Information for consideration of the Family Law Council interim report to the Attorney General: Families with complex needs and the intersection of the Family Law Act and Child Protection.

To the investigators,

My name is Sabian Mison-Popow, Co-ordinator of the not for profit, Tas Family Compassion, a support and advocacy volunteer program helping separated families.

We wish to contribute insight on families with complex needs going through separation in relation to the Family Law Act, child protection, and the Judges interpretation of the words used in the Family Law Act.

This information has been made known to the Federal Attorney General's Office and the last three Federal Attorney General's inclusive of the current Senator George Brandis. Unfortunately the reply has consisted of reiteration of the Family Law Act currently and reminders that the Attorney General cannot comment, with no changes made to address the issues.

Why do we feel our information that we can provide is of importance to researchers of Family Law and child protection?

It is our experience that while lawyers, Judges, family dispute resolution and mediation workers, parents going through separation and the Attorney General's office know this information, a lot of academics, family consultants and researchers do not. As such they are not taking into account the impact of the Family Law Act on child safety (and primary and secondary parent safety) and child abuse (and primary and secondary parent abuse) in real life scenarios and cases. Even academic research of court cases does not include the evidence legally removed by Judges from trial, or seem to notice the flaws in research methodology of other academic studies such as those conducted by Dr. Jennifer MacIntosh after she won the tender from the Federal Attorney General's office.

Recent submission to the Victorian Royal Commission into domestic violence by the High Court of Australia notes the incidents they are seeing of violent behaviour manifesting when prior to separation (Prior to the Family Law Act application) there was none. Without understanding the definition used by the family law Judges of the words in the Family Law Act the High Court's advice was based on supporting secondary parents rather than amending the Family Law Act to address the cause of this problem.

Before we begin, and before reading the submission documents, we feel we need to draw attention to the words "Complex Needs" used in the title of the preliminary notes we are responding to.

Firstly because it subconsciously implies, and indeed we have seen reports from the Family Law Court's saying this, that cases that go before the Family Court, Federal Circuit Court or Federal Magistrates Court must have difficult risk factors. This is not accurate. It also suggests a justification for errors made and again this is not accurate.

When people hear the words "Complex Needs" they often think violent behaviour cases only or only cases with serious psychological disorders in one of the parents, there by perceiving a limited number of cases but cases with very serious dangers, this is not the case due to the Judges definition of a Complex Case.

Complex is defined by Judges under the Family Law Act as also including any case where the parents do not agree totally on any issue, even if the disagreement is due to the first parent to get the child making inappropriate demands. Similarly Complex is defined by Judges as anytime parents have any difficulty communication or one parent refuses to communicate with the other on any issue, even if the person refusing to communicate is the first person to gain possession of the child, or parent who unilaterally secured a greater quantity of the child's time from the other parent.

Now you can see that every single case of separation where the secondary parent does not accept the terms decided by the first person to get the child is a Complex Case. Furthermore you can see that often once secondary parents realise at mediation that they have no hope under the Judges definition of the words in the Family Law Act, many of the cases that researches and Courts report as successful outcomes from measures put in place actually result in inappropriate arrangements simply because the secondary parent gave up.

This information we provide must be taken seriously into account before any consideration is ever given to how much involvement Family Law should play in child protection, under the current Family Law Act.

Yours truly

Sabian Mison-Popow

Tas Family Compassion

Explanatory summary only

Part 1

In Australia separation is governed by the Family Law Act. Key components are:

Must act in best interest of child.
Must elevate protecting child from harm above other considerations
Then try to promote a meaningful relationship
First consider equal time.....to the maximum extent that is in the best interest of the child

The fascinating part is how judges interpret this. The words are defined differently to how the universities teach the meaning of the words

To understand the judges understanding of the words in the Family Law Act you need to know that the Federal Government Attorney General's office tendered for research and a psychologist Dr Jennifer MacIntosh won the tender. The research was on Attachment Theory. It was a longitudinal study which implies high quality longer = better, but bad methodology over longer time just means more poor quality research. There is no imperial evidence and it is almost exclusively based on reports by the parent with more time and old research on orphans from interviews of Attachment Theory advocates.

From this research we get the terms Primary parent and secondary parent. And the psychological disorder call primary parent separation anxiety, which replaces the term Parental Alienation.

Next Macintosh says a child suffers a failure to develop neurologically as a result of primary parent separation anxiety (or any disorder with anxiety as a symptom such as autism) in two ways. First their brain will not develop if away from the first person to get the child for as little as one night, or secondly the child brain will not develop if the first parent to get the child feels stress. (She claims leaving one parent a child loves to see another parent the child loves triggers the failure of the brain development describe by a different body of research called neuro science in which a severely abused child's brain does not develop after severe child abuse. Suggesting going from one loved parent to another loved parent is the same as orphans who lose both parents.)
Her attachment theory says children are biologically hard wired to only be capably of having one parent learn their body and sound language the other parent can't learn this. And that biologically children are not able to shift their attachment needs to anybody else.

A child will only suffer primary parent separation anxiety if they go to someone the primary (or first parent to get the child) does not support or like. They can leave the primary parent without brain damage for many nights at any age so long as it is someone the primary parent likes.

If the first parent to get the child is upset in anyway, they lose the ability to read the child's body and sound cues which is like physically sending a child to someone the primary parent does not support resulting in child brain damage.

Third if the primary parent is upset by the secondary parent the primary will expose the child to the primary parent's emotions which will also induce neurological trauma associated with primary separation anxiety.

MacIntosh's research establishes prescribed levels of secondary parent contact which satisfies a meaningful secondary relationship required under the family law act. Under age two no overnight contact at all. From age two to age five no more than 1 night a week, and from age five to 18 no more than 5 nights a fortnight. She specifically finds contact of equal (7 nights each) and near equal (8/6 night splits) are of no additional value to children.

To clarify Macintosh attachment theory says quantity of time/greater residency is essential to primary parent meaningful relationship or Primary parents report losing the ability to read their children's cues.

But secondary parent meaningful Relationships are not dependent on time. Secondary parent meaningful relationships are dependent on quality time as grandparents have secondary meaningful relationship even with no overnight contact

Lastly anxiety causes the same harm as all but the most sever types of domestic violence like beatings, starvation or sexual abuse.

