



STATEMENT

Joint Select Committee on Australia's Family Law System
12 March 2020, Brisbane

Ms Karen Clarke, Ambassador & Queensland Representative
and Dr David Curl, CEO, For Kids Sake

Thank you for the invitation to make a presentation to this Committee. For Kids Sake is a non-profit organisation. We have no affiliations with any political party, religion, or profession and get no financial benefit for any of the policies we advocate.¹

We emphasize this because the issue of family law reform, as much as any we can think of, is dominated by anecdote, ideology and vested interests rather than evidence and logic. Every one of us brings to it our experiences or prejudices – whether publicly stated or not – and often these have been firmly forged in the furnaces of our own childhood trauma or relationship breakdown.

It can be almost impossible to move beyond the emotion, to be inclusive of the experiences of others or to be objective about the evidence.

This Brisbane hearing is being held in the shadow of a particularly horrific act of family violence – and our thoughts and heartfelt sympathies are with the family and all those affected by it.

It takes courage in today's climate to go beyond describing such events as unpredictable or unfathomable murders by evil people. But we have evidence to work with. Tragically, too much evidence. And we need evidence-based policy if we're to try to prevent further tragedies.

We know that, in Australia, a child is murdered by a parent or close family member every fortnight, on average.^{2,3} About 15 more children will die in this way before this Committee's report comes out.

**“It, in no way, condones or excuses any of these crimes
to want to look for common denominators –
at things that might alert us, things we could change.”**

¹ <http://www.forkidssake.org.au/policy/>

² Brown et al. 2019 <https://www.aic.gov.au/publications/tandi/tandi568>

³ <https://www.abc.net.au/news/2019-02-08/mothers-murdering-their-children-on-the-rise-domestic-filicide/10793162>

We must be as dispassionate about the data as we are passionate about wanting to prevent such horrific events from happening. After the horror,

“we must dare to establish a fact-based worldview again [and ...]
make sure our resources are used effectively to stop future suffering.”⁴

The Australian Institute of Criminology’s long-term data shows us that the best predictor of these murders is not location or method. Nor gender. (This most horrific act of family violence is committed about equally by men and women.)^{5,6} We’ve provided the Committee with these and other references to Australian and international data on child fatalities and maltreatment to enable you to consider original data and analyses yourselves.^{7,8}

Pre-existing or diagnosed mental health issues are often present, though not a reliable indicator.⁹ But one of the least-understood common denominators in many of these horrific events is family separation, especially where court proceedings are involved. Sometimes the connection is so clear as to be terrifying:

- It was the day after court proceedings in Victoria, and a particularly adverse court expert’s report, that Arthur Freeman dropped his 4-year-old daughter Darcey to her death from the Westgate bridge;¹⁰
- Just 8 months earlier, 2-year-old Oliver was killed by his mother Gabriela Garcia when she jumped with him from that same bridge, allegedly out of fear of family court proceedings that might take young Oliver away from her;¹¹
- It was the night before a family court hearing in Canberra that Anne Muhoro poisoned Ezvin (aged 8) and Furaha (aged 5) before burning down the house with them all still in it;¹²
- It was after prolonged and expensive court proceedings, and court orders that were tragically never enforced, that Peter Miles, in Osmington, WA, shot his four grandchildren, Taye (13), Rylan (12), Arye (10) and Kadyn (8), his daughter Katrina, his wife Cynda and himself. ¹³ (There will be no inquest into these seven deaths because the Coroner’s Court has recently announced its refusal to consider that another court’s proceedings might have been a contributory factor.¹⁴); and

⁴ Rosling, H 2018. *Factfulness: Ten Reasons We're Wrong About The World - And Why Things Are Better Than You Think*. p111. Hodder and Stoughton, London

⁵ 52% by women in the AIC’s 2015 analysis: Cussen and Bryant 2015 - <https://aic.gov.au/publications/rip/rip38>

⁶ 52% by men in the AIC’s 2019 analysis: Brown *et al.* 2019 - <https://www.aic.gov.au/publications/tandi/tandi568>

