

NCSMC

National Council of Single Mothers and their Children Inc.

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The Secretary
Legal and Constitutional Affairs Standing Committee
House of Representatives
Parliament House
Canberra ACT 2062
Laca.Reps@aph.gov.au

30 July 2002

Dear Secretary

Please find below NCSMC's submission to the inquiry into crime in the community: victims, offenders and fear of crime.

NCSMC's submission focuses on the crime of child sexual abuse because:

- it is the most widespread and common crime to which this organisation is exposed,
- it causes long-term damage to victims and their families
- it is not being effectively responded to by any of the institutional systems which have jurisdiction over its management
- perpetrators are often prolific with offending careers spanning decades
- it is the subject of many myths and misconceptions, and
- it is abhorrent to the non-offending community

NCSMC hopes that in providing information to the Parliament about this crime legislators will consider acting to protect children. NCSMC will be pleased to provide further information in support of this submission if required.

Yours faithfully

Rille Walshe
National Convenor

About NCSMC

The National Council for Single Mothers and their Children (NCSMC) is a self help group set up in 1973 by a group of women who gave birth to children without being married to the child's father. This organisation of single mothers and ex-nuptial children has since then consistently fought for the basic and essential rights of all sole parent families. The NCSMC was formed to act as a national voice for the existing network of state based councils in Australia. Its mission is to fight for the rights of single mothers and their children to the benefit of all sole parent families.

The organization aims to:

- Ensure that all children have a fair start in life
- Recognise single mother families as a viable and positive family unit
- Promote understanding of single mothers and their children in the community that they may live free from prejudice
- To work for improvements in the social economic and legal status of single mothers and their children.

As noted in the covering letter, this submission focuses on the crime of Child Sexual Assault.

Single Mothers and Child Sexual Assault

Single mothers experience the crime of child sexual assault in a number of contexts (McInnes 2001):

(a) as victims of child sexual assault as children: Child sexual assault impacts on victim's capacities to form and sustain adult relationships. Thus victims have a higher incidence of relationship breakdown. Victims are also at risk of teen pregnancies outside continuing relationships.

(b) as parents of children who are victims of child sexual assault by their father and/or other members of his family: Child sexual assault crimes are often committed intergenerationally in families. When an offender has been sexualised by members of his family, his children become victims for the offender along with other offending family members such as grandfathers, uncles, cousins and siblings. When fathers are the perpetrators, and the mother ends the relationship to stop the sexual abuse of their children, there is a high probability that the children will eventually be ordered into the unsupervised care of the perpetrator following Family Court proceedings. State child protection services commonly avoid acting in cases where Family Court proceedings are pending or underway (Brown et al 1998, 2001; Fehlberg and Kelly 2000) Separation will

not be sufficient to stop continuing sexual abuse of the children by the father given the current state of family court beliefs and practices (Hume 1996; Rendell et al. 2000)

(c) as single parents of children who are targeted by paedophiles: Paedophiles are aware that single mothers are often lonely and isolated by poverty and sole care of their children. Child sex offenders ‘groom’ mothers into a relationship and/or trusting them to care for the children while the mother goes out. Either way they get access to the children.

(d) as parents living on low incomes: Sex offenders who are released from prison are often reliant on public housing in the same way that single mothers raising children alone are, because both groups are living on low incomes. Single mothers often experience housing stress due to the need to flee violent ex-partners. When these groups are housed in the same area, children become targets for neighbourhood paedophiles. A small South Australian study of single mothers experiencing housing stress found that one-third of respondents reported that their child had been sexually abused by a neighbour whilst being accommodated in public housing. One mother reported that her child could no longer walk to and from school alone after being stalked and grabbed by a paedophile living in the neighbourhood. The incident had left the boy so traumatised that he hid in the wardrobe. Their low income inhibits their access to safety following sexual assaults on their children. They don’t have the money to move to a different location. Many cannot afford private transport and so have to catch public transport alongside offenders. They cannot afford to install high fences or alarms or surveillance equipment. Reporting the offence does not remove the offender’s access to the child as there will be no prosecution if the child is too young to be a witness in criminal proceedings. If there is a prosecution the offender will be on bail until the trial, at which there is a statistically consistent high probability he will be acquitted. An acquittal will have no relationship to whether or not he committed the offence.

Prevalence and Impact on Victims:

Child Sexual Assault¹ in Australia is estimated to affect one in four girls and one in seven boys (Eastwood and Patton 2002; Fleming 1997). It can affect victims for the rest of their lives, causing emotional, behavioural, sexual, cognitive and behavioural symptoms. The relative impact of abuse varies with the degree of invasiveness of the abuse, the child’s relationship to the offender, the number of abuse events, the number of offenders, and the presence or absence of supportive assistance and other factors impacting on the child’s environment.

Some adverse affects of child sexual abuse identified in the research literature include:

- Depression
- Suicide
- Fear – compulsive behaviours, avoidance
- Anxiety – panic attacks

¹ Child sexual assault is defined in this submission as the use of a child for sexual gratification. Child is defined as less than 16 years old.

- Dissociation Disorders
- Post Traumatic Stress Disorder /Flashbacks
- Insomnia
- Inability to feel or express emotions
- Shame and self-hatred
- Social withdrawal
- Aggression
- Sexual risk-taking – sexually transmitted infections, teen pregnancy
- Sexually inappropriate behaviour
- Damaged reproductive and/or excretory systems
- Distrust of others
- Self-harming
- Headaches
- Addictions
- Eating disorders
- Increased risk of re-victimisation

(Eastwood and Patton 2002; Kilpatrick and Williams 1997; Martin 1996; Mullen and Fleming 1998; Mullen et al, 1993; Yellowlees and Kaushik 1994; Zlotnick et al 1996).

These short and long term adverse effects may impact on the victim's capacity to sustain education participation, their capacity to form and sustain relationships and their capacity to enter and sustain paid work. Survivors are thus at increased long-term risk of social isolation, poverty, ill-health and sometimes, imprisonment. Child sex offenders who are imprisoned typically reported years of sexual abuse as children in which they 'normalised' offending as part of their survival, and later enacted it repeatedly on others (Briggs 1995; Briggs and Hawkins 1996)

The persistent health problems of victims can become a permanent disability with long-term costs to the income support and health systems. Emergent sex offending behaviour by the small percentage of victims who act out their victimisation on others continues and escalates the harms, exponentially increases numbers of victims and carries costs for the criminal justice and corrections systems (Chapman 1999; Donato et al. 1999). Child sex offending is a significant contributor to relationship breakdown and carries high costs to the state child welfare systems, the Federal family law system and ancillary services such as Child Contact Centres (Brown et al 1998, 2001).

Perpetrators and Motives:

Sexual abuse of children is a crime predominantly committed by men, according to the Australian Institute of Health and Welfare statistics. It is committed by men who are wealthy or poor, across all cultural backgrounds, married or single, with or without children. Men who are sexually aroused by children engage in systematic planning to gain access to their victims. The victims are 'groomed' by the offenders, who also engage

in ‘grooming’ gatekeepers to allow them access to the children and to disbelieve the children when the victims make disclosures (Briggs 1995).

The primary difference between a single man who has sex with children who are unknown, or who are acquaintances, and a partnered man who has sex with his biological or step children is **opportunity**. Men who live in families and who sexually abuse children have more opportunity to have sustained access to children and greater control over them than men who have sex with children who are not members of their family.

Men who are in positions of trust, and/or control over others are supported in their offending by the trust placed in them - such positions include volunteer and sporting organisations working with children, staff of service providers to children and religious institutions. Some institutions, particularly churches, have systematically protected offenders, silenced victims and not reported the crimes by their personnel that they know of to Police. Indeed typically the alleged perpetrator has been transferred to a new community to continue offending without notoriety.

Both incest offenders, and extra-familial offenders are likely to continue offending over many years because having sex with children is their preferred sexual practice. Many offenders begin offending against other children in adolescence. Over time child sex offenders gain skills, practice and confidence in having sex with children and successfully managing legal system responses to avoid detection. These skills also can be acquired when offenders meet and share information through men’s support groups which justify and enable such offending. Men who sexually abuse children typically deny their offending and avoid seeking help to stop it, they do however share information with like-minded individuals to enable each other. Child sex offenders know that criminal prosecution is unlikely, particularly if their victim is of pre-school age and if they avoid gross tissue damage. They know that child protection or police intervention will probably be limited to an interview, if anything.

Offenders receive a range of gratifications from their activity;

- Control over victims and their gatekeepers
- Sexual gratification
- Pride in their ability to get away with it
- Sharing their exploits and strategies with other offenders

Apprehension Rates and the Effectiveness of Sentencing

Most child sexual assaults are never reported. Research evidence suggests only about one-third of offences are ever reported. There are many reasons for these crimes not to be reported. The age and capacity of the victim to comprehend or define, what has happened is a critical factor. Most of the mothers with sexually abused children who contact NCSMC report abuse of children of pre-school age. These children are deemed to young to be a witness in criminal court proceedings and thus police investigations are commonly limited to filing a report of the abuse. Babies who cannot speak cannot tell who gave them sexually transmitted infections.

Fear is a common reason for children saying nothing. Fear that nobody will believe them, fear that they will get into trouble, fear that they or their loved ones will be hurt by the perpetrator, fear that their family will be broken up, fear that it was somehow their fault. Shame is another common reason for saying nothing. Many perpetrators actively build the child's belief that the child was responsible for the abuse occurring and engage them in a range of rule-breaking activities to isolate them from telling their parent. Children's beliefs that they are responsible for the abuse are reinforced if they have a physiological response to stimulation such as an erection or an orgasm. Offenders claim this as evidence that the child 'wanted it'. The child feels dirty and ashamed and doesn't want people to find out what is happening to them because they might reject them.

Commonly, it is not until the victim has reached a point of healing that they are able to recognise that they were not responsible for the abuse and that a crime was committed against them. Hence many complaints of child sexual assault are not made until the victim is older, or an adult. In South Australia, uniquely in Australia, sex offences occurring before 1982 cannot be prosecuted under existing laws. Thus an elite group of sex offenders enjoys statutory protection from prosecution.

