Why do the Australian Standards of Practice for Family Assessments and reporting[8], not apply to preliminary assessments by Family Court report writers, such as child inclusive conferences, mediation or case assessment conferences?

This lack of investigatory rigor supports incomplete initial observations, which may pre-emptively mislead judges and ICL's during proceedings. In practice, the court does consider this unreliable, often heavily weighted evidence, provided by the family consultant in making preliminary decisions throughout proceedings.

This could be characterised as an error of law, compromising the rule of law and denial of natural justice[9] where the Court is considering (and heavily weighting) unreliable evidence and not considering relevant evidence. Whether the legislation intended this or it is the outcome, the validity and constitutionality of such decisions, is cast into doubt.

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[6] Ibid at Conducting Assessments S.11(a).

[9] 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 words[10]

"…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 Constitution[11]."

Granting gratia arguendo that a judge of the Family Court[12], or a justice of the Federal Court of Australia[13], is not an officer of the Commonwealth merely highlights the irregularities that occur in the Family Law arena.

Question 13. Does the court support the implementation of a professional court directed disciplinary procedure or transparent accountability for practitioners who do not follow the court developed, *Australian Standards of Practice for Family Assessments and reporting*[14]?

Ms Saint, (from the Family Law branch of the Attorney General's department) elaborated by detailing that consultants, in the pilot parental management hearings, can provide information gathering using social work and psychologist expertise, to identify issues, assist with safety planning, and provide timely information about the family to the hearing, so those that are hearing the matter can make a well informed decision regarding the family dynamics.

This may be appropriate in cases not involving family violence. However, where training is voluntary, underfunded and there remains questions regarding the construction and delivery of the content, this approach does not fit more complex matters involving family violence and safety. A parallel

[10] Annetts v McCann (1990) CLR 596 at 598.
[11] Re Refugee Review Tribunal; Ex Parte Aala (2000) 204 CLR 82 at 101 [41].
[12] *Judiciary Act 1903* (Cth), s 39B(2)(b).
[13] Re Jarman; Ex parte Cook (No. 1) (1997) 188 CLR 595.

system which is inclusive of family violence matters has been documented in submission 8.

A post graduate degree in mental health such as psychology, psychiatry or social work absent specialized and approved training should not be considered evidence of family violence expertise.

The statistics on family court cases involving family violence vary. Professor Chisholm's Family Courts Violence Review, (2009), which stated that; " More than half the parenting cases that come to the courts involve allegations by one or both parties that the other has been violent…"

National Legal Aid data from 2014-15, found domestic violence was a factor in 79% of cases nationwide[15]. This inquiry has recently discussed much lower statistics provided below, however no matter what variables are used in research, it is clear that family violence and abuse matters are present in a substantial number of families involved in the family court system.

Question 14. Would it be more appropriate and accurate, to employ family violence experts (rather than family consultants),to investigate, manage and write reports on the (minimum) 36% of court matters which involve family violence and the 22% which flag child abuse?

It may be possible that further inquiries regarding how the family consultants' family violence expertise and competency is defined and improved, can also be further questioned with Ms Bogart's family violence taskforce which is focused on this particular area.

[15] Domestic violence cases in 72pc of cases the lowest in the country, new figures reveal, April 17, 2016. http://www.abc.net.au/news/2016-04-18/domestic-violence-a-factor-in-72pc-of-family-law-cases/7334150 , sourced on 19/06/2017

State and territory courts need to exercise shared power to amend orders and streamline separate jurisdictions.

State and Territory judges must be encouraged to support victims of violence through including the 68R amendment on intervention orders which addressing inconsistencies between family law orders and intervention orders, for compliance with 60CG ,(1a).

This may potentially reduce repeated proceedings in family court if the state or territory direction is not contested. This capacity for shared power concerning family court orders simplifies the process for victims of violence and has the potential to limit the financial and emotional costs of further court action.

Question 15. The Family Law Act, (1975), 68R amendment currently permits State and Territory Judges who are managing state family violence orders to modify family court orders. Why are State Judges reluctant to use this power in practice?

Safeguards must be included in the Family Law Act, (1975), 60CC and 60CG best interests[16] considerations, where there is evidence of any risk, including historic factors or as identified through the risk assessment.