⁷ <https://aic.gov.au/publications/tandi/tandi547>

⁸ <https://www.acf.hhs.gov/cb/resource/child-maltreatment-2018>

⁹ <https://research.monash.edu/en/publications/why-parents-kill-children-understanding-filicide>

¹⁰ <https://www.theguardian.com/australia-news/2015/oct/31/of-girl-thrown-from-bridge-by-father-could-not-have-been-predicted>

¹¹ <https://www.news.com.au/news/deadly-bridge-leap-to-save-son-from-a-bad-life/news-story/219620e733e1221911d1edc7965378cf?sv=7b6bf04d5121c9db3f42a01cf39d890c>

¹² <https://www.canberratimes.com.au/story/6002605/children-dead-before-bonner-fire-took-hold-coroner-says/>

¹³ <https://www.abc.net.au/news/2018-05-14/margaret-river-murder-suicide-peter-miles-pain-behind-killings/9756918>

¹⁴ <https://www.gsherald.com.au/news/crime/aaron-cockman-father-of-four-children-murdered-by-their-grandfather-in-margaret-river-refused-inquest-into-their-deaths-ng-b881469987z>

- It was at the end of nearly a decade of family court litigation that Heather Glendinning in Port Denison killed Jane (12) and Jess Cuzens (10), two of her three daughters, before killing herself.¹⁵

In any other context, such clear links and tragic outcomes would have triggered immediate action: an inquest, an inquiry, a finding, a change – a Royal Commission even. If multiple people died the day before or after visiting a particular hospital, restaurant, or government building, investigations, perhaps even closures, would follow.

We can understand people’s reluctance, in spite of the evidence, to admit a connection between family murders and a court system, let alone that the court might somehow be a contributing factor, or even a cause. It’s a system of law and order, after all.

The word “cause” can be misunderstood too – inflammatory even. If old people are dying more from coronavirus than the young, the immediate cause of death is still the coronavirus, or the consequences of its actions within a human body, not old age. But that does not stop us recognising that something about old age makes people more vulnerable and that it would be irresponsible not to take appropriate, extra precautions against this risk factor. Like keeping visitors away from aged care centres. Or keeping families that are vulnerable – as all separating families are – away from family courts.

We should not ignore the words of young Grace Cuzens, the one surviving daughter of the Port Denison murder-suicide - who wrote to the Coroner that “the Family Court completely failed us”¹⁶ - nor the words of the Coroner himself who stated:

“The evidence makes clear that parties to Family Court proceeding[s] can be subjected to intense, ongoing stress. It is also clear that such stress ... was a contributing, if not precipitating, factor ...”¹⁷

Let’s get this straight, for these are not our words. We cannot justify or excuse these crimes, but an Australian Coroner has found that family court proceedings are so stressful that they can contribute to murder – of one’s own child?!

With such evidence and such a finding, how is it that we’re still talking about merely tinkering with the family law system? About re-arranging the chairs in the courtrooms?

¹⁵ <https://www.abc.net.au/news/2016-02-01/port-denison-murder-suicide-coronial-inquest-begins-geraldton/7129414>

¹⁶ https://www.coronerscourt.wa.gov.au/_files/Glendinning,%20H;%20Cuzens,%20J%20L%20M;%20Cuzens,%20J%20R%20%20finding.pdf

¹⁷ *ibid.*

This is just the tip of an iceberg of harm and premature death that can be linked to how we currently allow family breakdown – and family violence – to be dealt with. Too late. And by a family law system that is intrinsically unfit for either purpose.

Hundreds of thousands of young people exposed to our family law system won't feature in any such statistics. But the childhood trauma they experienced – often as a result of being left for years with an abusive parent or removed for life from a loving one by a court system not competent to tell the difference^{18, 19} – significantly increases the risks of mental and physical health problems throughout their lives. It can lead to a 20-year reduction in life expectancy^{20, 21} and to some children not even making it to adulthood.