Part 2

Next we will show how the judges apply the best practice research and their definitions of the words in the Family Law Act to determine the best interest of a child

Australia in law does not acknowledge parental alienation as existing, and this behavior was considered a bad thing to do to your children. A quick description of parental alienation is to use restricted access primarily along with other psycho emotional techniques to turn the child against the other parent so that the child was incapable of going to the other parent eventually and eventually the child choses to limit contact with that other parent.

Parental alienation has been given a new name which is legally recognized thanks to Dr Jennifer MacIntosh's research and is now considered a good thing to do to your children by the judges. Primary parent separation anxiety is the product of using principally restricted access endorsed by the courts through interim orders, and other psycho emotional techniques to destroy a child's resilience so they can only attach more with the first person to get the child or people the first person likes, such that they can't go to the other parent and eventually choses to limit contact with that other parent.

So the Family Law Act says first consider equal time. Judges say this does not means consider equal time with preference. Instead it means begin discussion of how equal time is never in the best interest of a child when the first parent to get the child or the other parent does not communicate or cooperate. Which parent causing this is irrelevant to the best interest of the child regardless of how unfair this is to the secondary parent/child contact levels.

The next part of the sentence “first consider equal time” contains the end rider .... “to the maximum extent that is in the best interest of the child”.

As MacIntosh research proves contact over 5 nights with a secondary parent makes no difference to children, this no additional value means the word "best" being defined as improved can never be achieved with any contact above 5 nights a fortnight so the words "maximum extent" means contact above the prescribe minimum per age for a meaningful relationship is never possible as it is never in the best interest of a child. Renditions of this information satisfies the Family Law Act “consider equal time” and satisfies the Family Law Act “to the maximum extent”. And if you say it first it satisfies the Family Law Act “first consider”.

The Family Law Act says all assumptions are rebuttable. So to test if attachment theory is rebutted judges ask how the child is coping in each house hold. There are only four possibilities. (In cases where the secondary parent is not abusive and the first parent to get the child or the secondary parent will not communicate or cooperate.)

First the child is less happy with the secondary parent. This attachment theory says is because they are away from the primary parent so the first parent to get the child or primary parent must have significantly greater residency in the best interest of the child until age 18.

Second possibility the child is less happy with the primary parent. This attachment theory says is because they have been away from the first parent to get the child or primary parent. Macintosh finds Primary parent separation anxiety does not occur only on separation, but the primary parent separation anxiety occurs when returning to the primary parent. So the first person to get the child or primary parent must have significantly more residency in the best interest of the child.

Possibility three. The child is equally happy with both parents. Then judges say equal means the same and the same does not pass the definition of best which requires an improvement, so the first person to get the child or primary parent should keep significantly more residency in the best interest of the child.

The last possibility is when the child is upset at each parents. Attachment theory says this means the child has two disordered attachments and the child needs at least one good attachment so the first person to get the child or primary parent gets significantly more residency in the best interest of the child

In summary even the tiniest sign of having been upset at any location makes it in the best interest of the child for the first parent to get the child or primary parent to have at least significantly more residency than the maximum substantial contact allowed between the child and secondary parent. And a perfectly happy child makes it also in the best interest of the child for the first parent to get the child or primary parent to get significantly more residency of the child.

Part 3

Next how does the Family Law Act, prioritize protection from harm work according to judges?

Key to understanding this is realize that the Family Law Act elevation of protection from harm is not limited to harm caused by the secondary parent but includes all possible sources of harm.

And conflict is deemed caused by the secondary parent if they do not do what the primary parent wants even if the secondary parent is refusing to harm the child at the primary parent's request.

And anything that upsets the first parent to get the child or primary parent or anything that stresses the primary parent will cause the primary parent to harm the child, according to attachment theory.

So coupling this part of the Family Law Act with attachment theory means harm caused by secondary parents is treated differently to harm caused by primary parents in the best interest of the child. Resulting in three different levels of threshold for action in both separation under the Family Law Act and child protection under the Children, Young Persons and their Families Act which mimics the wording of the Family Law Act and has the same judges sitting as the highest authority in child protection. The lowest threshold for action is the secondary parent engaging in harm of the child, the next higher threshold of action is child protection and the highest hardest threshold to reach is when primary parents engage in harming a child. (It is worth noting the Family Law Act requires Judges to notify child protection once an allegation is made but there are problems in the involvement of the child protection such as, allocation of cost if not successful, judges dismissing evidence from child protection even though they are better resourced for investigation than the family consultants and single expert psychologist)

First look at how non extreme abuse is treated under the Family Law Act.

If a secondary parent engages in non-extreme abuse you protect the child from harm directly caused by the secondary parent by reducing secondary parent residency and increasing primary parent residency.

But if the Primary parent engages in non extreme child abuse you first measure the level of harm caused by the primary parent abusing the child against the theoretical harm Macintosh says primary parent separation anxiety harms a child.

Macintosh says primary parent separation anxiety causes the child's brain to not develop. This means all child abuse inflicted by the first person to get the child or primary parent, that does equal or less damage than stopping the brain developing, does not reach the thresh hold for the best interest of the child to reduce primary parent contact and increase secondary parent contact towards equal or near equal contact, even if the secondary parent is not abusing the child at all. So the first parent to get the child or primary parent must have significantly more time in the child's best interest.

Note, all primary parent child abuse that causes harm "equal" to the brain not developing - remember the definition for the word "best" in the family law act – will also not reach the threshold of harm that would activate the Family Law Act condition to elevate protection from harm by shifting contact towards equal or near equal residence.

In addition conflict plays a role in the Family Law Act in relation to non-extreme child abuse under attachment theory in two ways legally.

First if the first parent to get the child is engaging in non-extreme child abuse and the secondary parent speaks out and reports it, the secondary parent has demonstrated a poor attitude towards the first

parent to get the child and the first parent to get the child or primary parent must have significantly more residency in the best interest of the child.

The second way is for the first parent to get the child or primary parent to instructor/request the secondary parent to also harm the child in the same way. If the secondary parent refuses to comply and harm the child then the secondary parent is again at fault for causing conflict and poor cooperation making it in the best interest of the child for the first person to get the child or primary parent to have greater residency.

This dynamic under the Family Law Act over rides the Family Law Act aspect of shared parental decision making and shared parental responsibility.

Now look at extreme abuse under the Family Law Act.