The FLA, 1975, (60CG),1b is not adequately protective as it leaves this safeguard as an option without guidelines for appropriate safeguards under varied circumstances.

There is a need to detail and mandate a list of appropriate safeguards in legislation, in relation to how family courts should manage family

[16] 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

violence. This will help facilitate accurate and protective judgements for families affected by family violence, Goldstein's provisions[17] as adapted from the Safe Child Act, (provided below), must be included in the definition of appropriate ***safeguards*** in 60CG and mandatorily applied throughout the construct of family court orders. This trauma-informed Act, is a safety first approach, based on current sound family violence informed research.

Question 16. Why does the Family Law Act, (1975) and various courts, fail to employ adequately detailed best practice safeguards to improve the safety of children, throughout proceedings where family violence is identified?

An example of appropriate Safeguards;

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.

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

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

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.*

Question 17. How can we legislate to apply the safeguard, to prioritise the safer protective parent, and clarify the interpretation and application 'best interests' accordingly?

There is a need for an independent court at State level, with the higher evidentiary standard, to identify risk, prior to Family Court proceedings.

An independent State level investigation into family violence matters involving family violence, abuse experts and legal assistants, (conducted similar to a VOCAT tribunal), could facilitate a more accurate assessment of family violence risk factors. This is due to a more defined focus on family violence, abuse and the higher evidentiary State probabilities standard.

This proposed process is secondary to a permanent family violence order. It also has the potential to reduce the time and costs involved in family court proceedings, as cases can commence with a foundation of facts, provided by the State court.

Question 18. Would the family court support the development of an independent process, after a family violence order is granted, where a State court conducts investigations, focused on the **safety** as well as the best interests of the child, but limited to abuse and family violence matters, and could make findings of fact, prior to any complex family law proceeding?

Child Protection legislation found in Child Youth and Families Act[18] commonly known as the *'failure to protect laws'* are being used against the protective parent who are victims of violence to remove their children.

This legislation broadly directs report writers to interpret general frameworks without specifying an exact procedure considering protective circumstances.

The Children Youth and Families Act, (sec, 162), 2005 (Vic)[19] and similar, is commonly misused against parents who have experienced violence, to remove their children. This is being applied contrary to the intent during the drafting process, which explicitly discussed that this legislation should not be applied to protective victims of violence.

Child protection services, '*CPS*', in practice, offer little support to victims. A more protective approach, in consideration of UNCRC[20], would be to support the protective parent and uphold the child's rights, in leaving the risk situation and in facilitating supports to rebuild the **intact** family.

Question 19. Why is the Child Protection System removing children from protective parents, who are victims of violence, under the 'failure to protect laws', even in cases where the relationship is over?

[18] Child Youth and Families Act 2005 , S.162, SS.1c-f.
[19] Children Youth and Families Act, 2005 S.162.
[20] 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.

Question 20. Why does the Children Youth and Families Act, 2005[21], not differentiate between the protective and the abusive parent, if applicable, so that protective parents of victims of violence are not subjected to unreasonable child removals?

Question 21; What are the researched backed developmental outcomes for a child deemed at risk due to family violence and removed into the system, compared with one left to reside with a protective parent?

Implement supports and programs for victims of violence

There is an urgent need to create programs and supports within and outside the Family Court and Child Protection System which promote recovery and empowerment of a protective and victimised parent. This must go beyond just specialised counselling. The Child Protection System should not remove children from this protective parent, who has reasonably acted to shield the child and protect from harm, instead they should support the family holistically.

Question 22. Do the Child Protection and Social Service Systems adequately support and protect, help with recovery, and support resilience for victims of violence, in practice?

The role of an independent children's lawyer, (ICL), does not adequately present a child's view. An ICL does not meet community expectations or the purpose of congruently presenting a child's voice or paradigm for the purposes of this inquiry.

The primary function of an independent children's lawyer is to determine the child's best interests not the child's voice.

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

There are pertinent concerns surrounding 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 insights. It is detailed in 68L, (5), that an ICL ***may***, ***under specified order***, find out the child's views.

An ICL's function is an inadequate representation of the intent of 60CC,(3),(a), which highlights a consideration of the child's voice. 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.