If a complainant of child sexual assault is able to achieve a decision to prosecute the offence, they then face the hurdle that child sexual assault prosecutions have been described as 'legally sanctioned child abuse' (Eastwood et al 2002) and have the lowest success rate of all prosecutions due to the exposure of child witnesses to repeated attacks by the offender or his lawyer (Davies 1999). When there are multiple victims, most child sex assault trials are conducted individually with each victim having to make their case alone, thus further reducing the likelihood of success. This is particularly the case when victims are from the same family because they are seen as having an opportunity to collude. In reality, this is just another mechanism to stifle the exposure of the perpetrator's conduct.

As previously noted the Family Court system also commonly fails to protect children from repeated exposure to sexually abusing parents² (Brown et al 1998, 2001; Humphreys 1999; Rendell et al 2000).

As has been documented in reports to Parliaments in Queensland and NSW and in South Australia this year, child protection services are only able to attend to a small fraction of reports of child abuse. The majority of reports do not achieve an investigation. Similar statistics are reported in Victoria and Western Australia.

Currently therefore, victims of child sexual assault are normally unable to achieve safety either through reporting to child protection, seeking police action and prosecution, or the parent separating from the perpetrator. Even when a sex offender is convicted of offending against children, the majority are not imprisoned and can return to the site of their offending and continue to have contact with previous victims and find new ones.

² See Appendix 1 for NCSMC submission to Family Court on guidelines for children's separate representatives.

What can be done?

- Create a Federal Commissioner for Children to oversight the development and implementation of state and federal policies affecting children and to monitor and report on Australia's compliance with UNCROC.
- Increase funding to state child protection services to better meet demand.
- Provide dedicated federal funds to pay state child protection services to provide investigations and assessments and recommendations to the Family Court in cases involving allegations of child abuse.
- Increase access to legal aid for Family Law cases involving allegations of child abuse
- Amend Family Law to enshrine children's safety from risk of abuse as the first condition of meeting a child's best interests.
- Amend Family Law to require parental consent to investigating officers' access to police, welfare and health records of parents and children in cases requiring investigation of allegations of child abuse and require that these records inform court decision-making in determining a child's best interests, having regard to children's safety as the first principle in deciding those interests.
- Provide training in child development, domestic violence and child sexual assault to all workers with children and families and specifically to court officials making decisions about children's best interests.
- Support the National Child Sexual Assault Reform Committee³ process in progressing a national approach to reform of criminal justice system responses to child sexual assault.
- Review public housing policies to reduce the risk of child sex offenders being housed near families with children or child care or school facilities and develop a Child Safety approach to housing policy which supports victims of sexual assault to promptly relocate away from the perpetrator.
- Fund access to non-medical child focused counselling services for all child complainants of sexual assault.
- Progress national standards for mandatory reporting for all workers and organisations involved with children.
- Progress national standards for 'child safe' accreditation for all workers and organisations involved with children, denoting organisations' explicit policies of supporting child safety in all employment, training, service and complaints practices.

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³ Convened by Dr Anne Cossins of UNSW Law Faculty.

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Ms Karen Overman
Chief Justice's Chambers
Family Court of Australia
PO Box 9991
karen.overman@familycourt.gov.au

29 July 2002

Dear Ms Overman,

Please find enclosed NCSMC's submission to the committee on guidelines for child representatives. NCSMC's submission will identify some of the problems with current practices concerning child representatives and comment and make recommendations on the guidelines.

The case studies referred to in this document are drawn from cases around Australia over the past three years. These cases which have come to NCSMC's attention all feature pre-school aged children. They reflect the worst outcomes of current processes, however NCSMC acknowledges the ethical professionalism of most participants in legal processes and their desire to support children's best interests.

The abstract question which has still to be answered in the court's practical decision-making with respect to a child's 'best interests' is whether continuing contact with an abusing parent benefits the child more than not being exposed to the parent enacting abuse. Many family report writers, and children's representatives' recommendations, and subsequent court decisions, reflect an apparent belief by court officers that the risk of harm to children arising from sexual/physical/emotional abuse by a parent is less than the harm of loss of contact with the abusing parent. These comparative harms remain formally untested as experimental research would be unethical, however loss of contact with a parent has not featured in medical journals as a common antecedent of adult mental illness to the same degree as child sexual assault. This would indicate that the risk of harm to children arising from loss of contact with an abusing parent is less

than the harm of being abused by that parent. The balance of current judicial decision-making, often on the recommendation of children's representatives, appears to define children's best interests as contact with both parents, regardless of risks of harm to the child.

Whilst Children's Representatives do not 'make' court orders, their recommendations are used to inform the court. Therefore in the following submission, where NCSMC makes recommendations about court orders, these should be read as also pertaining to the principles informing Children's Representatives in formulating recommendations to the court.

NCSMC's submission focuses on the problem cases where court orders ensure that children are exposed to continuing abuse and harm because these reveal system failures and the need for reform to prevent or reduce the risk of recurrence. All of the children featured in these case studies have been sexually abused by a parent. In every case they have been ordered by the Family Court into the unsupervised care of the parent who has sex with them. In these cases Children's Representatives have formed part of the process delivering the child to continuing abuse. NCSMC considers that the delivery of even one child by court order to the care of a paedophile parent is too many. There is no avenue of safety or redress for these children. They grow in number every day. This submission has been prepared with these children at the forefront of NCSMC's concerns.

Any further queries about his submission can be directed to the NCSMC office, or to Policy Officer, Elspeth McInnes (08 8302 4042).

Yours faithfully

Rille Walshe

National Convenor

About NCSMC

The National Council for Single Mothers and their Children (NCSMC) is a self help group set up in 1973 by a group of women who gave birth to children without being married to the child's father. This organisation of single mothers and ex-nuptial children has since then consistently fought for the basic and essential rights of all sole parent families. The NCSMC was formed to act as a national voice for the existing network of state based councils in Australia. Its mission is to fight for the rights of single mothers and their children to the benefit of all sole parent families.

The organization aims to:

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Context of gaining access to a Children's Separate Representative

Family Court problems for mothers and their children are one of the central issues of concern to NCSMC. The most common issue of complaints involve mothers' inability to protect their children from abusing fathers⁴.

Children's representatives are part of the court's response to allegations of child abuse. They are only appointed if legal aid is available. They are only appointed if the protective parent resists warnings by legal practitioners to say nothing about child abuse or domestic violence and persists with making statements to that effect. Many women are silenced by the legal aid process, making it difficult for them to raise allegations later (Rendell et al 2000).

The context of provision of children's representatives is that a process allegedly free from the influence of either party is initiated to determine the child's best interests. The presumption that contact with both parents will be in the child's

⁴ NCSMC acknowledges that both mothers and fathers engage in abuse of children, however child sexual assault and serious physical violence against adults and children are criminal acts which are statistically and empirically dominated by men and are qualitatively different from inconsistent, neglectful or harsh parenting. NCSMC specifically acknowledges men's competence as parents and the positive benefits for children of continuing safe contact with both parents where possible and appropriate.

interests operates as an entry point for consideration which is heightened if one party is adamantly seeking to refuse contact. This party will be regarded as hostile and obstructive (Fineman 1988).

Mothers are judged as bad for wanting to keep their children safe. When a parent believes the other parent is sexually abusing the child, seeking no contact is a normal response. We would not expect that a parent would idly stand by and disregard a stranger having sex with their infant. We would understand the parent's view if they wished the child did not have repeated sessions of contact in isolation with their rapist. Yet children are ordered to have contact with parents who the children say have abused them. If the protective parent makes the claims on behalf the child she will be seen as inventing it. If the child makes the statements about abuse the child will normally be seen as lying to get attention or as having been coached to say things by the protective parent. In short, all manner of justification, speculation and investigation may be engaged in to explain away children's statements of abuse and resolutely resist collecting or referring to evidence of abuse.

Children's Representatives can paradoxically form part of the court's apparatus for silencing children alleging abuse. The Family Court has great difficulty in determining whether or not a child has been abused because proceedings are private and adversarial, it has no forensic or investigative capacity and does not seek to make findings of a criminal nature. Like the three wise monkeys, the court apparatus has structural barriers to ever having to directly know anything about child abuse.

At interim hearings affidavits alleging abuse are treated as untested evidence and ignored until the trial (Altobelli 2000). Parents' claims are seen as tactical manoeuvring and thus dismissed. Children cannot speak to the court so they are given a child's representative. The representative does not have to speak to the child because they 'lack expertise', so they send the child to a Family Report writer. The Family Report writer does not have to speak to the child because he/she speaks to the parents and typically has no qualifications in child development or the forensic assessment and investigation of child abuse. The Family Report writer is accountable to no-one and can invent anything they like, without the requirement to refer to any evidence other than their impressions during the hour or so they will spend with each parent and the child. The state child protection system does have workers with skills in forensic investigation of child abuse but the state child protection system does not have to speak to the child because the family court is involved. But the Family Court cannot speak to children. So we come full circle. The current system is an apparatus which enables everyone to avoid knowing anything and thus ever having to take responsibility for the outcomes for children.

Children's representatives may commission a family report but they are not obligated to put recommendations to the court reflecting the content of the report. They may ignore it. Contesting the report, its accuracy, its impartiality, the substantive basis on which views are formed, what is included, what is excluded is virtually inaccessible to a person without legal standing. Children's representatives have commissioned the report and will thus not interrogate its contents. Mothers with legal aid lawyers cannot instruct their legal aid lawyers to contest the report because to gain access to legal aid they have to agree to abide by their lawyer's recommendations. Legal aid lawyer's recommendations routinely pressure clients to enter agreements rather than contest anything as this keeps costs per case down.

Limited access to legal aid means that most eligible mothers⁵ are commonly not represented in the Family Court, or if they are, repeated applications by the abusing parent exhaust the available legal aid before the matter goes to trial. Without legal representation acting on their instructions, protective parents have little prospect of successfully protecting their children from an abusing parent.

Case Study

In 1998 HH and I attended a legal aid conference, which in light of the extensive abuse of myself and my children , seems totally ridiculous. During the conference HH admitted both to his violence and drug use and admitted that he was the cause of our homelessness. Little of this information was taken into account when making the agreement... The children and I went to interstate to my sister for several months ...My legal representative supplied by legal aid informed me that the long history of violence against myself AND the children was not considered relevant to the Family Court and further that my actions in leaving the state were deemed inappropriate and there was a slight possibility that HH might be given custody as a result.

