Matters of concerns : Justice for Children

While Justice for Children welcomes the proposed changes in the Family Law Legislation Amendment Bill 2011, there are concerns that these changes do not go far enough.

1) Item 14 Section 60C refers to the "best interests of the child" which are not defined. Best interests are currently subjective: some judges have concluded that fathers have the rights to parent their children even when they have abused them or have been convicted of child sexual offences. Some have said that it is in the best interests of the child to have a close relationship with their father regardless of the quality of that relationship.
2) Item 60D gives precedence to the safety of the child but if you look at the list of advisers qualified to give advice on what constitutes "best interests', you will see that not one of the professionals referred to has expertise in child development/child abuse. They are lawyers, family counsellors, mediators and consultants all of whom have experience in relating to parents, not children.
3) There is no requirement that professionals in the Family Court have to have police checks along with others whose work involves children. This omission should be rectified.
4) Item 4 refers to Independent Children's Lawyers (ICLs) who are expected to represent the interests of the child. What we have found while sitting in courts is that ICLs are far from "independent" and, according to Justice Dawe in the case of Lorenz v Gugenberger, they do not have to be independent. Most have only basic degrees in law and no professional education in child development/child abuse. Their ignorance is often apparent in the advice they give to judges. Furthermore, they often do not even meet or talk to the children they supposedly represent. Without communication or expertise, how can they possibly advise judges of what is in a child's best interests.. and isn't this contrary to their stipulated role. In our considerable experience, some of the bizarre decisions have been made by judges because they have relied heavily on bad advice from ICLs who are not accountable.
5) Item 67ZBB2(i) "to enable appropriate evidence about the allegations (of abuse) to be obtained as expeditiously as possible" How? Judges do not have the power to order state child protection services to investigate allegations of child abuse. SA Family First MP Dennis Hood, using FOI, recently publicised the fact that in 44 recent cases judges had sought the intervention of Families SA and intervention was refused. Two years ago the media reported that 33 requests had been ignored. We do not know what happened to those children.
6) Item 47 (1) is a concern, ie that the amendments do not affect orders already made. Some of those orders have forced children to live with convicted child sex offenders, eg in South Australia a man awaiting sentencing for child sex offences was awarded residence of his own four children by Justice Burr. Justice Benjamin was reported to have ordered two little girls to spend weekends with their convicted sex offender father, confident that they would be safe by "daylight" but would need to stay together and lock their bedroom door at night; Justice Carmody was reported to have said that an 8 year old boy would be safe if removed unwillingly from his grandparents and father in Tasmania and handed to the care of his previously negligent mother whose boyfriend had just been released from jail for breaking the Australian record in the quantity of child pornography downloaded. The rationale given for thinking that the child would be safe was that the offender said he was only sexually attracted to young girls.

7) There is nothing in the document to stop judges from making orders to prevent parents, paediatricians and general practitioners from reporting child abuse, examining or treating abused children or allowing them to have counselling. Such orders have been made, assisting child sex offenders by preventing child victims from receiving help. This is surely contrary to the UN Convention on the Rights of the Child. (eg see Justice Mushin No(P)HBF 1608 of 1997; also Callendar and Davenport (2010) Fam. CA 637 5 July 2010 File ADC 2033 of 2009)
8) There is nothing in the document to deter judges from accepting diagnoses of maternal mental illness made by professional witnesses who are not qualified to make such assessments, (as has happened in recent times). A phone call or hour long interview with a 3 year trained psychologist or social worker is obviously inappropriate for such a diagnosis to be allowed.
9) The workload of the Family Court of Australia now consists of a vast number of cases involving allegations of violence and child sexual abuse. This is because the adversarial criminal justice system cannot prosecute offenders if children are not sufficiently mature to be "rigorously" cross examined. Very young children are being targeted increasingly for the manufacture of pornography for which there is a lucrative market.
10) The Family Court of Australia was not created to investigate cases of child sexual abuse and domestic violence and, as the current Chief Justice and her predecessor Alistair Nicholson pointed out, it lacks the facility to investigate such cases. Retiring Chief Justice Nicholson is on record as saying that a different style of court was necessary for cases involving child abuse... and even the state youth court would be a better option because judges are accustomed to working with children.
11) State police and child protection services have a long history of not investigating allegations of child abuse if there is a case in the Family Court or a court order exists. This is said to be an issue of state versus federal funding. The lack of assessment has led to abused children being deprived of their mothers and handed to the parents they accused of abusing them (eg Lorenz & Gugenberger in the Adelaide Court).
12) Judges and magistrates are making major decisions about children's lives and safety with no professional knowledge of child development/child abuse and child sex abusers. Several have exposed a serious deficiency in their knowledge in the bizarre statements and decisions they have made; for example by ordering shared parenting or residence with convicted child sex offenders who would not be allowed to work with other people's children.
13) For the last 12 years to my certain knowledge, domestic violence has been ignored by Family Courts. It is often assumed that violence against the mother does not harm the child although international and Australian research shows that child witnesses suffer the same long-term psychological damage as children who are the direct recipients of violence.
14) A pattern has emerged where fathers accused of sex offences against young children turn quickly to the Family Court seeking residence of their victims. They then allege that the mothers are delusional/mentally ill because they believed the children who disclosed the abuse. Some have been accused of being "enmeshed" with their children and this is presented as a danger to their emotional development. There is no such mental illness as enmeshment in the DSM 1V; in another context, an enmeshed mother might be described as protective and attentive but in the family law system she is pathologised. A population study of lifetime prevalence of mental illness found that 0.18% would be diagnosed with