With extreme abuse such as, sexual abuse, beating, and starvation. If a secondary parent engages in extreme child abuse you remove the child from the secondary parent and give the residency to the first parent to get the child.

If a primary parent engages in extreme child abuse you protect the child from the primary parent abusing the child by removing the child from the primary parent. But unlike when a secondary parent engaged in extreme child abuse you can't give the residency to the secondary parent because Macintosh says the child's brain won't develop under attachment theory and the court has to elevate protecting the child from harm under the Family Law Act. So you give the child residency to an intervener.

Now how to pick the intervener?

You cant let someone who would promote the secondary parent be the intervener because Macintosh says children suffer primary parent separation anxiety with anyone the primary parent does not support/like and the Family Law Act elevates protecting the child from harm originating from any source so the intervener has to be someone the primary parent likes. This allows the primary parent to retain control through the proxy primary intervener parent figure, and the intervener blocks secondary parent contact on behalf of the primary parent.

A final note on elevating protection from harm. What used to be associated with parental alienating behavior and not acknowledged under the Family Law Act and considered bad to do to children is now addressed legally under attachment theory and considered good to do to children. An example is when a parent exposes the child to the court conflict like crying in front of the child.

To understand this remember Macintosh says if a primary parent is stressed the child's brain will not develop.

According to the Judges if a secondary parent exposes a child to the secondary parent's anxiety the secondary parent is acting inappropriately so the first parent to get the child or primary parent gets more time in the best interest of the child.

But if the primary parent exposes the child to their anxiety it is not the primary parents fault and it is not the primary parent who is at fault. It is the secondary parents fault for causing the primary parent to have to harm their child as a result of the secondary parent seeking to regain contact that the primary

parent took away from them initially. Which Macintosh says is of no value to children anyway. So the first parent to get the child or primary parent gets more residency in the best interest of the child.

Just to tidy some things up as the child gets older.

Under The Family Law Act secondary parents can't seek greater contact than Macintosh prescribes is required for a secondary meaningful relationship or the judges say the secondary parent and their evidence lacks creditability (even secondary parent evidence such as a favorable report by a single expert psychologist) as the secondary parent is asking for something of no additional value to children. The secondary parent must therefore be looking more after their own personal interests, and lacks insight into the needs of their children.

You can not seek court orders incrementally increasing residency as the child hits the prescribed ages that Macintosh says the child needs more residency to maintain a secondary meaningful relationship because legally the judges say it is unconstitutional. (you can not see more than six months into the future) so as the ages of 2yrs and 5yrs are reached theoretically secondary meaningful relationships talked about in the Family Law Act can't be maintained. But MacIntosh says that's ok because secondary parental relationships can be established anytime in the future such as when the children have become adults.

You can not return to court when the child reaches these ages because Aspland and Rice requires a significant change of circumstances. As all children hit these mile stones age is not a significant change of circumstance.

Furthermore the Family Law Act elevates protection from harm from any source. Judges say parents in court harms children. Macintosh says when secondary parents disagree on contact level chosen by the first parent to get the child this causes the first parent to harm the child. Judges say this means two things. First that so long as parents aren't extremely abusive any residency split that allows a meaningful secondary relationship, will do under the Family Law Act.

Next, it is the final order stopping the court action that saves the child from harm. The loss of meaning full secondary relationship as the child reaches these ages is not a problem because preventing the secondary parent seeing more of the child preventing court action which harms children and preventing conflict which Macintosh attachment theory says causes the primary parent to harm the child is how you elevate protection of harm.

Interesting domestic violence issue is if a primary parent cry's in front of a child or makes the child scared to leave them to the point the child who is happy with the secondary parent choses to not see as much of the secondary parent so that the primary parent stops crying in front of them. A secondary parent trying to see more of the child is found to be guilty of domestic violence. You see stalking is defined as attempts to make contact not wanted by the subject of those attempts or that attention.

There are two exceptions to the best interest of the child rule.

One exception is that the first parent to get the child must drop false unsubstantiated allegations of risk of harm originating from the now secondary parent and replace it with the risk of harm from primary parent separation anxiety now that they have successfully been able to restrict the child's access and

contact with the now secondary parent. Failure to do this often results in reversal of care levels but it is important to note you can maintain the secondary parent as the source of risk right up till you have started the final trial and not lose residency of the child because the Judges rule once the primary parent switched there is no evidence under the Family Law Act of the primary parent having a poor attitude towards the secondary parent.

This means under the Family Law Act so long as at trial you allow a lesser meaningful relationship with the other parent, in exchange you will get to enjoy significantly greater time with your child until they turn 18 as you have made it in the best interest of the child to do so.

The other exception is if a child runs away from home, because under the Family Law Act the judges can't make orders that they can't force the child to comply with. While this is the easiest way for children to have a say it is still difficult and primary parents don't mind because it is usually not until they are teen age or adults that this happens so they still get many years of significantly greater time with the children. (Sometimes because this is the only way under the Family Law Act for a child to see more of a secondary parent, secondary parents pressure the children in this case often the child who is more scared of being told of by the primary parent who they see as having more power in court will run away from the secondary parent. This is often taken as evidence of greater primary parent attachment but often the children would prefer more time with the secondary parent if there was another way for this to happen, but as there is not they are just stopping the pressure from the secondary parent the only way they are brave enough to. This often happens about age 8 for girls who develop emotionally first and age 9 for boys)

While running away from home is the most common/easiest way for a child to alter court orders the other ways to create significant change of circumstances that hold greater risk than the brain not developing include things like trying to commit suicide or cutting themselves.

Part 4

Evidence Handling under the Family Law Act.

Judges have three tools under the Family Law Act.

First is to remove any evidence that they feel will not help their decision, so any evidence that will not change the judges mind. This is interesting because instead of evidence leading to decision making, the view of what a separated family should look like determines leads to what evidence is in trial. It is also worth noting such evidence is not able to be used in appeals.

Second Judges assign meaning to each event. For example if a secondary parent would not take a child to live overseas for nine months a year but a primary parent would. Instead of saying the primary parent has a poor attitude towards the secondary parent, it is the secondary parent who has a poor attitude towards the primary parent.

Third they assign weighting under the Family Law Act. So if a single expert psychologist supports the secondary parent having equal or near equal contact the judges say judges make court orders not experts, but is the single expert supports the first parent to get the child having significantly more residency they say how fortunate they are to have the help and insight of the expert to guide them in determining the best interest of the child.