My concern for her safety arose long before there were any family law issues. In March 1999 I returned to Queensland with my children primarily out of fear of the Family Law Court. I had already been informed many times of the court's habit of punishing women trying to escape violence. I had in the past already mentioned some of my daughter's disclosures to welfare department staff, via phone, but they had been unconcerned. Now they seemed very worried and made a notification. After a pathetic investigation which concluded "unsubstantiated" I was forced to send her back to her abuser whilst the abuse continued. She continued to make disclosures and suffered from soreness, redness and irritation around both her vaginal and anal areas. This was ignored by the department of Families. (Mother of three older children and a then two year old girl of the relationship Qld)

Mothers whose children are being abused ordinarily experience reactions of disbelief or warnings from legal practitioners, counsellors and family report

⁵ Mothers are more likely than fathers to qualify for legal aid under income testing due to women having lower incomes on average than men.

writers that inventing child abuse will place them at risk of losing residence of their children (Brown 2001; Humphreys 1999; Rummery 1996). Such warnings reflect the routine disregard of the relevance of histories of violence against women and children by court officers. Mothers accessing legal aid are required to agree to follow the instructions of their legal aid lawyer. They are told they must not seek 'no contact' orders regardless of serious criminal assaults against themselves and their children. Men's groups gleefully quote Family Court judicial statements that domestic violence orders are easily obtained and meaningless in considering parenting orders⁶.

NCSMC has come to comprehend that an ordinary, routine outcome in the Family Court for mothers whose children are being sexually assaulted by their fathers is that the alleged perpetrator will eventually have unsupervised contact or residence and be able to continue to have sex with his children without consequence. Younger children are at most risk as they are least able to speak, be heard, or be believed in any arena. They rely on the protective parent to tell people what is happening to them, not comprehending that this is the person least likely to be believed, because she is the protective parent.

If the mother resists court orders to present her child for sexual abuse she is most likely to lose residence of the child to the perpetrator and be placed on indefinite supervised contact.

Case Study:

On Christmas day 2000 HH took our then four year old daughter from outside my house and refused to return her. My solicitor refused to do anything. The police were informed but after HH lied to them and produced an old court order they too did nothing. As result my daughter was sexually assaulted again and no-body gave a damn but me. When my daughter was finally returned to me she was in the worst state I had ever seen her. She had been dumped on the doorstep and she just stood their staring straight ahead making no movement and no sounds. This is the only time in my life I have seen a child so devastated. After several Family Law Court mentions a child psychologist was finally appointed. He is well known in the Brisbane area as biased and misogynist. He lied in his report to the court, not the first time either as a local solicitor informed me, and deliberately withheld information from the court. Originally the psychologist claimed that my daughter had made no disclosures but after hearing a tape of her disclosures then claimed that my daughter was simply a liar. The physical symptoms shown by my daughter were ignored. In March 2001 I was forced to give HH residency of my daughter in the family court. I was again informed by the Court that " the long history of domestic violence is not relevant ". My daughter continues to live with her abuser whilst I now have regular access visits. She is convinced that sexual abuse is normal. She is also well aware that telling anybody is pointless, although Daddy continues to remind

⁶ Whilst judicial officers of the court hold such inaccurate views of the relationships between domestic violence and child abuse, the process of securing safety for children is seriously impeded by the ignorance of the judicial decision-maker.

*her before school each morning " you're not allowed to tell anyone about the rudey stuff".
(Mother of child now six years old. Qld)*

Issues Raised:

1. Why does a family report writer who is identified by legal professionals as biased and misogynist get to do continuing reports? Where is the accreditation and review process which monitors the standard of service provided by Family Report writers?

2. The capacity of Children's Representatives to pick and choose their favourite writers of Family Reports establishes a cash 'gravy train' between Children's Representatives and their 'mates' in the Family Report writer profession. The capacity for corruption is embedded in this system. It should be noted that collusion by Children's representatives and/or Family Report writers with perpetrators to procure child sex and/or child pornography is also entirely possible within the current system of personal patronage and referral.

3. The protection of children relies on a viable, funded, trained and responsive state child welfare system. Reviews this year of child protection systems in Queensland, New South Wales⁷ and South Australia have identified chronic funding shortages and incapacity to respond to demand. This is also being reported as a problem in Western Australia and Victoria. Previous research has identified that between 30% and 50% of Family Court referrals are **never investigated** by Child Protection services (Brown et al 1998; Hume 1996).

Case Study

A father with AIDS and numerous convictions including two for sexual assault was granted residence of the three year old daughter with whom he had never lived because the mother ran away to try to stop him having sex with the child. The father was later reported to child protection for his statements to two acquaintances that he liked to watch his 14 year old son have sex with the child, then aged 5. The child protection service did not substantiate the reports, although they may not have actively investigated them due to the department's prioritisation process. The child is now six and is often not at school. (Social Worker SA case)

Issues Raised:

1. The lack of co-ordination between the state child protection services and police services and the Family Court inhibited the court's access to information about the fathers' extensive criminal record including two sexual assaults; the department's investigations of the reported sexual

⁷ See Appendix One submission of NSW Women's Legal Service to DOCS Parliamentary Inquiry 2002.

activity between the father's son and daughter and the implications of the fathers' AIDS status and care of the child.

2. The child was conceived at a time when the father was knowingly HIV positive and had therefore committed a criminal offence of having unprotected sex with the mother without informing her of his HIV status. The court never considered the father's actions in placing the mother and resulting child at risk of HIV as abusive or criminal.
3. The court's decision to remove the then 3 year old child from her mother to live with her father with AIDS with whom she had never before lived, appeared to prioritise punishing the mother for disobeying the court, ahead of the child's well-being.

Case Study:

P's little boy was taken from her in the Family Law Court. She was classified as 'emotionally abusing' her 5 year old. Daddy was physically abusive and there was some doubt as to his sexual conduct with the child during access visits, but of course none of that mattered and the little one was taken to live over 5 hours away from his mum and sister. (Grandmother WA).

Issues Raised:

The mother in this case was classified as emotionally abusive because she did not accept the child's physical and sexual abuse by the father and kept bringing the problem to the court's attention. If she did accept such abuse she would be legally culpable for being complicit in the abuse.

Removal of young children from their primary caregiver and the siblings with whom they have grown up is emotionally abusive, yet the Court is not accountable for the child abuse manifest in decisions to take infants from their primary carer or for exposing children to harm.

Case Study:

When my grandson was given to dad the judge insisted he have counselling to help him adjust. But nobody ever followed this up although I believe it's the sep reps job to do so. A. has been 3 times in 8 months and each time his father and defacto have been in the room. He can't afford to let A. be on his own, he might talk about the sex games!! P's little boy is in the same position and I don't doubt that countless others are as well (Grandmother of four year old boy WA).

Issues Raised:

The sporadic counselling to help the four year old 'adjust' to life with his sexually abusive father provided another layer of coercion of the child to accept that he could not live with his mother. The 'counselling' did not support the child's safety. Rather it

provided a forum in which the child had to again perform adequately to avoid subsequent punishment.

Counselling of children after removal from their family should have an avenue to inform the court with a view to revising the decision if the child disclosed abuse or was manifesting distress – given that the decision has to serve the ‘best interests of the child’. If it is subsequently found that the decision has in fact harmed the child, there should be a mechanism to change the decision.

Case Study:

The first family report, which was quite damning of me, was used by my ex, who is himself a lawyer, during a police investigation into his alleged sexual assault of another girl, from when she was aged three to age seven. He sent the family report to the Police Sexual Assault Team in his defence. I raised concerns about this based on Section 21 of the Family Law Act, but no one seemed particularly concerned. The police were planning to lay charges against his sexual assaults on both my daughter and the other child, but the mother of the other child had a severe breakdown after she found out about my case and was hospitalised for three days. She was too traumatised to pursue it. The DPP advised us that there was not enough evidence, with my case only, to take it to trial in the criminal court. Therefore they recommended I commence proceedings in the Family Court.

The police have offered their evidence in support of my case in the Family Court, but these requests have been knocked back both by his lawyer and the child rep. A second family report was then sought from the same psychologist after the first supervisors of contact, who are reputable, had contacted the police and the Community Advocate, about my ex in his interaction with the child. At the supervised sessions apparently my ex was "controlling and coercive". Most concerning was that he was also observed to have an erection at the session. As the psychologist had by now become aware of the involvement of the police and the concerns raised by the first supervisor, her second report reversed her earlier view and said my ex had "paedophilia preferences" but that contact of a "therapeutic nature" should continue - not stop. But even with the second report, the child rep at another interim hearing, recommended that contact should finish at the contact centre and instead commence every week at the father's house for 2 hours - with a friend from his work and a supervisor from a less reputable contact centre. These supervisors are not accredited or regulated and are definitely not qualified. In my case unsupervised overnight contact has been scheduled by the Family Court to commence in August (Mother of three year old girl ACT).

Issues raised:

1. illegal circulation and use of the Family Report with no action or consequence
2. the Family Report pathologised the mother for making allegations against the father despite the existence of independent Police evidence supporting her allegations.
3. the Children's Separate Representative refused to access available relevant material from the Police about the alleged offender's activities.
4. the child is continually exposed to her paedophile father
5. the Family Report writer considers exposure to paedophile fathers to be 'therapeutic' in non-specific ways. The 'therapy' available to children spending private time with paedophiles is not challenged or specified or monitored.
6. the Children's representative in this case was a defence lawyer for sexual offenders at the criminal bar, used to excusing and justifying sexual offending on behalf of clients, with regular contact with the sex offending community. The professional practice of a defence lawyer for sex offenders is to attack children who claim sex abuse and aggressively destroy their capacity to give evidence.
7. the Children's representative's capacity to make referrals to selected report writers and selected supervised contact service providers establishes opportunities for corruption, kickbacks and referrals to family report writers who are sympathetic to sex offenders and hostile to mothers alleging abuse.
8. the child's safety from abuse during contact deteriorated from supervised accredited providers, to non-accredited providers, to unsupervised home contact on the recommendation of the Family Report writer and the separate representative even though the father's paedophiliac preferences were acknowledged.

Case Study:

The sep rep went to lunch with daddy. We just happened to be in the same restaurant. They were very friendly and it made me realise that the child doesn't stand a chance of being protected (Mother of four year old child victim WA).

Issues Raised:

1. The Children's Representative has entered a partisan relationship with the allegedly offending parent.
2. The Children's Representative has the power to select referrals to friends, to persons known to be sympathetic to child abuse, to receive personal benefit or kickbacks in exchange for referrals.