There is a provision in 60CD, (2c), for the Court to consider the child's views by other means it deems appropriate. This legislation must be amended to prioritise corroborative evidence over an ICL's uninformed opinion. This evidence could be inclusive of a child's diary, letters, drawings, disclosures to educators and other relevant professionals. A letter or verbal submission from the family's school counsellor would be more reliable to present the child's views than an ICL's opinion, to satisfy 60CC, (3), (a). This should also be considered to hold more weight than the view of an ICL, if one must be used.

Any issues and corroborative evidence concerning the child's views including residential preference involving domestic violence and trauma should be delegated to a trauma informed professional that can produce a report for the Court. It is pertinent that section 60CC,(3),(a) is amended to support this inclusion.

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.

Question 23. Considering that the ICL represents the child's *best interests,* and not the actual child, how often and through what process, is a child's voice and paradigm adequately heard, in practice, in the family court, family circuit court and child protection proceedings?

Question 24. Do the courts conduct research on how often is a child's voice heard in the courts, during *contested* matters involving family violence and abuse?

Question 25. The child's voice is deemed an additional consideration in the FLA, (1975). Why is the child's voice not considered a primary consideration in the legislation surrounding best interests?

Question 26. In complex matters involving family violence and abuse, why is a family violence or abuse expert, (who holds greater insight into these matters), not employed by the court, to congruently present the child's voice?

The role of an independent children's lawyer is redundant, not fit for purpose and must be removed.

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 to escalate conflict and blindly side with the also ill-informed family reporter. The role of an independent children's lawyer should be removed from all future proceedings.

Question 27. Is there any available data detailing the number of occasions an ICL has not concurred with a court-ordered family consultant?

Question 28. Considering the ICL does not represent the child. Does the ICL perform a function which is not replicated by the family court consultant, (who also determines best interests), and the parents lawyers, (who represent the parents interests)?

The Australian Paralegal Foundation, informed by over 40,000 victims and NGO's, submit that many independent children's lawyers rarely comply with many of their expected guidelines[22] to promote best interests in practice.

Section 121[23] of the Family Law Act, 1975 limits public knowledge and review and informed reflection and improvement of practice regarding the management of family violence in the family court.

There is an urgent need to evaluate the risks and benefits of case judgements and outcomes. This will limit the risks endorsed through the current subjective process. This can then be used to create supportive legislative alignment, with any protective conclusions identified through the research.

Question 29. In consideration of section 121 of the FLA, how do the courts promote the critical analysis, reflection and discussion required to improve practice and facilitate protective judgements?

[22] Guidelines for independent children's lawyers, Family Circuit Court website, (2013) http://www.federalcircuitcourt.gov.au//wps/wcm/connect/fccweb/about/policies-and-procedures/guidelines-independent-childrens-lawyer sourced on 15/06/2017

[23] FLA, 1975, section 121, sourced at http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s121.html on 02/05/2017.

Family reporters, and child protection workers and Independent Children's lawyers are not family violence experts. They therefore do not have the capacity to determine or provide accurate reports in the best interests of the trauma-affected child.

Family reporter's, child protection workers and independent children's lawyers, do not have adequate educational or experiential capacity, to consider family dynamics, participant behaviour, relevant and complex issues, such as family violence, substance abuse, child welfare developmental stages and needs, through a family violence paradigm.

Question 30. Why are family reporters, child protection workers and independent children's lawyers considered to be the 'experts' at determining what inferences are to be drawn from their investigation, for the trauma-affected child's best interests, when they simply do not have the required family violence expertise?

The directive for family reporters to consider, the *Family Violence Best Practice Principles*[24], or the Policies of the Western Australian Family Court is also grossly inadequate, as these guidelines also do not address the nuances of violence.

Question 31. Why does the *Family Violence Best Practice Principles*[25], and the Policies of the Western Australian Family Court contain terminology using the worlds 'may' or 'should' which permits a dangerous degree of discretion and an unacceptable degree of error, throughout investigations.

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[24] 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

[25] 'ibid'

Question 32. Why do the *Family Violence Best Practice Principles*[26], use stereotypes and also do not differentiate between the evidentiary meaning of interim and permanent protective orders?