It is worth noting that the safe guards built into the Family Law Act do not work. Appeals are not funded through legal aid under the Family Law Act because funding does not happen if you can't win rather than being based of evidence or merits of the argument. Independent Children's Lawyers put too much emphasis on appearing neutral so pick levels of contact between the sole residency primary parents are allowed to ask for and the equal contact secondary parents ask for but are not allowed to ask for without having creditability assigned against them and evidence down rated as a result. Family Consultants are trained in Dr Jennifer MacIntosh's attachment theory in making their assessments, and single expert's reports get dismissed.

This is a brief summary, our other documentations goes into greater detail. There is this mistaken feeling in people that with separated families when considering equal or near equal contact, it is the same as removing a child from their family, the only family they ever knew because that is all the first parent allowed with the courts interim ordered support, and forcing them to live with a lessor cared about adult they can't possibly love as much or want as much. This is not correct regardless of the academic theories supported by the Attorney General's office. In actual fact the children are going from an significantly unbalance opportunity between two parents loved and wanted equally, to a more equally balanced or equal level of contact with parents they love and enjoy being with equally.

This practice under the Family Law Act where the first parent to get the child even when being the source of conflict or harm to the child, when the secondary parent is not abusing the child, can trade a lesser secondary relationship and receive significantly greater time to enjoy with their children in exchange because by successfully restricting contact with the other parent you have made it in the best interest of the child to never spend more time with the other parent is something that needs to be amended in the Family Law Act.

Recommendations for amendments to the Family Law Act to bring back into focus the best interests of the child as being separate and distinct from the best interests of the first parent to get the child.

1. Take the object of 'Best interest of the child' and amend it to be 'Best interests of the child with in standardised expectations'.

   1.a. Expressively remove attachment theory from use in determining the best interest of children.

   (Law should never say that the more you harm a child the more it's in the best interest of the child to increase your contact if you're the first parent to get the child and so long as you're not too extreme.
   Or something the children strenuously object to that if they say they love both parents the same it no longer gets interpreted as meaning the child wants to spend significantly more time with the parent who got them first. When they say they love both parents the same it means they want to see both parents the same amount of time.
   It will also remove things like how if the parent with greater possession can create discord or refuse to communicate or co-operate with the other parent during interim orders that it makes it in the best interest of the child for the primary parent to end up with greater time after trial or the child's brain wont develop.)

   In essence there needs to be a removal of the upper limit of secondary parent residency that can be considered as being in the best interest of a child, and a safety net below which a child cannot have contact restricted in cases where the secondary parent was not abusive.

   1.b. Clearly specify that the starting level of care for what is in the best interest of children is equal time.

   (This will remove two problems, first the ability to say as equal and near equal time is of no value to children we can never begin consideration with equal time under the Family Law Act as it can therefor never be in the best interest of the child, as emphasised by the wording "to the maximum extent that is in the best interest of the child. Those words mean that if the level of care is just as good in both houses there is no difference between houses and the definition of the word best is never achieved so you start consideration at the level put in place by the first parent to get the child and don't consider equal time as the first option.

   Second it will remove the principle that so long as the first parent to get the child is not doing too much harm or if both parents are equal or near equal in parental skill there is no need to move the level of care from the starting consideration which is not equal time or near equal time but whatever the first parent put in place. And further that you cannot shift towards equal or near equal care only towards the level of care under the Family Law Act of substantial and significant being the minimum needed for a meaningful secondary parental relationship.)

1.c clearly specify that the best interest of children in determining the move towards spending more time, and/or the move towards equal or near equal time is assessed on a positive for positive, negative to negative principle with regards to the condition of the child while actually in the care of the parent in question.

(This will remove two problems, First the ability under the Family Law Act to say if the child is displaying signs of trauma while in the primary parents care that the child needs to have more time with the primary parent as that is the only way for primary parents to meet the needs of the child, while if the child is displaying trauma signs in the care of the secondary parents care you reduce the child's level of care with the secondary parent because they must be missing the primary parent.

Second it will remove the ability to say it's in the best interest to leave the child significantly more with the primary parent and offer only substantial time with the secondary parent if the secondary parent is better able to meet the child's emotional needs or any other need such as developmental needs because the happy child in the secondary parents care indicates that the Family Law Act's objective of allowing a meaningful secondary relationship has been achieved and no further increase in contact needs to be considered making stability of residency the new focus of what is needed to establish the child's best interest.)

2. Expressly prohibit the use of the terms primary parent and secondary parent by both the courts and the auxiliary services to the courts such as at mediation centres and change over centres.

   (This will remove two things. It will stop those parents with initial possession from telling their community and the children, other parent, and courts that they are neurologically more important to the child than the other parent.

   Secondly it will also remind the judges, psychologists, court family consultants, and mediators that their reports, assessments and decisions are not to be based on the notion that the needs of the parent initiating with greater possession is more important to the child's best interests.)

3. Include in the Family Law Act that after consideration of equal time – in a non-biased belief that equal time is possible even if the primary parent does not want it, and even if the parents don't get along, that the next level of care the judges have to consider is near equal contact if the level of care the parents provide is similar. This needs to be given genuine consideration not applying attachment theory which says near equal time is a worthless to children as equal time when the parents can't co-operate or communicate.

4. Change the order of assessment of parent and witness creditability and evidence weighting so that instead of determining creditability and applying it to the weighting of evidence you determine the creditability of evidence and apply it to the weighting of parental creditability.

   (This will stop the judges saying things like because the first parent to get the child is seeking they have more time proves under attachment theory that they are doing what is essential

to the child's neurological development so the child will stop screaming in the primary parents care, but the secondary parent is seeking something of no value to the child neurologically because the child is usually always happy in the secondary parents care, the primary parent and their witnesses must be more creditable than the secondary parent and their witnesses so you have to take that into account when weighing the importance or accuracy of the evidence such as reports prepared by the single expert witness.)

5. Include in the Family Law Act that while the child's rights remain paramount that parents also have the following three rights.

   5.a. Included that Parents have the right to apply for whatever level of care they believe is in the best interest of the child without criticism.