Case Study:

When the family report writer interviewed me I told him I'd read a lot of papers about how children that age don't really know how to lie about such things, his reply.... 'Oh yes they do!!, and he's got the books to prove it' So I guess it all depends on how master four tells him about his cousin and dad and what they do to him (Grandmother of 4 year old boy WA).

Issues Raised:

The report writer selected by the Child's Representative has preconceptions that pre-school infants lie about sex abuse, despite copious research evidence which indicates that infants have to be exposed to sexual activity in order to talk about it and that the incidence of false sex abuse allegations in family court proceedings is no greater than any other context of such allegations (Brown et al 2001; Parkinson 1990).

Case Study

At my first interview for the family report I was asked if anyone in my family had been sexually assaulted. I said I believed my aunt in England had been abused when she was 9 and the consultant's report said I had been assaulted when I was 9 and thus I was now being oversensitive and needed professional help - also Munchausen by proxy was floated around! She also said that my ex-partner's suicidal tendencies and thoughts and threats to kill me were due to stress and lack of sensitivity from me! I think there must be a family report template doing the rounds and they just add names to it regardless of the case! (Mother of 3 year old girl ACT).

Issues Raised:

The Family Report writer selected by the Child Representative rescripted the mother's statements to manufacture a scenario to explain her allegations against the father and to blame and pathologise her.

Because the children involved are below pre-school age, no professional is expected to actually speak to the child, or if they do, they can ignore what they say and describe it as lies, attention-seeking or statements coached by a parent.

Case Study:

I conceded custody of my five year old son to his father after years of physical and sexual abuse against me and our son because I couldn't protect my boy during contact, and the department said they wouldn't act because I was the custodial parent and the Family Court was involved. So I stupidly believed child protection would intervene to protect him if the father was the custodial parent and court action ended. Some months after conceding residence my son had a nightmare during a contact visit over the school holidays. He appeared to be reliving being raped.. I didn't return him after contact and took him to my counsellor and later to child protection where he gave detailed information to child protection workers and the police about his rape by his father and anal bleeding, and then being taken to a doctor in Melbourne afterwards. But nobody physically examined him and he was too young to be a witness in a criminal prosecution so they just filed a victim-offender report and left it to the Family Court. The children's representative in the Family Court commissioned a private psychologist to write a report. It said that my child was distressed but it was difficult to decide whether that was because he was raped or because I had made him say that, so she recommended that I be placed on supervised contact. It is tragic really that when they considered what to do they decided to risk more violence from his father, rather than have me talk to my child without supervision. The children's representative wouldn't look at the hospital or police records where there is independent information about the father's violence and his child porn collection. I now don't see my son at all any more because of the violence from his father towards me and my son before and after the visits. I can't protect him. I just pray he survives but he told me he wants to be dead. He has bowel problems because of the rapes (Mother SA).

In summary there are many serious concerns about the current operation of the Child Representative and Family Report system.

- Parents alleging abuse are silenced by legal practitioners from talking about the abuse in the process of applying for legal aid and making/responding to court applications which limits access to Children's Representatives in cases involving allegations of violence against children.
- Many Children's Representatives share a widespread *a priori* view that seeing both parents is in the best interests of the child creating a presumption that any parent seeking no or limited contact is acting against the child's best interests. This leads to a presumptive hostility towards protective parents. In this way Children's Representatives function as an additional layer of experts interposed between the child's experiences and the court to manage and justify the continuing presentation of the child for abuse.
- Many people involved in the court processes believe and act on the following myths regardless of research evidence and presenting facts: (a)

mothers lie about child abuse to gain advantage⁸ (b) young children can be coached by parents to lie about abuse (c) children benefit from contact with parents who are abusing them (d) child protection would have intervened if there really was a problem (e) fathers are frequently wrongly accused of abusing children (f) there is no connection between domestic violence and child abuse (h) children are resilient and recover easily from abuse events. Adherence to blind belief in these myths is at the core of the problem for children experiencing abuse.

- Children's Representatives' referrals to Family Report writers generate considerable income for the service provider creating opportunities for corruption and cronyism between Children's Representatives and Family Report writers.
- There is no avenue of accountability for the professional conduct of Children's Representatives. The guidelines provide a very broad guide for conduct but not a mechanism for investigation and remedial action if there is misconduct. Parents of children who are being sexually abused following a recommendation of a Children's Representative which was based on errors of fact or deliberate exclusions of evidence cannot seek remedy and neither can the child.
- Family Report writers can have diverse and idiosyncratic training and methods. Their reports can arbitrarily exclude or include information. They can be untruthful in fact. They can speculate without foundation. They can base subjective conclusions on irrelevant material such as the clothing worn by a parent. They can detail children's allegations of abuse and recommend contact without needing to justify why or how the contact serves the child's interests or providing any monitoring of the outcome for the child.
- The child's representative in the Family Court has no **obligation** to do anything other than to liaise with the parties, organise a report and put the report and a recommendation to the court. At minimum they act as the commissioning agent for family reports and can select cronies who can be relied upon to deliver reports which fit their preconceptions or to pay kickbacks for referrals, or to facilitate a shared taste for child sex offending.
- There is no requirement that children's representatives in the Family Court actively seek to make all relevant material available to the court - which may include information from GPs, hospital records, police records,

⁸ The 'advantages' of raising child abuse in Family Court include extra expense, extra appointments, longer proceedings, risk of loss of residence, risk of loss of contact, being treated like a liar.

school counselling services, child contact services, child protection reports etc. The existence of records detailing abuse of mothers is not even recognised as relevant to the safety of children.

- The restrictions on the information available to the court structurally enables the court to avoid finding out what has actually happened to the child beyond the limited and subjective and often inaccurate information in the Family Report. This deficiency is exacerbated by the limited acceptance of evidence at interim hearings which ensures that allegations of abuse are treated as untested and then ignored (Altobelli 2000; Dewar and Parker 1999, Rendell et al 2000, Rhoades et al. 1999, 2001).

A. NCSMC recommends that federal funds be provided to the Family Court to make agreements with state child protection services to provide forensic investigation and assessments of allegations of child abuse with recommendations regarding the child's future safety and well-being. This would have a number of structural benefits:

(a) The people writing reports on child abuse would have clinical training and expertise in the forensic investigation and assessment of child abuse and be operating to publicly defined and monitored and accountable standards;

(b) The people writing reports on child abuse would have access to existing health, welfare, education and police records of the child and parents from within state information systems enabling a more holistic and detailed understanding of the child's family history and current situation.

(c) The capacity for corruption and cronyism between Children's Representatives and Family Report writers would be greatly reduced.

(d) Rather than Family Court involvement being a signal for state departments to cease all protective action with respect to a child (Fehlberg and Kelly 2000), a Family Court referral for investigation under a funded agreement would ensure a quality independent investigative service supporting the child's safety.

(e) The funding of state-based investigations could come from a reallocation of funding for family report writers. Commissioning of reports, liaison with the parties and preparation of paperwork for the court could be managed by skilled paralegal officers. They would be responsible for ensuring requests for investigative reports are referred to state departments when allegations of abuse are made, parental consents for access to welfare, health and police records are obtained when applications and responses are filed (see recommendation B below) and that resulting report and record material are available to the court's timeline of decision-making.

B. In cases involving allegations of child abuse, particularly when the child is of pre-school age, it is critical that all relevant information is before the court at the time of its decision-making. This should include the child care, education, welfare, health, and police records of the parents and child/ren. Parents in cases involving allegations of domestic violence or child abuse should be required to consent to releasing the records available to the Court officers as a part of the process of filing or responding to contact or residence applications. Such records should accompany affidavit material at interim hearings and be annotated to identify material relevant to the child's safety such as:

Evidence of violent conduct by a parent

Evidence of harassment, threats, harm or injury to any party by one the parties

Evidence of parents' patterns and activities of care for the child

Evidence of parents' capacities and facilities to meet the child's care needs

Evidence of parents' exposure to harm or failure to protect the child

C. Court orders and children's representative recommendations which knowingly expose children to carers with a record of violent conduct towards adults or children, or who the child has alleged has abused her/him should detail:

(a) why the risk of future violence to the child does not exist or is not sufficiently significant to warrant a cessation of exposure to the person;

(b) how the child's safety will be monitored and by what means and time-line it will be reviewed;

(c) why the child's disclosures or other evidence of abuse have been discounted in favour of continuing exposure and how this serves the child's interests, with reference to credible research literature supporting continuing exposure to abuse ahead of protection from risk of harm as the course of action serving the child's best interests.

D. In cases involving child abuse allegations where the recommendations of the children's representative support a change in the child's residence from the person who has been the primary carer to a person with whom the child has never lived, the children's representative should specify how removal of the child from its known care relationships delivers greater benefits to the child outweighing the risk of harm of forced removal from her/his family, with reference to credible research literature supporting this view. In such cases, the court orders should specify how the child's wellbeing will be monitored, with what indicators and by what means and time-line it will be reviewed.

E. When the court cannot decide whether or not child abuse is taking place, the approach should be to minimise the risk of harm to the child. This means, in effect, making recommendations and orders providing circumstances which would protect the child from harm if the abuse allegations were true. In other words, 'better safe than sorry'. Over their lifetime children can resume contact with a parent if they choose, they cannot undo traumatising abusive events or forget that nobody helped them even when they kept telling.

F. All Family Report or child protection investigation sessions should be taped to provide proof of what occurred in the event that the veracity of the writer's account of the sessions is challenged by a participant. Privilege is currently functioning to enable some report writers to invent the reality they prefer without accountability to anybody. Videotapes or transcripts of children's disclosures of abuse to child protection services and/or Family Report writers should always be played to the court to avoid the sanitising, minimisation, reinterpreted, justification or explanation of the disclosures by adults. If a child's disclosure or physical evidence or abuse is to be disregarded, the reasons for such disregard should be detailed by the children's representative and supported by evidence and rigorous objective clinical assessments which explain why the child's exposure to risk of abuse is to be continued.

G. When a child's representative puts a recommendation which is contrary to that of child protection investigators or family report writers, the child's representative should have to specify why they have not accepted the recommendations arising from the investigation.

H. In the interests of providing a credible service meeting children's interests, legal personnel with a professional practice involving the defence of sex offenders should be prevented from working as Children's Separate Representatives.

I. Pending wider reform, Children's Separate Representatives should be prevented from selecting preferred providers of Family Reports to remove the systemic opportunity for corruption. All providers of Family Reports should be subject to a rigorous annual accreditation process with an allocation system which does not rely on personal referrals.