Every day, at least one child loses a parent to suicide, often in connection with family breakdown or family law proceedings.^{22, 23} “The upside of losing my father to suicide,” says mental health advocate JC Clapham is that “I know what it’s like to be the child left behind. And it’s really, truly, horrible.”²⁴

We are coming to realise that there’s a crisis in the mental health of young Australians. The number of children presenting at WA emergency wards in the past five years or so due to self-harm has risen by 400 per cent. The significant self-harm once seen in 16- and 17-year-olds is now commonly seen in the 12 to 14-year-olds.²⁵ If we want to deal with these terrifying statistics, we must urgently adopt a different attitude to family breakdown – a destroyer of childhood resilience – as part of the solution.

This is without mentioning the health impact of family court proceedings on parents and other family members exposed to inconceivable levels of stress every day for months or even years, or on grandparents and carers who lose a relationship with those they love most dearly.

“Why would we knowingly allow tens of thousands of parents each year to enter a system that adversely affects the mental health of almost every one of them? That these parents are stressed and vulnerable from the start ... makes it inhumane and unethical. That some of them are at risk of harmful behaviour ... makes it irresponsible and unconscionable.”

If a hospital was linked to just a fraction of these adverse outcomes from its procedures on families; or failed, as do family courts, to monitor what happens to any of its outpatients; or refused, like courts, to allow proper scrutiny of its employees and procedures, it would have been closed down years ago. If this was a University research project or experiment, no Ethics Committee would allow it to continue.

¹⁸ <https://www.abc.net.au/news/2019-06-14/family-court-report-writer-takes-mum-to-wine-bar/11171556>

¹⁹ e.g. <https://www.theaustralian.com.au/nation/push-for-family-courts-to-lift-veil-of-secrecy-on-expert-witnesses/news-story/ad1b401c98fd3153382e20997a90accd>

²⁰ <https://donna.jacksonakazawa.com/childhood-disrupted/>

²¹ <https://www.cdc.gov/violenceprevention/childabuseandneglect/acestudy/index.html>

²² <https://www.ncbi.nlm.nih.gov/pubmed/26454502>

²³ https://www.amhf.org.au/male_suicides_in_australia_up_10_in_2017

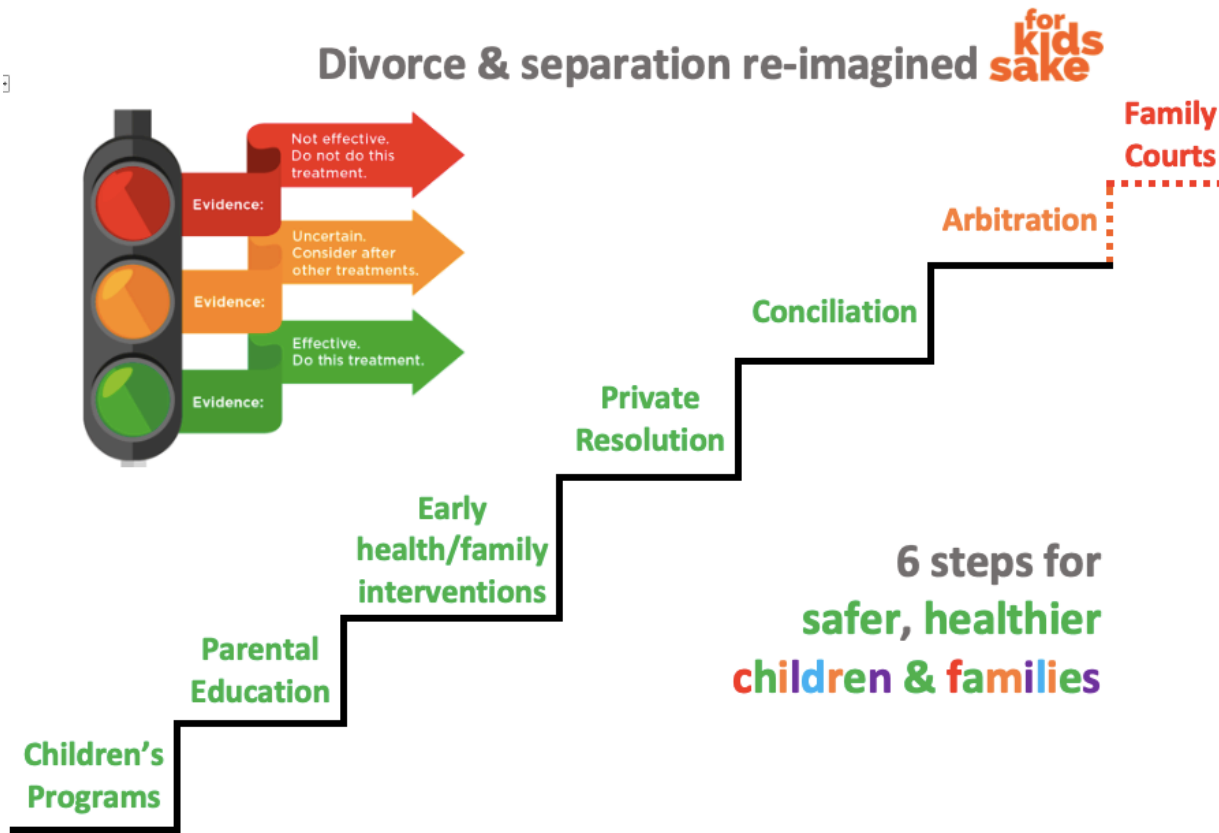
²⁴ <http://jcclapham.com/blog/2018/10/13/how-my-fathers-suicide-helped-me-to-become-a-real-man/>