   (This will remove the problem that under the current Family Law Act secondary parents are not allowed to apply for primary care, near equal or equal time, as to do so proves under attachment theory that they are not acting in the child's best interest and must be acting more in their own interests, or that they must lack insight into the needs of their children.)

   5.b. include that Parents have the right to fair and equitable evaluation of evidence in a non-biased environment.

   (This remove biased evaluations such as things like judges saying you can present your case but you are going to have to work extremely hard to prove to me that increasing the child's time with a secondary parent when they clearly can't communicate or co-operate.
   And it will remove things like judges being able to remove entire assessments by single expert witnesses or refusing to allow secondary parents to present witnesses only allowing primary parent witnesses, and it will stop judges from only allowing half of a report like the courts family consultants reports and dismissing the half that supports the secondary parent.)

   5.c. That evaluation of dismissal of a judge on the grounds of bias be not made by the judge accused of being biased.

   5.c.i include bias against a principle expressed with in the Family Law Act as grounds for dismissal of a judge.

   (this means a judge can no longer say they are non biased as to the parents but biased against equal time as a poor model of how a separated family should look and function in the best interest of children if they need a judge to resolve how much time a child spends with each parent)

   5.d. Amend so that judges are deemed to be real people when acting in the role of judge.

   (This will allow other legal bodies such as the commissioner for anti discrimination to take action also on the grounds of discrimination due to parental status)

6. Include in the Family Law Act that after the reason for judgement is written up by the judge that the secondary parent has a right of response and a right to expect the judge to counter respond.

   6.1 that in this right of reply the parent may include evidence that has been
   a. poorly weighted
   b. had inappropriate meaning attached to it by the judge or report writer
   c. new evidence that gained significance after the Judge raised an issue in their reasons for judgement.
   6.2 that the right of response and the judges counter response including any evidence presented with them be permissible in an appeal before the full court.
   6.3 That the Judge has the right to amend his orders if it alters their opinion on the matter.

   (The inclusion of this new section in the Family Law Act, will address many problems including things like, first it stops judges from removing key evidence that is no longer able to be used in appeals which is often essential for a successful appeal.

   Secondly it will prevent judges from raising new reasons for the orders that the secondary parent's solicitor never realised was relevant and so did not raise the counter argument and evidence during the trial.

   Thirdly it will increase the likely hood that judges will think twice about making outrageous comments or connections with evidence as they will know that it will be clearly presented for observation by other people. Because at present these only show up in the system if the secondary parent can afford a full appeal.

   Fourth, it will allow judges the opportunity to reconsider their performance on the bench and allow them to adjust their performance mid trial without criticism, if they feel they had made an honest mistake.

   Fifth it will save the courts and the parents thousands of dollars as you can divert the requirement for appeals as errors can be raised prior to going to a full court of appeal.

   Sixth it will reduce the use of parental poverty as a way for judges to prevent the judgements ever being evaluated by a full court of appeal as it might not require an appeal if the judges feel they were in error and amend their ruling, but even if judges don't change any inappropriate behaviour can be raised and audited or reviewed without the appeal process.

7. Amend the Law so that Legal Aid for appeals is not granted on the basis of whether or not you can win, but rather that it be paid on an evaluation of the strength of the evidence and on the merit of the argument.

   (At present many impoverished parent as a result of legal costs are not able to have appeals raised so judges know they are likely to not be corrected through an appeal process)

8. Amend the Family Law Act that instead of having to apply at the time of appeal for the cost of transcripts to be covered by the courts which is insanely expensive at $1800 per day over 7 days for a half trial or 14 days over a full trial, Which if refused results in loss of the appeal and having to pay the primary parents legal costs.

    8.1 Change the Family Law Act so that the auditory recording of the trial must be admissible for used in an appeal free of charge with relevant time stamps identified prior to the appeal trial. Instead of only allowing total paid written transcripts.

9. Increase the time to prepare an appeal to 6 months as appeals are far more technically difficult especially for those who can't afford solicitors as a result of the cost of trial.

10. Remove the section of the Family Law Act that awards legal cost at appeal so that the loser does not have to pay the winners cost.

    (As this is a grave injustice because it scares people of from appealing bad decisions which ruin the emotional aspect of children. It was removed from final orders trials.)

11. Remove the concept of Final Orders

    11.1 Replace final orders with 3 yearly review orders. Or add as an option with a significant weighting as being in the best interest of children.

    (This will address several issues. Firstly the idea that children need stability of time for the entirety of child hood unless there is a significant change of circumstances which almost never eventuates in an appropriate timely manner. Even when attachment theorists say as a child grows older they can spend time with someone with initial possession does not like without neurological failure to develop, family law says a change in the child's age is not a significant change of circumstances as all children go through this process. This three years insures the child will have stability of time over several years. – We also have issue with the idea that stability is a factor of keeping the primary parent with more time than the other parent for years on end after one parent has unilaterally imposed contact restrictions, and feel that the stability of a child's life is better measured by the environment of stability with in each parents home that each parent can individually provide. There for if the secondary parent provides a more stable life reversal of initial contact levels should be possible.

    Second it will address the stress on both children and parents of having limited contact with children until the child is about sixteen and able to run away from home under the current Family Law Act as if there is a mistake or biased judge in three years there is hope this can be corrected. (Of course the Family Law Act must change to insure appropriate behaviour at the review time) This is the issue that angers and upsets children the most. Children hate that they might have been tricked into saying something to a family consultant when they were too young to understand how the courts family consultant will use that in the report after applying attachment theory. Children hate that if they change as they grow up that the primary parent can ignore the child's wishes until the child can "vote with their feet" which they say is scary. They hate that they are not allowed to have a say about their living arrangements. With the replacement of final orders with three yearly orders they like that

they will be able to correct or amend the orders as they get older and their voice can be heard once again.

Thirdly the current Family Law Act has lowered the stress of considering time as a priority but has had negative repercussion, as now Judges are not giving it much consideration at all. This removal of final orders and replacement with three yearly revision orders will also remove the stress of time as a consideration for parents and children but leave the opportunity still as an important consideration for the judges. This issue often causes secondary parent to lose control emotionally then later when they have dealt with the courts saying they can never see more of their children it is to late wit Final Orders in place. Three yearly orders would remove a lot of these situations where secondary parents lose emotional control.