J. Child representatives should be required to undertake training in a number of social issues including domestic and post separation violence and its impact on women and children.

K. The draft guidelines omit reference to procedures for consulting children when they are very young. This facilitates the situation of young children to be filtered through adult perspectives enabling them to be readily abandoned to continuing abuse in preference to supporting the protective parent. The guidelines should specify the processes of supporting the safety of infants and young children, such as the foregoing recommendation for the use of independent records where they exist and a presumption supporting the removal of risk of harm to the child.

L. Any recommendations by the Children's Representative for contact when there is evidence of risk of abuse should include mandatory safety provisions including professional supervision of contact as well as a detailed statement

by the assessing professional specifically skilled in child development and child abuse, that contact is in the child's interests and why this is the case for the particular child. It may be the case that a child will benefit from a continuing relationship with its rapist, but this should not be assumed (McIntosh 2000). Exactly how the child will benefit from such contact needs to be detailed and subject to continuing monitoring .

Factors Mitigating Against an Effective Service for Children:

Children's representatives get paid at minimal rates for the work they do and this encourages minimal service. Why do more? Who can afford to? The only obligation is to liaise with the parties, organise a report and present it to the court. When the child is very young, Children's representatives can get away with never meeting or talking to the child. They can satisfy requirements for payment by making referrals to the provider who does their Family Reports for them.

Acting on initiative to seek out extra information from other agencies and individuals costs time and money for no returns to the practitioner. Anyway, because it is discretionary to seek out information, nobody can hold Children's representatives accountable for the omission - certainly not self-represented impoverished parents.

The Family Court is outside and above the purview of the Ombudsman or any oversighting authority which can investigate court decisions resulting in abuse of children. In the case study of the child whose father has AIDS, who is accountable if the child is found to be HIV positive after the sex abuse? The Appeals Court cannot hear appeals on the judge's subjective assessment of the evidence, only points of law.

The draft guidelines as presented do nothing to change any of the above concerns. The recommendations NCSMC has made would result in increased protections for children. NCSMC commends them to you.

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APPENDIX ONE:

Copy of a Report by the Women's Legal Centre NSW submitted to the Inquiry into DOCS 2002.

Systemic Problems in Child Protection: A Community Discussion Paper⁶

There has been strong rhetoric over the last few decades about the rights of children, most especially their right to safety and social justice. Advocates for children have spent considerable time in debate and practice to work toward a child protection system that seeks to hold as the main intention the best interests of children. However the main components of that system, namely the Department of Community Services, the police and legal system have struggled to provide an intact blanket of protection to many children who are reported as being at risk.

This failure has been particularly evident when the issue of child abuse, in particular sexual abuse, enters the doors of the Family Court. It has become evident that the current policies and practices of the Department of Community Services, the Joint Investigation Teams, the Family Court, as well as the Legal Aid Commission, interact to create extreme difficulties for resident parents seeking to protect their children when they are confronted with a disclosure of sexual abuse.

The repeated failure of State and Federal systems to effectively cooperate and coordinate their response to the needs of protective parents means that they are left without legal representation or support from child protection agencies. This inevitably means that children are left unsafe.

This discussion paper aims to identify a number of areas of concern, recognising that this systemic problem for child protection must be addressed if a child's right to safety is to be honoured by all guardians of that child, both within the family and wider community.

Department of Community Services

The NSW Department of Community Services (DOCS) is the agency with the lead responsibility in child protection as it is the agency charged by law for the care and protection of children. DOCS has the responsibility and legal mandate to ensure a child's safety, care and welfare.

It has been recognised that this department has been in crisis for some time in terms of its inability to effectively respond to the overwhelming number of notifications made. For example of the 36,382 notifications made to DOCS between February and November 1997 only 51% were investigated, with a further 22% waiting for investigation to be completed. In saying "only 51%" this still numbered 18,527 cases. Given the existing caseload carried by District Officers, in the midst of limited human resources, exceedingly high workloads, and a critical community eye, a

process of prioritising is the only means available to DOCS to try and maintain some reasonable hold on the tidal wave of work they face on a daily basis.

Assessing children at risk is often based on whether or not that child can be kept safe by their main carer/s. In terms of a disclosure of sexual assault made by a child to their resident parent, DOCS would consider that child to be safe if they are kept from the alleged perpetrator until further investigation can occur. DOCS often relinquishes its duty of care to the child as it is presumed that further investigation and steps to protect the child will take place in the Family Court. It therefore becomes the responsibility of that non-offending parent to safeguard the ongoing protection of their child.

This step is problematic for two main reasons. First, it takes the onus of child protection from the State and therefore public domain, to the private domain of Family Court litigation, most commonly between the two parents. Secondly, in trying to keep her child safe, stopping contact often places the non-offending parent in direct conflict with Family Court orders, and therefore in an adversarial position. The focus of attention shifts to the resident parent justifying and defending the breach of orders without the support of a professional assessment of risk by the statutory authorities. Her position is further hampered by the fact that many government-funded counselling services will only accept referrals following an investigation and subsequent disclosure of the child to DOCS. Inaction by DOCS effectively means that mothers are unable to access vital counselling services for their children who may be dealing with the effects of being abused. Further when mothers make attempts to access other counsellors or doctors who work independently of government agencies they and at times these independent health workers are often accused of 'systems abuse' or bias and orders are issued by the Family Court to prevent further attendance at these sessions.

The Joint Investigation Team

The Joint Investigation Team (JIT) is a service for children and their families which brings DOCS and the Police together to provide statutory protective intervention. The Police have a responsibility for the investigation of alleged child abuse which might constitute a criminal offence. The joint investigative response seeks to link the protective intervention system of DOCS with the criminal investigation of Police.

DOCS will refer allegations of sexual abuse to JIT, which will be accepted for further investigation where the child has made a clear disclosure to an adult and/or there is physical evidence of sexual abuse.

The focus for JIT is on a criminal investigation. A forensically-led interview is conducted by a police officer and DOCS officer, often recorded on video. JIT are focussed on having enough evidence to satisfy a court beyond reasonable doubt of the guilt of an alleged offender. This may automatically exclude preschool aged children from being interviewed, as there are difficult evidentiary issues in relation to disclosures from young children. If a disclosure is not forthcoming, JIT will often take no further action in the investigation and close the case. JIT may assess some risk and then refer the case back to the local DOCS office for allocation. Once again the guidelines concerning the prioritisation of cases within DOCS as previously discussed may mean there is no further action and the case is closed.

Commonly then, mothers who believe their child has been sexually abused are left to continue their battle to protect their child in the Family Court.

Family Court

The Family Court was not established as a specialist child protection agency. However it is expected to make parenting orders that serve the best interests of the child. As another 'system' dealing with overwhelming numbers of cases that involve child protection issues, the Family Court, like DOCS has also become embroiled in a struggle to defend children's rights in an often heated arena where parental rights also hold a privileged position.

Self-represented litigants

The workload of the Family Court has substantially increased. With cuts to Legal Aid, there are many unrepresented litigants in the Family Court, making court proceedings lengthier and more frustrating for clients, court staff, legal practitioners and judicial officers. The Court over the last few years has directed more litigants to mediation in the form of case conferences or court counselling. There is pressure on litigants to come to an agreement in relation to parenting issues. While this suits many litigants in a dispute, it does not work well in matters where there are allegations of child sexual assault. Many mothers are extremely reluctant to compromise or come to an 'agreement' that may make the further abuse of their children a strong possibility.

At times, facing the pressures of a stalemate with little supporting evidence, mothers do agree to Consent Orders for contact between the child and the father. These Contact Orders soon become unworkable as the mother witnesses the emotional effects on their children who continue to have contact with the alleged abuser. The contact arrangements leave the mother at risk of contravention proceedings in the Family Court which incur serious penalties.

Mothers have expressed their distress of what they see as being caught in a "Catch 22" situation. If they have grave concerns about the ongoing safety of their child they withhold contact. This potential breach of Family Court orders places them in a situation where their actions may be seen as equally abusive in terms of denying their child access with another carer. Facing the likelihood that the sexual abuse allegations will not be substantiated and further, that they themselves may also be accused of abusing their child emotionally by preventing contact, they agree to ongoing contact. Their status as a caring mother, and therefore the character of their protective acts, is even further undermined as they find themselves attacked in cross-examination for handing over the child.

The high cost of being involved in Family Court proceedings without legal representation cannot be overstated. Litigants who have no choice but to appear before court unrepresented walk into a proverbial mine field. Without an understanding of the legal process or rules of evidence they find themselves unsure about the legal tasks of using subpoenas, calling witnesses and rules of cross-examination. For an unrepresented mother trying to protect her children, even if she has some evidence of the sexual abuse, it is difficult to adduce the evidence required to persuade the Court of the risk to her child of contact with the alleged offender.

Lack of evidence

The very nature of child sexual abuse, in terms of the active and continued manipulation by the offender to maintain the secrecy of his crime, makes it difficult to substantiate. Further it is a commonly held belief that allegations of child sexual abuse are unfounded and only made by

parents for tactical purposes in Family Court proceedings. Infact several research studies have confirmed international experience, finding that in Australia, false allegations are low, making up only about 9% of all allegations.

Most commonly the sole witness, other than the offender, is the child victim, coerced into silence and confused by the fact that the abuser is usually someone close to them who they have learnt to trust. The fear surrounding children who have been abused usually means that, should they disclose, it will most often be to someone they hope will believe them and keep them safe. This is commonly their mother. Having taken the huge step of finally confiding in someone, children will often be hesitant to yet again tell someone else, making the task of an investigative interview with children all the more difficult to achieve. If the child is still having contact with their alleged offender, as in the case of contact visits, that hesitation will be exacerbated.

The fear of the alleged offender's response, especially if he has threatened the child with retribution, will naturally prevent a child from risking further harm. These tactics of coercion will make clear and concise evidentiary statements, a difficult task to achieve.

Without strong evidence criminal prosecution is difficult. In the absence of a JIT investigation, DOCS risk assessment and supporting evidence from DOCS's referral agencies, the non-offending parent also has little evidence to support her application in the Family Court to protect the child. Further if she is unrepresented, she will not have an understanding of the legal process or rules of evidence. For an unrepresented mother trying to protect her children, even if she has some evidence of the sexual abuse it is difficult to adduce the evidence required to persuade the Court of the risk to her child of contact with the father.