"delusional disorder" but mothers who report allegations of child sexual abuse are ordinarily labelled as delusional for believing their children's disclosures. Being delusional or enmeshed are the key labels currently used to justify removing abused children from their primary carers and placing them with the parent they accused of abusing them.

15) School and pre-school curriculum teaches children to tell someone they trust if someone behaves inappropriately. The trusted person is usually their mother. If the offender is their father, there is a risk that the Family Court will remove them from their mothers because they believed them and are therefore delusional. If children are older and report abuse to their teachers or others, there is a risk that the mother will be accused of "training" the child to make a false report (as in Jones v Winstanley –SA). At the age of three, that child was ordered to live with a middle aged father who had no previous experience of single-parenting, had HIV/AIDS and two convictions for child sexual abuse. Some forty reports of child abuse were ignored. She made a serious suicide attempt last week and is in the Adelaide Children's Hospital.
16) Research by Bagshaw and McInnes (University of South Australia) confirms that lawyers now advise mothers not to tell the courts that their children have been sexually abused because of the risk that they will be labelled as mad or bad and lose residence of the children. It was reported by the child's uncle that the mother of Darcey Freeman (thrown from the Westgate Bridge by her father) was advised to agree to shared parenting and not disclose that the father had threatened to kill all three of their children.
17) Mothers who (rightly) reported child sexual abuse have been ordered to undertake psychological or psychiatric treatment for the express purpose of convincing them that their children had not been sexually abused (when they had). This is brain-washing of the worst kind. The mothers have then been threatened that if they do not change their beliefs, they will not be allowed to see their children again. A South Australian mother who is a social work academic was examined by four psychiatrists and an eminent psychologist, all of whom said that she could not be treated because she was not mentally ill. The ICL (who supported the father) persuaded the judge that she should have yet another assessment by a psychiatrist chosen by him (Lorenz v Gugenberger 2011). The Family Court website 2010 showed that a third of mothers who lost residence of their children were "mentally ill" compared with only 3% of fathers. The Chief Justice commented on this without investigating why it was happening.
18) Independent children's lawyers are not required to be independent as confirmed by Justice Dawe in the Adelaide Court.
19) When a judge said that a child had not been sexually abused (when he had) and the mother was mentally ill (when psychiatrists said that she isn't) subsequent judges upheld the original decision despite further evidence, forcing the children to live with their abuser and depriving them of contact with their mother (Ref ADC65 2008). This should not happen.
20) We have serious concerns relating to how children are treated when mothers flee interstate or overseas to protect children who disclosed sexual abuse which Family Courts ignored, ordering shared parenting or residence with their alleged abusers. It is not in a child's best interests to be snatched from their lifelong carer by police then placed in institutions as happened in both the Wood and recent Thompson cases. The Wood children were in institutions and foster homes for 3 years before Justice Penny (WA) decided to return them to their mother. Andrew Thompson was placed in a Dutch orphanage. It has been shown

repeatedly that these draconian actions under the Hague Convention constitute child abuse and cause long-term mental illness. It is the failure of the Family Court to accept that children are being abused that causes some mothers to abandon their homes, careers, families and possessions to flee to foreign countries. In the Thompson case, the father was allowed to tell media worldwide that his wife was mentally ill and dangerous, acquiring a great deal of support in the process. His wife is banned by S121 from speaking out. There is a lack of transparency and accountability in the court system.