12. Children want an inclusion in the law that relocation away from the secondary parent is not allowed until the child is about 8 years old and old enough to understand and clearly voice if they wish to go or stay by swapping to living with the other parent, because after the primary parent "had to relocate and take them away" the opportunity to bond enough with the secondary parent for them to feel comfortable changing primary carers and home location disappears until they are teenagers and less scared.

    12.1 And that the determination of relocation in the best interest of children is not based on the primary parent having always retained primary possession of the child's time.

    12.2 Or prevent granting relocation on the basis that the now primary parent is lacking the ability to look after the child and needing to relocate closer to other family supports when the secondary parent can cope.

    (If the primary parent still can't cope, after winning primary care on the bases that only primary care will allow them to comfort the child and allow them to meet the child's care needs, then primary care should have gone to the other parent who could comfort the child and could cope and meet the child's care needs in the first place)

13. When children turn 18 that all material from the trials including the transcript recordings and including evidence the judges removed from trial be forwarded to them free of charge. They don't want it to be something they have to apply for first.

    (First some children think they won't care but they prefer having the choice to review it or not.

    Second this will become a small incentive for parents and judges to act with greater honesty as they know the truth will be available to the children when they grow up.

    Thirdly several child victims of family law when they grew older felt that being able to verify what the secondary parent said may have helped speed up the healing process after the parental alienation inflicted on them by the primary parents and the courts. – (realise now the term parental alienation which involved turning the child against the other parent so they are incapable of spending more time with the other parent, has become unpopular in the court system as being a bad thing to do to your children and not acting in the child's best interest. It has now been replaced by the term primary parent attachment which involves

destroying the child's resilience and retarding the child's development so that the child is incapable of spend more time with the secondary parent, and is deemed to be a good thing to do to your children and acting in the child's best interest.)

14. Include in the Family Law Act that the Independent Children's Lawyer must make recommendations for residency levels based on what the evidence shows where the child is happiest and is developing best prior to judges handling of the evidence.

    14.1 And that the ICL is not to make recommendations for residency based on prioritising their appearance of neutrality.

    (This removes what is currently happening where ICL's are just choosing a level of contact which is somewhere between what the primary parent seeks, mostly in their care and what the secondary parent seeks, often equal or near equal care. Or defaulting to what attachment theory says is the minimum level of contact a child needs to maintain a secondary relationship. If the evidence demonstrates that a child is better of primarily in the secondary parents care, or with equal time then the child has a right to have that recommendation put forward by their independent children's lawyer.)

15. Reduce the emphasis on what the child says in determining the child's wishes when they are under the age of 8 years old

    15.1.1 replace this with increased emphasis on what the child expresses as being the child's wishes once the child has turned 8

    15.1.2 And continue to increase the importance of what the child says is the child's wishes for each three year revisionary cycle due to the increase age and capacity of the child to reason, capacity to express themselves, and make informed decisions.

    15.2 Remove the application of attachment theory in determining the child's wishes and replace it with evaluation of the child's level of happiness at each parent's house but being directly related to that parent as per recommendation 1.c.

    15.3 remove the application of "creative interpretation" of determining the child's wishes and replace it with evaluation of the child's level of happiness at each parent's house but being directly related to that parent as per recommendation 1.c.

16. Include in the Family Law Act that siblings can spend the same number of nights with secondary parents, and that those nights can be together regardless of the attachment theory that says younger children must always have less time with a secondary parent than older children once both children begin primary school.

17. in cases of sever child abuse amend the orders so that if the primary parent engages in sever child abuse that

17.1 increasing the child's contact with the secondary parent be giving it priority as being in the best interest of the child, and if not immediately possible

17.2 That the intervener must be someone supportive of the secondary parent.

(This will address what is happening now as at present if the secondary parent engages in extreme abuse you reduce secondary parent contact to protect the child and increase primary parent contact, but if the primary parent engages in child abuse you reduce primary parent contact to protect the child, but because of the best interest of children principle in the Family Law Act you can't increase secondary parent contact because the child's brain won't develop according to Dr. Jennifer MacIntosh's attachment theory findings, if the child spends time with someone the primary parent doesn't like. So they are giving the child to someone who supports the primary parent allowing the primary to retain control over the child through the proxy primary caregiver who acts to interfere with the increasing of child contact with the secondary parent.)

18. Amend so that once siblings of different ages are all in school that they may share the same level of secondary parent contact. Even if this requires the younger child to increase level of secondary parent contact faster than the 1 night per year specified by attachment theory as the maximum a child can cope with without the brain failing to develop. Keep in mind Dr. MacIntosh says after age 5 (About the age when children can talk for themselves) there is no evidence of primary parent separation anxiety in children.

19. Introduce an external audit of judge's application of evidence that is independent of government and independent of family law judges. Make it mandatory for a yearly report of the audit findings be submitted to both the chief justice and, with powers to make recommendations, to a copy to the Federal Attorney General

(The independence will maintain the requirement for the legislative arm of the law to be separate from the judicial arm of government while removing the current situation where the only review process possible is an appeal sat upon by three other family law judges all engaged in the same decision making reasoning.)

20- Introduce a process where by Judges who act with dishonour, act with a lack of integrity, or prove incompetent can be removed from the bench and no-longer be allowed to preside over the determination of the best interests of children.

21. Find some way to legislate and address the insane charges of solicitors at trial and at preparation of trial. It is unethical and immoral that it should cost upward of $70,000 to defend a child's rights to be safe from a parent or spend the time with a skilled and loving parent that the child is capable of.

22. Introduce that the conduct of the parent must be measured over the course of the litigation and not only at or near the trial.

(this will remove how at the moment if a parent changes their behaviour just before trial or at trial or under the shadow of impending trial drop their allegations of the other parent being abusive that they are deemed the more creditable witnesses because they have suddenly had an epiphany)

23. Introduce transitional orders.

23.1 And make transitional orders extendable time periods.

(This will remove what is currently happening where it is unconstitutional to make court orders greater than 6 months into the future because you can't see what the child's needs or circumstance will be after that, coupled with the attachment theory that children can only increase secondary contact by 1 night per year making it impossible to transition slowly into the other parents care.

The introduction or extendable transition orders means you can increase contact, review it at 3 months – not using attachment theory where a child screaming with the primary parent means the primary parent needs more contact but rather assessing it at the secondary parents care so if the child is happy with the secondary parent the child can cope with stepping up to the next level of contact with the other parent.)