Question 33. Why do court orders often contradict the *Family Violence Best Practice Principles*[27], directive regarding giving victims a choice with undergoing medical examinations?

Family reporters use an inadequate therapeutic approach with minimal validity, which cannot accurately assess the level of parenting capacity that provides for the child's emotional and psychological needs.

There is a dire need for critical analysis and meaningful interpretation of verifiable information provided throughout court report writer assessments to assess parental capacity. The current sub-standard family report therapeutic methodology, does not support accurate conclusions and promotes a subjective, untested opinion. This opinion increases risk for the victim of violence. It often contributes to misleading the judge, influencing an order which is not adequately protective. The more accurate neuropsychological approach promotes required rigor, a meaningful and verifiable interpretation of behavioural analysis and informs parental cognitive and behavioural functional capacity.

[26] 'ibid'
[27] 'ibid'

Question 34. Why are family consultants not using a trauma-informed, verifiable, neuropsychology based investigatory process, to inform more accurate reports.

Past violence is called 'historic', and is not adequately considered in determining family court orders.

Patterns of abusive behaviour throughout the parents' relationship must be significantly considered as a flag for possible future risk to the child. The *Standards*[28], suggest that family reporters *may* consider whether there are unresolved criminal or state welfare proceedings. Historic proceedings are not included in the *Standards* at all.

Question 35. Why are historic proceedings surrounding violence, not included as a primary mandatory consideration the *Australian Standards of Practice for Family Assessments and reporting*[29]?

There is a need for the appointment of a teacher and family violence trained, integrated educational manager, in the Family and Children's courts.

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.

Question 36. Can the courts employ an Integrated Educational Manager, to liase between the courts and schools to promote individualised educational

[28] 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.

development, welfare needs, resilience and recovery of a trauma-affected child?

There is a need for clarification of the interpretation of *significant harm* for a child to be considered in child in need of protection.

Child protection authorities must not remove children for trivial matters and must provide probable, (not possible), evidence that there is no parent or kin who is willing and able to care for the child. This is not occurring in practice, especially in family violence matters where the protective parents' safeguards are not adequately considered. The defined *possibility* of significant harm used alone without adequate consideration of a parents protective actions, may produce an inaccurate prediction of risk. This results in excessive child removals from victims of violence.

Child Protection legislation supports that children exposed to violence are 'at risk' of serious physical or psychological harm. This must be amended with the inclusion that this must **only** be applied, regarding child removal measures, if the parent **has not** commenced adequate protective measures.

Question 37. Why does the application of Child Protection legislation surrounding the determination of a child deemed 'at risk' not substantially consider protective measures applied by a parent who is also a victim of violence?

The Child Protection and Family Law legislation must be amended to reflect that parents are the Competent Child Authority[30] with their children's matters.

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

Parents have never conferred jurisdiction of their authority to the state or Family Law Courts. This status must remain, under the jurisdiction of the Commonwealth Central Authority.

Question 38. Why are parents not given the legislative status of the Competent Child Authority, (as per defined in the Child Protection Convention considerations, in the Family Law Act), unless evidence is supplied to a reasonable standard that credible reasons are accepted, that the parent/s have had their status revoked?

There is a need to ensure compliance with constitutional issues regarding the family courts' jurisdiction regarding exercising child protection powers.

The absence of state conferred powers, in the FLA, 1975, 111CG[31] 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 Child Protection Convention may affect the operation of State and Territory law, contrary to the intent section 111CZ, (2a)[32]. The Family Law Act's child welfare power, inserted into 67ZC of the Act in 1983, may not support capacity to support the making of what may be considered 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.

Question 39. Does the family courts welfare power of 67ZC satisfy the constitutional obligation to resist working within a child protection framework, which has never been conferred by the States?

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

[32] 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

Compliance of the *The Charter of Rights* in NSW[33], and Section 60B,(4), needs to be enforced and replicated in the Family Law Act to promote the child's rights and voice.

This legislation supports that children in substitute care *should* receive the conferred rights[34]. of the UNCRC provisions. There is a need to monitor and enforce this in practice, throughout all state child protection legislation. The inclusion of this Charter in the Family Law Act, 1975 is necessary, to provide the child's voice and rights.