'Right' to Contact

The changes made to the Family Law Act in 1996 were intended to encourage both parents to take an active shared parenting role. The reforms, supported by recent decisions of the Family Court have been a catalyst for many debates about the rights of parents against the rights of children in terms of residence and contact. Recent collaborative research by the Family Court and the University of Sydney evaluating the 1996 reforms to the Act has found that there is now effectively a 'presumption' operating in favour of contact with the non-resident parent, despite the requirement that contact must be in the best interests of the child. This fosters a belief now held by many non-resident parents (and solicitors), that they have a 'right' to contact with their child. It can lead to situations where fathers continually make applications before the court to maintain contact with their child. The Family Court is therefore used as a medium through which fathers have contact to both their former partners and their children. The difficulty for the Family Court is balancing the dynamics of an abusive relationship with the litigant's fundamental right to due process.

With the evidentiary difficulties discussed above, the Family Court may grant contact to the alleged offender, therefore unwittingly subjecting the child to further abuse. This occurs in particular at interim hearings where the Family Court is now more often awarding contact to fathers without the benefit of a detailed consideration of the allegations or even a Family Report. Where there is detailed consideration of the allegations and a chance for each party to bring evidence, a significant number of cases result in 'no contact' orders being made. The presumption in favour of contact, in the face of allegations of child sexual abuse, especially at interim hearings, means that children are being exposed to further abuse which, if it goes to a final hearing is often determined to be contrary to the child's best interests.

Supervised Contact

In some matters as discussed, the risk to the child will be seen as unacceptable and the Court may order supervised contact at interim or final hearing. It needs to be acknowledged that contact with a sexually abusive parent, even if no further acts of sexual abuse are perpetrated, can be harmful for children. If the child's context continues to feel unsafe, their response may resemble emotional abuse. The child may become more and more fearful of attending contact, exhibiting behaviours and emotions that demonstrate severe anxiety which may be reflective of a continuation of the coercive tactics of their abuser. Due to the limited vacancies at contact centres, supervision is usually carried out by relatives, often members of the alleged offender's family. The court does not appoint supervisors. Once the order for supervised contact has been made by the court there is no ongoing assessment of either the quality of that supervision or the impact on the child.

Child Representatives

Where sexual abuse is alleged the court may order a Child Representative to represent the child's interests. The Children's Representative is there to look after the best interests of the child, separate to the views of the parents. It is believed that this is an effective way for children's views to be heard by the court, free from the influence of parents. While the court perceives that this is in fact what happens and bases its decisions largely on the recommendations of the child representative, the reality is that the information they hold is often inadequate and misrepresents the views, wishes and needs of the children they represent. Children's representatives often have little or no contact with their clients and may not come from a perspective of children's advocacy in their work with children. Further, the Child Representative frequently relies on independent assessments by court-appointed psychiatrists, child experts or court counsellors.

Court Counsellors and Independent Assessments.

Where there are allegations of child sexual abuse the Family Court will order a Family Report to be completed by a Court Counsellor and may order other independent assessments to be completed. These Counsellors, psychologists, psychiatrists and other experts often base their reports on a single interview with each family member and observe each parent with their child for one session. Within two or three sessions they make assessments of the psychological health needs of children, the likelihood of abuse having occurred and the risk of it occurring in future contact. This is then included in a report which is often relied on heavily in Court judgments. They may or may not have practice experience in the area of child sexual abuse and may not have access to specific training about child sexual abuse. In no other area of child protection would it be considered possible to obtain sufficient information in this way. The experience of families suggests that often these reports reflect the limitations of assessing risk within the confines of an interview room. The full nature of an abusive relationship and indicators of sexual abuse are either misinterpreted or unseen in this context.

Judicial Officers and Registrars

Judicial Officers and Registrars are often given the critical task of risk assessment without the support of expertise and often with minimal information. Registrars, in particular, who deal with contravention matters and interim contact arrangements make important decisions without expert evidence about the ongoing risk to the child and sufficient time to consider the evidence. Overall, Court decision makers may also not have access to specialised training in child sexual abuse and be able to understand the dynamics and contexts in which this abuse occurs, let alone the effects on children.

Jurisdictional Issues

There is much misunderstanding about the powers of the Children's Court in relation to children's matters. DOCS can make an application under the *Children (Care and Protection) Act* to the Children's Court for a care order in respect of a child. Once a care order is made the Family Court will, in effect not deal with an application for contact while the Children's Court care order is in place. However, in practice, DOCS will often not get involved in a matter where there are Family Law proceedings or negotiations on foot. Some DOCS officers incorrectly believe that as the Family Court is a Federal jurisdiction, the Children's Court has no overriding power to intervene or overturn Family Court parenting orders. In fact, once the Family Court has made contact orders which may expose the child to further sexual abuse it is DOCS' mandate to use its power under the *Children (Care and Protection) Act* to apply to the Children's Court to override the Family Court orders to protect the child. However, unless there is new evidence of abuse, say following contact, it can be a difficult process for DOCS to make a successful application to the Children's Court.

The perceived jurisdictional issues between the State and Federal agencies who have a role in child protection are barriers which are complex but not insurmountable and ultimately leave children unprotected.

Legal Aid Cuts

The severe cut backs to the Legal Aid budget over the last three years has left many women and children unrepresented in the Family Court. Due to the Federal/State legal aid funding arrangements which were renegotiated at the Commonwealth's request in 1997, the Legal Aid Commission has been placed in a position of prioritising its scarce funding in criminal law over other areas such as family and civil law. This has led to refusals of legal aid in many family law matters, even where there is clear risk to the child or an applicant can show particular disadvantage.

Mothers are representing themselves in Family Court applications and are struggling alone to protect their children. Being unrepresented in Court is a daunting, overwhelming prospect in itself. This is exacerbated by having to oppose applications made by an abusive and often controlling ex-partner. The Court is forced to spend excessive and frustrating time tutoring self-represented parents in the legal process. The result is that critical evidence vital to the issue of child sexual abuse is not adduced and the Court's primary role to consider the best interests of the child is dangerously undermined.

Where Legal Aid grants are made, recipients are often required to attend Legal Aid conferencing which is a form of mediation between parties to see if an agreement is possible. The conference is conducted by an experienced family lawyer and an assessment of the merit of each party's application is also conducted during the conference. Often parents are forced to choose between unworkable consent orders or having their grant of legal aid terminated and continuing in the Family Court unrepresented.

In this sense Legal Aid solicitors/mediators become quasi decision makers by deciding whether a case has merit. In many cases to continue with an application in Court unrepresented is not an option for women and so terminating a grant of legal aid is in effect deciding a matter. The

woman is left with consent orders exposing the child to more abuse or exposing the woman to serious penalties if she contravenes the order.

Legal Aid funding decisions are made prior to substantial work being completed in the Family Law matter. There are often medical forensic reports and sexual assault counsellors files which would be essential for making informed decisions, however prior to issuing subpoenas or collecting these documents there is often little evidence to support the allegations of child sexual abuse. Yet it is at this stage that Legal Aid conference mediators make decisions about the merits of the case. They are not trained in the complex dynamics of child sexual abuse and may have no understanding of the context in which the abuse occurs.

Even when a legal aid grant is made and it is decided that an applicant has 'merit' the grant is often capped. This capping prevents the legal aid recipient from appealing interim orders made by Registrars which expose the child to risk or applying to vary interim or final orders if, for example, further abuse on contact is disclosed.

In most cases, the Child Representative is paid by the Legal Aid Commission but often both parents are required to contribute to or cover the Representative's costs in total. Action is taken against mothers, often already in financial hardship, by the Legal Aid Commission to recover the costs paid to the Child Representative. Previously the Legal Aid Commission has refused to grant aid for a Child's Representative or has limited the number of Child's Representative grants made in one year resulting in parents being ordered by the Court to cover the Child's Representative costs or a Child's Representative not being appointed.

Some strategies for further consideration

The issues raised in this paper are complex, interwoven and cross State and Federal agencies and jurisdictions. There are certainly no simple solutions. However, a number of strategies were raised to address some of the difficulties for women struggling to protect their children from further abuse and for children struggling to recover from the abuse.

- Establish a Senate Inquiry into Child Protection Systems
- Reinstate Legal Aid funding to pre 1996 levels
- Provide a grant of Legal Aid as a priority where the matter involves a risk to a child
- Reinstate Legal Aid grants for all Child Representatives which do not require contribution or recovery of costs from parents
- Establish a specialised case management system for dealing with Family Court matters involving allegations of child sexual abuse such as 'Project Magellan' in Victoria
- Provide training for DOCS staff about the powers of the *Children (Care and Protection) Act* to override Family Court parenting orders
- Establish Protocols between Family Court and DOCS for dealing with matters involving child sexual abuse allegations
- Provide detailed training for all Court Counsellors and Registrars about child sexual assault including dynamics of abuse, tactics used by perpetrators
- Provide training for Child Representatives in children's advocacy and communicating with children as well as child sexual assault
- Increase contact centres to facilitate supervised contact
- Provide information to parents and children on JIT
- Release of the completed evaluation report of JIT
- Establish research project which tracks child sexual assault allegations from first report to DOCS – referral to JIT – rejection by JIT – referral back to DOCS - further action or inaction – response by Family Court to child protection concerns – availability of Legal Aid.

Case Studies

Sharon

Sharon is 23 year old Aboriginal woman who is mother to 4 year old Dougie. Dougie was sexually assaulted by his father Pete (a non-Aboriginal man) from a very early age. The child sexual assault included penetration of Dougie's anus and Dougie being forced to play 'games'.

After confronting her partner, who admitted to the sexual assault, Sharon took steps to immediately separate. Pete called DOCS to notify them himself of his actions.

DOCS contacted Sharon within an hour of receiving the phone call from Pete. She was told she would need to bring Dougie in for an examination and interview. Sharon informed DOCS that she was separating from Pete and he would not come back to the house. DOCS promised they would call her to make a time for a medical examination.

Two weeks after the notification, frustrated at the lack of DOCS response and extremely concerned about Dougie's safety and health, Sharon phoned Dr Atherton, her family doctor. Dr Atherton advised that it would not be worth the trauma to Dougie to put him through a medical examination.

Despite 18 phone messages left with DOCS and Sharon's mother's advocacy, Sharon did not hear back from DOCS until 6 months later. At this time, a DOCS worker had said it had taken some time, as her matter was not a priority because the child was considered safe.