²⁵ <https://thewest.com.au/lifestyle/health-wellbeing/expert-advice-to-help-stressed-out-kids-and-their-parents-g-b88740055z>

Family breakdown is a health issue – a public health crisis, no less. It doesn't belong in a family law system.

There are solutions, providing we ask the right question. For 44 years, we've been asking how to reform family law in the best interests of children. And we've failed – catastrophically – because it's the wrong question. What we should be asking is: how do we best look after the long-term wellbeing of our children and families? The answer, as even the Attorney General's Department hinted at the start of this Inquiry, has remarkably little to do with law.

We hope you will consider For Kids Sake's submission, and our 6-step process in particular, as a comprehensive framework, a blueprint for how children and families can not only be protected when families break down but can thrive.²⁶

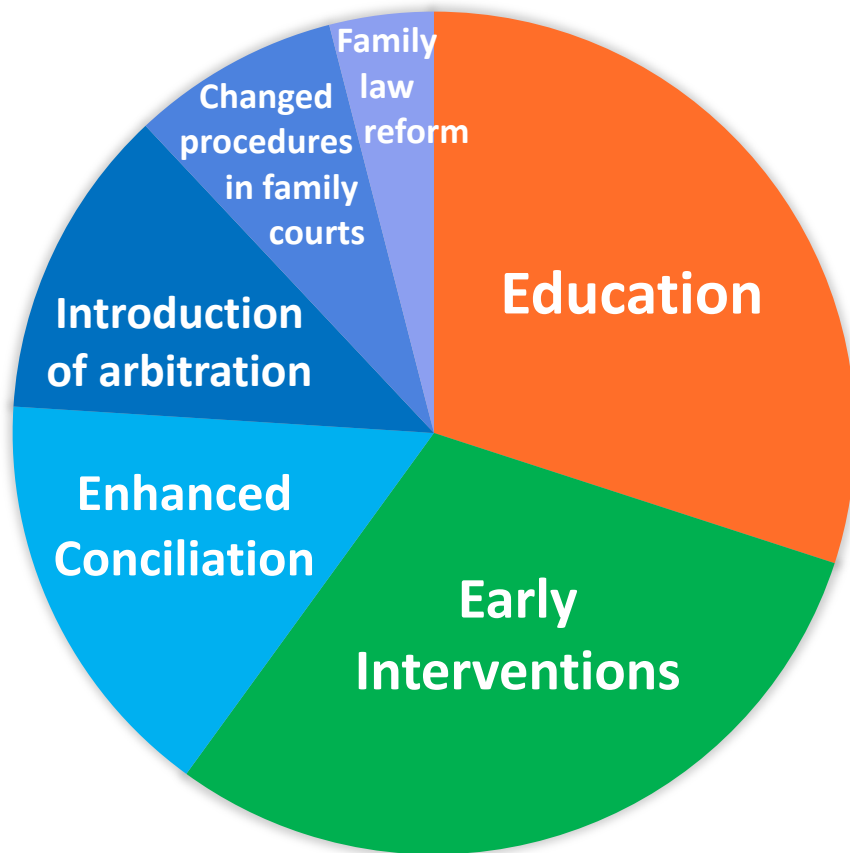


Our vision is based on science, but not rocket science. It's not so much "out-of-the-box", as the Chair requested, as out-of-this-world – real world examples and clear principles that will save money. That will save lives. And that could be implemented today.

Our vision is not an "alternative" to a family law system, it's the proper, humane and safe way to deal with this major social issue. The family court ... is the alternative.

²⁶ Submission #607: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Family_Law_System/FamilyLaw/Submissions

Illustrative guide to anticipated, relative impact of different reform measures and recommendations



A focus on educational measures and early interventions, rather than on family law reform, is likely to produce much better outcomes for families that may divorce or separate. It is also the most effective way to address family violence.

We encourage the Committee to consider the principles that have helped guide our own evidence-based policy development and recommendations:

1. **Being compassionate.** Separating parents are vulnerable people who need support, not the pejorative labels they so often receive;
2. **Being inclusive.** Women's safety and men's rights are not fundamentally in opposition, as some would have us believe. Solutions can be crafted, as we have done, that are inclusive: that protect the safety and the rights of all women and of all men - and, above all, of all children;