21) The Family Court is too expensive for the average family. Melbourne solicitors now charge $500 an hour and, for the trial, barristers charge from $3000 to $5000 a day. Often the mother has to represent herself which is an impossible task for a trial. The cost of an appeal is prohibitive. We are aware of many mothers who have lost their homes to pay legal bills in their attempts to protect their children from further abuse.

Aspects of the new Bill that we endorse because they will help children

- The broader definition of violence
- Removing 'friendly' parent provision
- Removing Cost orders if allegations aren't proven
- Inserting consideration of the United Nations Convention on the Rights of the Child (UNCROC) which, under Article 19 (1) requires State Parties to "take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse or negligent treatment, maltreatment or exploitation including sexual abuse while in the care of parents, legal guardians or anyone who has the care of the child" requires legislation that protects children from all forms of abuse; education for child protection; support for the non-offending parents of abuse victims". Item 2 requires "effective procedures for the establishment of social programmes to provide necessary support for the child and for those that care for the child as well as for other forms of prevention and for the identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment.
- Article 31 requires governments to prevent the exploitative use of children in prostitution, unlawful sexual practices and creation of pornography.
- Article 39 requires governments to take all measures to promote that physical and psychological recovery of child victims

It is apparent that the Family Court of Australia has frequently contravened UNCROC by forcing children to live with convicted child sex offenders, depriving them of their protective parents.

Summary of what needs to be done:

- A different, non-adversarial style of court is needed for cases involving child abuse because the current system is not protecting or serving the best interests of children. Judges should be replaced by a panel of experts in child development and child abuse, assisted by a legal officer.
- Suppression laws eg S121 should be eliminated. We noted with concern that, in a recent Hague Convention case, a father was allowed to tell the world that the mother was mentally ill and dangerous while she is gagged forever.
- Natural justice must be increased – there is too much reliance on single "experts" with inadequate qualifications

- Claims of abuse must be investigated by appropriately qualified experts before any there is any change of a child's residence
- Given the number of disastrous decisions and ignorant statements made by judges dealing with allegations of child abuse, they should be replaced by a panel of experts in child development and child abuse assisted by a legal officer. Our fear is that changes in Family law will make no difference to the attitudes of judges. For example, a Magellan Judge told university students that "mothers always fabricate allegations of abuse".
- Children must be given a voice relating to their place of residence (in accordance with UNCROC). In WA, three children now aged 12.5 years, 15 and 16.5 years were ordered to live with their father who, they alleged abused them. They ran away several times to live with their mother and because of this, they were placed in state care for supposedly three months. Sixteen months later, they are still in state care and have not been allowed to have any contact with their mother. They were not allowed to accept birthday cards and gifts. One of the children has an anxiety disorder. The mother was labelled as having the mythical Parent Alienation Syndrome and ordered to have therapy before she could see her children. This suggests that young people are not being given a say in matters that affect their lives, violating the UN Convention on the Rights of the Child. (Ref: PTW 5464 2007, R & TT Broad Oct 2007-March 19 2010 and TT & R. Broad 1.6.2010 to present.
- Panel members should be able to order DoCS and other child protection services to investigate allegations of abuse (rather than request). This has financial implications in state versus federal services. Children are put at risk and damaged by serious gaps between state services and federal courts.
- There must be more accountability and transparency by having a reviewable system and allowing access to media. Secrecy is damaging to children.
- When allegations of child abuse have been ignored and children are placed with the parent they accused of abuse, there should always be a random follow-up assessment of how they are progressing.

Please note that justice for Children is part of the Safety for Children Alliance whose aims are supported by 200+ organisations. http://safetyforchildrenalliance.org/endorsing-organisations/

Dr Freda Briggs AO

Emeritus Professor in Child Development

University of South Australia