Meanwhile Dougie's behaviour became worse – it became increasingly sexualised and inappropriate. He showed fearful behaviour and became harder to parent. Sharon was finding it very difficult to cope under these circumstances and was extremely frustrated at the lack of assistance from agencies such as DOCS and child sexual assault services.

After representations from Sharon, her mother, support services and Women's Legal Resources Centre, the local Joint Investigation Team investigated Sharon's allegations. They are took a statement from Dougie 12 months after the last sexual abuse incident. Dougie was alone in the room with two investigation officers (one from DOCS and one from JIT). He did not disclose Pete's sexual abuse but said clearly that he did not want to see his dad. The interviewers used forensic interview techniques. Sharon could not go in with Pete and could not discuss before hand what the interview would be about. Needless to say, the JIT assessment said they could not confirm the allegation and the case was closed by JIT and DOCS.

After lobbying by Women's Legal Resources Centre, Sharon was given a limited, capped grant of legal aid. The Court ordered interim supervised contact with the option of restoring the matter to the Court list within 48 hours if the child came back from contact distressed. This occurred on the first contact weekend (with the child going to sleep the following night with a plastic gun in his bed and suffering distress). Legal Aid have capped Sharon's grant and so she is not able to 'restore the matter to the list', as Legal Aid will not fund this extra legal process. She now only has a grant of Aid to have a solicitor represent her in the final hearing – over 9 months away and in the meantime has to provide the child for contact each second weekend – despite his extreme distress and possible continued abuse.

Commentary

- DOCS did not act to protect the child and Sharon was forced into the private domain of the Family Court to protect her child, where, for a period she was unrepresented.
- There was a lack of evidence for consideration by the Family Court due to DOCS inaction and delays in referring Dougie.
- When the Legal Aid grant was made, it was capped so that, despite the Registrars orders, Sharon was not able to go back to the Family Court when further abuse was suspected.
- Supervised contact orders were made at the interim hearing rather than no contact orders which continues the non-legal presumption of father's 'right' to contact.
- Sharon is at continual risk of contravention proceedings (and the subsequent penalties) for protecting her child.

Rebecca

Rebecca lives on the Central Coast and has an 11 year old daughter, Kalia. She has been separated for 3 years from Kalia's father, John. Kalia's behaviour and comments have lead Rebecca to suspect that John has sexually abused Kalia. Kalia becomes distressed and uncontrollable when she has to go to John for contact. Rebecca temporarily stopped contact while she contacted DOCS. The matter was referred to JIT who interviewed Kalia. Although Kalia did not make a disclosure JIT recommended counselling for Kalia and continued supervision.

John, who lives in Cobar has applied for contact with Kalia in the Family Court. Rebecca did not want to be unreasonable and suggested seven different possible supervisors, all of which were rejected by John. Finally, the Court appointed John's best friend who lives in Sydney as the supervisor on an interim basis. Supervised contact occurs at John's friend's house each month.

Rebecca receives Centrelink benefits as a single mum. She was not eligible for Legal Aid to contest the contact application. She spent \$3,500 on private solicitor fees. She has now had to continue unrepresented, as she cannot afford to pay any more legal fees from her benefits.

She is waiting for the final hearing on contact. Meanwhile contact handover every month has been changed to the Police Station as Kalia is so distressed at handover time. The police have intervened to stop contact on three occasions.

Commentary

- DOCS have not continued in this case as it is a Family Court matter
- Due to the cuts, Rebecca was not eligible for Legal Aid and had to pay her own legal fees when she is already in financial hardship.
- John's unreasonable demands regarding the supervisor have led to unworkable contact arrangements, causing enormous distress to Kalia, whom the Family Court is set up to work for in the best interests.
- There is no independent screening of supervisors or monitoring once supervised contact has begun.
- Supervised contact is still abusive for a child who has suffered sexual abuse. In no other system are victims required to have contact with the perpetrators of the abuse.

Prita

Prita is divorced from Ron, the father of Gabi, her 8 year old child. Contact orders were made for Ron to have contact on Saturday and Sunday only of each second weekend. Soon after

contact began, Gabi disclosed that her father had sexually abused her. Prita contacted DOCS who referred the matter to JIT. She was referred for medical examination and JIT are in the process of further investigating the matter with a view to criminal prosecution. Prita signed undertakings with DOCS under the *Children (Care and Protection) Act 1987* that she would not allow Ron to have contact with her daughter. Soon after, Ron filed a Contravention application in the Family Court arguing that Prita was contravening the Contact orders.

Prita applied and was refused Legal Aid. She was representing herself in the contravention proceedings. DOCS would not intervene saying it was now a matter for the Family Court despite being the agency that took undertakings from Prita and being involved through JIT in an investigation of the allegations. Prita attended three Court mentions unrepresented. Ron was arguing for unsupervised contact. After making contact with a sympathetic private solicitor who acted pro bono for Prita, she managed to defend the contravention and have the orders temporarily suspended. The matter is set down for a 3 day hearing and Prita is awaiting the outcome of a Legal Aid appeal on the refusal to grant her aid.

Commentary

- Lack of communication and training for DOCS officers meant that the undertakings Prita gave to DOCS put her in direct breach of the Family Court orders and exposed her to serious penalties.
- DOCS then left Prita unsupported opting out of their duty of care to Gabi.
- Legal Aid cuts means that Legal Aid has been initially refused despite there being a clear risk to the child – a criminal prosecution is being considered.

Angela and Michael

Angela disclosed to her mother that her stepfather had sexually assaulted her for several months. The stepfather was no longer living with the family but had been having ongoing contact with his two sons, subject to Family Court consent orders. Angela said that the assaults had occurred while her stepfather had been living with the family but she had been too scared to say anything as he had threatened to kill her and the boys if she told. She decided to tell because of her continuing concerns that her stepbrothers may also be hurt by this man.

Angela was taken to the local police where she was briefly interviewed. The matter was then referred to JIT. JIT refused to interview Angela because they believed her statement at the local police station had been contaminated by the questions she had been asked.

Several months later, Michael, one of the boys disclosed to his mother that he had been assaulted by his father whilst on contact. The matter was reported to JIT and the child was interviewed. His subsequent disclosure was considered “too vague” for police action to proceed.

The mother stopped contact and the family were referred to a Family Court Counsellor. The counsellor interviewed both parents and all three children. The counsellor did not believe that the children had been assaulted but rather had been coerced by their mother to make false statements. Contact was allowed to continue.

Approximately three weeks later Michael made another disclosure. This time he was seen at the Child Protection Unit (CPU) at Westmead Hospital and the disclosure recorded. JIT also interviewed Michael and also stated that although there was evidence by the child that he had been abused, due to his age they would not proceed. Once again the mother stopped contact.

This process through the Family Court continued with evidence being presented by JIT, CPU, and the father’s own psychiatrist that sexual assault was likely to have occurred. Despite this the court counsellor still stayed within their position of disbelieving the child. Further, the Children’s solicitor also recommended continuing contact by the father and concluded that the mother’s part in the whole incident was questionable.

Eventually contact was recommended through a contact centre however the contact centre nominated refused to accept the referral because of the accusations against the father.

Legal aid was not granted in this case and the financial burden of the legal proceedings was taken on by the mother’s parents. Without this financial support the mother would have been forced to continue to allow contact between her children and the offender.

Commentary

- Family Court counsellor may have lacked experience or expert knowledge on the complex dynamics of child sexual assault.
- The Child Representative relied on the assessment of the Court counsellor, without clear instructions from the children and perhaps in the absence of clear, detailed knowledge about the dynamics of child sexual assault.
- Initially, with very little evidence the Family Court allowed contact to continue. Later after hearing some evidence, the Family Court recommended supervised contact.
- Legal Aid was not available to the mother although she fitted within the means test. Without the financial support of her parents to instruct a private solicitor the children may not have been protected.
- Supervised contact with the perpetrator is still abusive for children who have been victims of

sexual assault

Susan

Susan is a mother to six children – 4 boys and 2 girls - Amanda and Kristie. She left her marriage 4 years ago when Amanda was 4 and Kristie was 3. She and her children had suffered many years of physical and emotional abuse inflicted by her husband, Darren. After their separation, the Family Court ordered fortnightly overnight contact to Darren. Weeks later one of the boys came home after a contact weekend reporting that Darren was sleeping in the same bed with the two girls. The Family Court ordered him to cease this activity and provide beds for all his children. Within a short time, Amanda was coming home very distressed and angry, refusing to go to school and to eat. She was also refusing to go to her father's home and didn't want Kristie to go either. Kristie was wetting the bed after every contact visit and returning with a red sore vagina.

Eventually Amanda was able to disclose to her mother that she and Kristie had been assaulted by their father on a number of occasions while on contact visits. Susan rang DoCS to notify them of the assault. On their advice, she ceased contact visits with the father and applied to the Family Court to prevent Darren having contact with the two girls.

After some weeks Amanda was interviewed by DoCS and disclosed occasions of sexual touching by Darren of both herself and Kristie. Kristie was too young to be interviewed. The girls were also referred to Children's Hospital Child Protection Unit for a medical assessment and again Amanda disclosed abuse by her father. The medical examination confirmed that the soreness of Kristie's vagina could be related to sexual touching and was consistent with Amanda's statement about the abuse. However the report went on to say that as there were Family Law issues involved, it could not be determined that the abuse was perpetrated by the father. It suggested that the mother might be the perpetrator – a statement that constantly resurfaced throughout the court proceedings.

After her disclosure, DoCS referred Amanda to the local police to be interviewed. Unfortunately as JIT was only in the process of being set up, the case got lost in the system, and Amanda was not interviewed for another six months. Again she made a consistent disclosure of abuse by her father. But at the time no further action was taken. Meantime Amanda was receiving counselling. The focus of this counselling was on the effects of the abuse, such as her anxiety and fear, nightmares and bedwetting. In the course of counselling, while the details of the abuse were never discussed with Amanda, she constantly spoke of the fear she had of seeing her father, how frightened she had been when he had touched her and Kristie and how she didn't want to visit his house again. The counselling sessions were documented in case notes.

Prior to the final court hearing, an independent assessment was ordered by the court to be done by a psychiatrist. The psychiatrist saw the children on one occasion with the mother and one occasion with their father. She also interviewed the mother and father once separately. The children reported that they had been told by the psychiatrist to kiss their father on meeting with him. They also reported that they had been asked in front of him whether they wanted to have contact with him. They reported feeling "too scared" to say no and agreed to see him. The 32 page assessment recommended overnight contact with the father, suggesting that he was a better influence in the lives of his children and that the mother may be personality disordered and putting ideas of assault into the minds of the children. It went on to say that "if anything had happened" it was "only touching". The counselling notes were subpoenaed for court but appear not to have been considered at any time.