Question 40. An object and principle in the Family Law Act, Section 60B, (4), gives effect to the UNCRC, as does the state legislation in the Charter of Rights in NSW. Why is the child's voice and rights diminished through family court and child protection proceedings by leaving their views to the discretion of the Judge?

19/ There must be an accessible, transparent, accountability and complaints and review process

The court system must uphold that accepted professional practice is upheld. There is an urgent need to meet this community expectation, both during and after proceedings. Sanctions must taken against below standard court report writers and compensation awarded to recipients of inadequate reports to uphold natural justice and fair procedure.

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[33] 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.

[34] 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.

Question 41. Is it reasonable that a parent is directed by the courts to initially appeal to the very Judge who is perceived to have not followed protocol, to initiate a complaint against this Judge?

Question 42. What is the court process used to uphold the professional practice of the judiciary?

Question 43. What is the Family Court and Child Protection System's doing to improve their complaints process?

Question 44. Why are not all transcripts published?

Summary

To create a more protective court system, we require a re-directed focus on remedies which close the gaps in the system. We must resist strengthening processes which limit the courts understanding of accuracy, truth surrounding family violence issues. It is not conducive to seek answers from those that support or request finances on failed oppressive methods.

Contrary to the contention of prior paradigms, the gaps in the system do not surround the funding of the replicated functions of an Independent Children's Lawyer, (ICL). Legislation does not congruently support that these ICL's provide a child's voice. State courts can substantially assist with protective orders through utilising the powers of the Family Law Act, (1975), 68R.

The response to the committees question regarding family violence training, was inadequately answered by the Family Law Council, and the *Doors* training framework was not adequately further investigated. Reasonable questions could be;

- Was this training delivered by family violence experts?
- Why was this training voluntary?
- What data supports that the content was adequate?
- Was the content written and delivered by family violence experts?

*All family violence training conducted by court personnel should be valid, informed, transformative and useful in contributing to protective orders.

- What data, critical analysis and reflection were presented regarding the *Doors* tax-payer funded training exercise?
- Is it reasonable that this training largely comprised of a mere one and a half hour information session?

I respectfully ask that this committee to ask more insightful questions to support this inquiries purpose. This will facilitate that further funding is not wasted on inefficient methods. This funding must be re-directed towards genuine measures to protect and support victims of violence.

To manage family violence issues, family violence experts must be prioritised. All that is needed are trauma-informed experts and processes which support verified truth, accuracy, accountability throughout proceedings, in addition to financial and emotional support for victims.

To clarify, the gaps in the system surround the following;

- States must be encouraged to use the shared power capacity of 68R to amend family court orders where relevant.
- There is a need to develop a State level court process, with a higher evidentiary standard than the family court. This is to assess risk, prior to Family Court proceedings.
- Issues surrounding the family reporter's expertise, standards, principles, understanding of neuropsychology, capacity to critically analyse and meaningfully interpret information.
- Family courts must significantly recognise reasonably verifiable historic violence, as well as present risk.
- Safeguards must be employed for children at risk of violence in custody cases.
- The judges' require improved capacity to employ trauma-informed and reasonable discretion.
- Section 121 must be amended to permit review and risk/benefit analysis of orders by an independent body.

- There is a need to amend legislation that is not protective, such as the 'failure to protect' legislation.
- There is a constitutional issue and need, to investigate the jurisdiction of family court in relation to it exercising powers surrounding child protection. This was never conferred to the family court by the state.
- Financial wastage, inaccuracy and often bias through the employment of the independent children's lawyers.
- Court conferred immunity must be revoked for report writers and ICL's, and there must be transparent accountability, an accessible complaints process.
- The appointment of an Integrated Education Manager for children
- Hearing the child's voice through the Charter of Rights detailed, and other means appropriate.
- Prioritising and provision of extensive victims support programs is also valuable to facilitate the best interests of the child's development, resilience and recovery from family violence
- There is an urgent need to implement the 75 key recommendations in submission 8 and those from the other submissions which reasonably promote accuracy and trauma-informed protective insight.

This is how you create a more protective system for victims of violence.

Regards *Mishka Hudson*