24. Amend the Family Law Act so that Secondary parents are also allowed to use after school care or child care and not just the primary parent.

(Removes the best interest of the child argument that a child only derives benefit from secondary parent while physically by their side)

25. Amend the Family Law Act so that if a primary parent is engaging in minor child abuse or misconduct and the secondary parent is not. That the best interest of the child is not measured against the harm caused by the child being with someone the primary parent does not like. This way minor forms of child abuse will strengthen the argument that increasing time with the secondary parent could be in the best interest of the child if the secondary parent is not harming the child.

(currently if the primary parent is engaged in low level child abuse such as making the child sick with medication the harm of being sick all the time is measured against the harm attachment theory says spending time with someone who the primary parent won't support incurs, which is failure to develop neurologically according to attachment theory so it is in the best interest of the child to remain significantly in the care of the primary parent and be subjected to low level abuse for the duration of child hood regardless of the level of care provided by the other parent.

Similarly currently if a secondary parent goes to court and gets court orders preventing the primary parent from engaging in minor child abuse this has the legal effect under the Family Law Act of the secondary parent having made it safe and therefore acceptable for the primary parent to retain significantly more, leaving the child more in the care of the parent who was engaged in low level child abuse.

Note that currently if a secondary parent engages in low level child abuse it is in the best interest of the child to spend less time with the abusive secondary parent and increase the primary parents contact.)

26. In the past Family Law Act amendments have carried the clause that the amendments don't count as a significant change of circumstances. However these amendments must constitute a significant change of circumstances and this must be specified as a part of the amendments to the Family Law Act.

(Because when judges altered the evidence or relied upon attachment theory research findings from research completely lacking sufficient empirical evidence they back at the trial created the significant change of circumstances back then.)

27. Courts to collect and make available statistics on the number of times the parent leading into trial with more time with the child leaves trial with more time.

27.1 courts to separate 6/8 night splits from 7/7 night splits and stop calling near equal rulings as equal rulings.

28. Strengthen the access rights of children with secondary grandparents to match that of the primary grandparents.

(At present grandparents on the primary parents side are deemed more important to a child than grandparents on the secondary parents side because primary parents will often approve of and allow their own parents more contact so no risk of neurological harm so primary grandparents get better contact orders awarded.

It is not uncommon for primary grandparents to be deemed more important than the secondary biologics parent as primary parents allow their own family greater access even than they allow the biological secondary parent. Under the significant substantial part of the Family Law Act primary grand parents often get the two days a fortnight taken from the secondary parent resulting in a split of 7 nights primary parent 5 nights secondary parent 2 nights primary grandparents.

Or interim orders of primary grandparents having greater nights than secondary parents.

29. Add an alternative to vexation proceedings that are less harsh given the special vulnerability of secondary parents under the Family Law Act as it is currently interpreted and give this option a less adversarial sounding name like Judicial Guidance orders. (See our Vexatious Proceedings document)

29.a Introduce a statute of limitations on the status of being a labelled a vexatious litigant, something like 5 years after the last trial or 5 years after the last child turns 18 years old whichever is sooner.

30. In these cases where the secondary parent is not found to be a risk of harm to the child, set a limit of contact below which judges are not allowed to comply with what the children ask.

Remember the process of attachment theory (as it was when it was called parental alienation) is to get the child to say they want no contact with the other parent. Where false allegations of risk of harm by the secondary parent are dropped and replaced with risk of harm from primary parent separation after successfully keeping the child access limited and the primary parent leaking their anxiety onto the child, when the children say they don't want any contact with the other parent so that the primary stops crying in front of them. The Family Law Act must protect the children by no longer legally ruling the child's mother or father out of their lives with the justification that it's in the best interest of the child to listen to the child. After all if children are asking to increase their residency with secondary parents, under this current Family Law Act Judges are also saying that they should not be letting children decide such important matters.

Just as the upper limit of what secondary parents can apply for needs to be removed so must legislative lower limits that Judges can comply with children's requests be limited in cases of secondary parents with unsubstantiated domestic violence findings.

As at the moment too many children are having either their mums or dads ruled completely out of their lives simply because of fear of being told of by the primary parent, or the children give up fighting the primary parent who was given so much power from the interim orders, or side against the secondary parent because the primary parent distresses them emotionally.

One example of a lower limit might be a card every three months and on special occasions such as Easter and Christmas. These cards can be reviewed by a councillor or psychologist to insure the content is acceptable, and that the cards have to be signed for by the child. This way even if the primary parents keep the child from reading the cards by getting the child to say they don't want the card the child will still receive in their minds knowledge that there is a secondary parent who loves them but just was not fast enough to grab the child first when the parents separated.

In summary

The concern of the courts and federal parliament is that the legislative part of government cannot amend court orders because of how judges make orders. So that forever more, future children must be left to suffer.

We suggest ignore what judges are doing, and ignore if they are doing anything wrong, but acknowledge that the interpretation of the Family Law Act can be understood in the terms highlighted by this and other reports made by Tas Family Compassion, continuing education material produced by the judges themselves and other social welfare groups in Australia.

And on the basis that this alternative interpretation was never intended to be how the Family Law Act was to guide judges from the legislative body. Then you have not only the ability but an obligation to amend the Family Law Act to give clearer guidance to the courts and help rebuild the faith that has been lost.

We must see past the current incorrect perception that considering equal time or near equal time is akin to taking a child from their family to live with some other less significant adult. Despite the academic opinion that unilaterally imposed contact restriction on a child's access to their other parent makes it impossible for the child to prefer the other parent or impossible biologically for the child to love and need more than one adult equally.

We need to see the truth and recognise that it is simply, in actuality taking an arbitrarily applied imbalance of opportunity forced on the child and correcting that, so the child can begin having equal opportunity to enjoy spending equal time with both parents that the child loves equally, and enjoys being in the presence of equally and is equally important to the child.

Consider also the impact these amendments might have on reducing domestic violence on separation and improving mental health. Any form of domestic abuse should be illegal (even mild child abuse by primary parents) recognise while abuse can never be excused or allowed that secondary parents do get pressured and lose control when the first parent to get the child (with the courts help) say:

Because they got the child first you lose contact to 30% or below for the rest of childhood, as your contact is of only limited value to the child and you should be happy with needlessly limited contact and only a lesser secondary meaningful relationships, than the now more important essential other parents relationship as a result of having successfully restricted the child's contact and access to you.