As a result of the independent report, Susan's solicitor advised her that the children's solicitor (who had on no occasion spoken to the children) was taking a very strong stand in support of the

father's application and was planning to recommend to the court that the children have overnight contact visits with the father. It was her belief that the mother was suffering mental illness and had put the ideas of assault into Amanda's head. Susan's solicitor advised her to make an agreement, as she had no chance of winning the case if she went into court and that the process of cross-examination would be very damaging for her. As she was extremely distressed by the independent assessment and had to go home to parent six children, Susan took his advice, believing that the agreement could be structured to ensure the best chance of safety for her children.

As a result the children were sent back on overnight contact with the father. In the agreement restrictions were placed on the type of physical contact allowed by the father with the children.

At this time the police were again contacted to determine if they were planning to take any action against the father. The case was transferred to detectives at a different station who believed that there may have been contamination in the initial interview and so decided to re-interview Amanda. Consequently, 6 months after the first police interview and at least 12 months after the first disclosure Amanda made a further disclosure consistent with the four previous ones. As a result the police decided to charge the father but after interviewing him concluded that the case would have difficulty in court and so did not pursue it.

The case was taken up with DoCS, noting the child protection concerns where children were being sent on unsupervised contact visits after clear disclosures of abuse by the father. After several months, DoCS had advice from their legal department that they could not take the matter to court as another court had already made a ruling on the case. Within a few months Amanda and Kristie again displayed signs of extreme anxiety and Amanda eventually disclosed that her father was touching her and Kristie again. The case was again referred to DoCS who referred it to JIT. However, this time, Amanda became very distressed and would not disclose.

The only alternative available to Susan has been to breach the Family Court orders and stop contact with their father as she knows that to follow legal procedures would only set her children up for continuing abuse as there was no further evidence to support her case.

Despite threats, the father has not at this stage attempted to take the case back to Court. The children are now stating that they feel safe because they do not have to go to their father's place for contact. Their behaviour no longer shows signs of extreme anxiety.

Commentary

- The mother is the only person trying to protect the children in the private domain of the Family Court despite five consistent disclosures and it being 'very highly probably' that the children have been abused.
- Advice from DOCS is uninformed. The Children's Court can clearly suspend all Family Court Orders
- Despite numerous consistent disclosures, due to JIT inaction and administrative difficulties there is continued abuse for the children.
- The Independent assessment conducted was highly inappropriate and furthered the abuse suffered by the children – showing that the assessor was poorly trained in the dynamics and effects of child sexual assault.
- The Children's Representative did not get instructions from the children. The Representative's strong support of the father's position did not assist the Family Court with making a well considered decision and forced contact arrangements which exposed the children to further abuse.

Donna

Donna became pregnant with twins when Terry raped her. At the time she did not go to the police as she was frightened and thought that no-one would believe her.

After the birth of the girls, Terry applied to the Family Court for contact. Donna was granted limited Legal Aid but when she refused to negotiate any contact, Legal Aid was withdrawn and she was forced to represent herself. Donna had been fighting the case on the grounds that not only were the children the product of a violent rape which made her fear for the safety of her children with Terry but also that he had threatened that he would do the same to her children. She believed that he was capable of doing this as he had also confessed his sexual desire for young girls.

Donna was unable to continue to fight the case on her own as she was ill, was still breastfeeding the twins and caring for her other two children on her own. She was forced to agree to supervised contact. When the children turned two, contact was occurring under the supervision of her mother on the family farm. It had become impossible for the grand mother to be with both children all the time as both were active and each needing constant attention. Consequently, while she took one inside to the toilet the other could be left outside on the property with Terry out of sight of anyone.

Close to the twins third birthday, Jess came home from contact very distressed and suffering from very sore genitals. She was very frightened and became very distressed if Donna moved out of her sight. Soon after she disclosed that Terry had “broken her bottom”. She began to tell her brother and sister and family friends about Terry touching her sexually. Donna contacted the police but even though she disclosed to them they would not take a statement from Jess as she was too young to be a witness in court. No record was taken of the interview. Donna then went to DoCS but they would not interview Jess as she had been interviewed by the police. The local Children’s Hospital advised against a medical, as it would be like “re-abusing” her.

As a result Donna told Terry that because of what he had done to Jess she was stopping contact. Terry did not attempt to make contact with the children for 13 months and then charged Donna with breach of orders and applied for residence of the children. Donna applied for legal aid but was refused. She appealed the decision on the basis that she suffered from epilepsy and that grande mal fits were brought on by stress. She had in fact fitted in the Family Court just before her case was called and was unable to understand what the registrar was saying or sequence her own words correctly. Donna’s appeal was also knocked back and she was forced to represent herself. Legal aid provided a solicitor to represent the children.

Donna was unable to understand the legal language of the court and could not work out what the Court was requiring. She struggled through the processes with the help of her counsellor. While she had heard that Terry was in trouble with the police for shoplifting and assault and had a heroin addiction she did not know how to bring this into court. She had little evidence available to support her case that Terry had assaulted Jess or herself. Her two older children (16 and 13 were prepared to give evidence but were considered too young).

The court ordered an independent assessment. Donna attended two sessions with her children and her older children were also interviewed. Terry did not turn up for his interview and the report was written without any contact with him. The report, while commenting on the quality of Donna’s parenting, suggested that as she was obsessed by thoughts of sexual assault she was emotionally damaging her children and that it was his opinion that this would continue into the future. The children’s representative decided that it would be emotionally best for the children to be transferred to the care of their father to avoid the emotional abuse being perpetrated by their

mother. Donna's counsellor, concerned that the children's safety was at stake, searched out a solicitor who agreed to represent Donna pro bono in court on the day. The solicitor organised a further psychological assessment of Donna for court. Donna borrowed \$500 from Centrelink to cover the costs. The report did not support the concerns of the previous assessment.

When it came to the final hearing, Terry did not turn up. The Judge ruled that because Terry had shown his commitment to the children by applying for residence it was only fair that he should be given a further 6 months to re-activate the case, after which the orders would allow the children to remain with their mother and contact with the father to be discontinued. Terry made no further contact.

Commentary

- The Legal Aid conference resulted in Donna's grant being cut and 'forced' Donna into unworkable contact arrangements, yet she is a client at a special disadvantage and fits within Legal Aid Commission funding policies.
- DOCS's refusal to become involved and a lack of risk assessment meant there was little evidence to support the allegations. As Donna was self-represented, it was very difficult to understand the Court process and the methods for adducing evidence.
- The Independent Assessment was completed without interviewing the father and was therefore not completed and should not be credible

Rebecca

Three year old Rebecca was living with her natural mother Kylie and step-father Rob. She had regular weekend contact with her natural father Steve and step-mother Julia. In April 1999 Rebecca disclosed to Steve that her step-father Rob (mother's husband) had sexually assaulted her. Not long after DOCS received a notification from the Day Care Centre of sexual assault. The case was initially referred to JIT who sent it back two days later. It was allocated to a DOCS officer who was on one month's sick leave.

In June 1999 JIT finally interviewed Rebecca. There was no disclosure forthcoming from Rebecca and it was too late for forensic evidence to be taken. The DOCS/JIT files were closed. Julia and Steve organised 'protective behavioural counselling' at their local health centre.

In August 1999 Rebecca again disclosed to Julia and Steve on a weekend contact visit that she had been sexually assaulted by Rob. She described in detail what he did to her. Julia and Steve immediately phoned DOCS who say 'it is too late on Friday' to do anything. Julia and Steve took Rebecca to police where Rebecca disclosed in an interview. Police were not successful in reaching DOCS' emergency hotline after trying for 3 hours however but they were extremely supportive and continued trying to contact DOCS throughout the weekend. On Sunday DOCS phoned Steve and Julia to advise them not to return Rebecca to mother's house.

Three days later JIT again interviewed Rebecca who made a clear disclosure and the police charged Rob same day. Julia and Steve were advised by DOCS to make an application in the Family Court for Interim Residence which they did through a private solicitor as they are not eligible for Legal Aid. Julia and Steve took out a second mortgage on their home to pay for their legal fees.

In September 1999 Julia and Steve were awarded interim residence of Rebecca. DOCS recommended no overnight contact and only supervised contact but did not provide any material in writing for the Court. The Court awarded day contact each weekend.

Over the next three months, Julia, Steve, Rebecca and the mother and her husband attended counselling sessions. A Children's representative was ordered. Rebecca was also becoming more difficult to parent as she was dealing with effects of sexual abuse.

The criminal case against Rob was dropped as the DPP were worried about using the evidence of a child under 6 years old.

In February 2000, on application from Separate Representative, the Court ordered an assessment by a psychiatrist for all parties including Julia and Steve. The Psychiatrist also interviewed Rebecca in the presence of Kylie and Rob 'as a family'. Immediately following the appointment and weeks thereafter, Rebecca exhibited extremely distressed behaviour.

The final hearing on application for residence in Family Court was held in June 2000. Julia and Steve believed the Judge made many comments which showed a lack of understanding of child protection issues. The Separate Representative (who supported Julia and Steve's application) spoke of appealing after the second day due to the Judge's comments which flew in the face of the child's best interests. Kylie settled on the fifth day of hearing. Julia and Steve were awarded residence and Kylie was given contact from 9am to 6pm each second Saturday. Julia and Steve outlaid \$43,000 in legal costs (which is now an extra mortgage on their home) to protect Rebecca.

Commentary

- The matter was never one for the Family Court. It was not a residence dispute between two parents but a serious child protection issue where there was strong evidence of sexual abuse by a step-father.
- The Family Court is not set up to deal with difficult child sexual abuse matters. Court staff including Judges, Registrars and Court Counsellors are not trained in dealing with these issues and often respond inappropriately.
- DOCS were slow in allocating the case, resulting in valuable evidence being lost and did not continue their own risk assessment process following the initial non-disclosure to JIT. This resulted in further sexual abuse on Rebecca.
- DOCS could have made an application to the Children's Court to remove Rebecca from the care of her mother and step-father. This Court is equipped and trained in child protection issues and would have been the more appropriate and least traumatic option for Rebecca and her family.
- Julia and Steve have outlaid \$43,000 in legal costs and they now live in severe financial hardship.