3. **Testing the evidence.** 87% of the statistics you will hear are not accurate. That's a joke, but it's a serious one if we're to create an evidence-based approach. For a start, much of the data we need does not exist. Our family courts do not collect essential data; they don't even know the ultimate outcomes of their own cases. In those studies that do exist, methodology is often flawed, data unreliable, and its interpretation ideological rather than scientific; their conclusions should not be accepted without professional scrutiny. Similarly, the fact that 30 organisations may repeat the same statement does not make it any more or less true. Among other things, the organisations that have made submissions to this Inquiry (and we have read all those published) are not a random or representative sample. About 28% of named submissions, for instance, are from legal organisations. Not only are lawyers involved in the system unlikely to be able to see beyond it, but they're also unlikely to advocate a system that doesn't involve them. We should always be prepared to ask, not just of legal organisations: "Cui Bono?"
4. **Being alert to incentives** that systems or recommendations create. Systems that reward bad behaviour and prolong or even create negative interactions between parents, as do our family court and child support systems, will never be fit-for-purpose.
5. **Asking the right questions.** Most importantly, not: "How do we reform family law in the best interests of children?" But, "How do we best look after the long-term wellbeing of our children and families?" The answer has remarkably little to do with law.
6. **Taking us beyond family law.** Many changes to family law are needed, but if these were to be the primary outcomes of this Review, we would be condemning another generation of Aussie kids. Family separation or divorce must be treated, first and foremost, as a health issue, not as a legal issue.

The solution does not lie in giving more money for more registrars or more judges to one of the least evidence-based institutions in the land. It lies in building a new, health-focused system – not from scratch but based largely on existing structures and possibilities. It lies in changing attitudes.

The purse-strings should be given to the Minister for Children and Families, not the Attorney-General. And either that Minister should be given the responsibility for ensuring implementation of the recommendations of this Inquiry, or there must be a Royal Commission, to ensure a legacy (unlike many, prior inquiries) that protects future generations from the tragedies and trauma of today.