Surely this is also something the legislative body is responsible for given it's their Act of parliament and their tendered out research?

We call upon all federal members of parliament to look deeply at their own values and ethics and not stand by and allow this to go unaddressed simply because the Family Law Act currently has no way to be amended.

Please our nation's children deserve better.

Vexation proceedings order, prohibit the other party from instituting further proceedings without leave. It should be noted at final orders secondary parents are almost also not able to institute further proceedings without leave by application of the Aspland vs Rice in which you need a significant change of circumstances and there are very few circumstances for a secondary parent that fit that criteria, age is not significant as all children age.

Vexation orders are sought under the new s.1092QB of the Act which commenced for applications instituted or transferred to the Circuit (formally the Family Court) on or after 11 June 2013. Originally the provisions of previous s.118 of the Act applied

Old sections of the Act apply to cases proceeded prior to the date, but the new section can be triggered by the new Part XIB through the transfer of proceedings from one court to another.

The previous provisions of s.118(1)(c) of the Act provide that if court is satisfied that the proceedings are *frivolous or vexatious* – or, means not needing both conditions – that court may order that the person who instituted the proceedings not institute proceedings under this Act of the kind specified in the order – the kind is important see further on – without leave.

Being labelled vexatious also has a negative impact on the emotion and therefore the reaction and behaviour of the parent so proceeded against.

The fundamental differences between the old section and the new Part are:

i) The test is no longer a court having frivolous or vexatious proceedings before it, but rather whether or not there is a history of a person having frequently instituted or conducted vexatious proceedings. Our evaluation of this change is that it is now a question that needs to be answered (whether), with parts of either (frequency) being either importantly only begun (instituted) or followed through with (conducted) with (vexation) having a definition.

ii) Vexatious proceedings are now defined by statue s.102Q(1) Remembering that definitions in court are part prescribed in the act under subsections and interpretations of the words by judges through appeals and previous case histories.

An order can now be made prohibiting the person from instituting proceedings or proceedings of a particular type under the Act in a court having jurisdiction under the Act, which brings with it a right in the prohibited person to seek leave to make an application s.102QE(2), but a requirement that the application for leave or the supporting affidavit not be served unless there is an order to do so s.102QE(4). Consequentially orders which had previously been made under s.114(3) to restrain a party from serving orders which had previously been made under s.114(3) to restrain a party from serving an application for leave to institute proceedings on the party (and therefore creating potential distress for them – but note no aspect of the dynamics under the Act around this reason for distress, or for that matter the dynamic around the reason for vexatious actions, when explained by judges it is only partially explored with a one sided biased towards primary parent view) as such are no longer necessary as they are mandated under the new law.

So seeking vexatious proceedings orders under s.102QB(2) are a provision being an amendment to the Act pursuant to the provisions of the Access to Justice (Federal Jurisdiction) Amendment Act 2012 (no. 186 of 2012)

In addition a new s.118 was inserted into the Act. That new provision enables dismissal of vexatious proceedings.

The provision contained in PartXIB and the repeal of the then s.118 was contained in schedule 3 to the Access to Justice (Federal Jurisdiction) Amendment Act 2012 and those changes commenced on 11 June 2013. Part 2, s.11 of that Amendment Act 2012 provides that the power of a court to make a vexatious proceedings order under the Family Law Act 1975, applied in relation to proceedings instituted in, or transferring to, that court on or after the commencement of that item.

Vexatious proceedings are dealt with under Part XIB of the Act, Section 102QB sets out the statutory basis underlying the making of a vexatious proceeding order, it provides:

(1) This section applies if a court exercises jurisdiction in proceedings under the Act is satisfied:
   (a) A person has **frequently** (there is a big trap here for secondary parents and a great boon to primary parents, in relation to contraventions by primary parents relating to how a court would define frequency in a single application) instituted or conducted vexatious proceedings in Australian courts or tribunals: (this disadvantages secondary parents also as it makes review and seeking of second opinions dangerous)
   (b) A person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted vexatious proceedings in an Australian court or tribunal.

(2) The court may make any or all of the following orders:
   (a) An order staying or dismissing all or part of any proceedings in the court already instituted by persons;
   (b) An order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under the Act:
   (c) Any other order the court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that a person may only file documents by mail, an order to give security for costs and an order for costs.

(3) The court may make a vexatious proceedings order on its own initiative or on the application of any of the following:
   (a) The Attorney-General of the Commonwealth or of a State or Territory. It is not know yet if this means any individual or individual working as part of a group could be proceeded against as vexatious if they seek frequently for issues in family court to be addressed by the Attorney General's office in relation to problems with family law given the portfolio resides there
   (b) The appropriate court official;
   (c) A person against whom another person has instituted or conducted vexatious proceedings;
   (d) A person who has a significant interest in the matter.

(4) The court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(5) An order made under paragraph (2)(a) or (b) is a final order. Theoretically this means vexation sticks as it would theoretically require a significant change of circumstances to remove and we have seen how hard significant change of circumstances are to achieve.

(6) For the purpose of subsection (1), the court may have regard to:
   (a) Proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal):
   (b) Orders made by any Australian court or tribunal;
   (c) And the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance – breach of orders is non-compliance but

why did they not comply? And theoretically not accepting the decision and seeking alteration could be seen as non-compliance in overall conduct. Including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

A vexatious proceedings order does not, in bare form, impose the restrictions set out in s.102QD (that is prohibit and/or to stay proceedings and to require leave to apply); it is not a creature in it's own right. This is because s.102Q(1) defines a vexatious proceedings order as an order made under 102QB(2).

Section 102QB(2) gives the court power to make various types of orders, namely; s.102QB92)(a) empowers staying or dismissing proceedings, s102QB(2)(b) empowers a court to make a vexatious proceedings order to which the provisions of s.102QD apply (ie to stay proceedings and provide a mechanism for leave to commence) and s.102QB(2)(c) makes provision for any other order a court considers appropriate.

It is by operation of an order pursuant to s.102QB(2)(b) including use of the term 'without first having been granted leave to commence that proceeding pursuant to s.102QG of the Act' (or similar) that brings in effect the prohibitions, stay and leave provisions contained in s.102QD

So at this point the question to be decided is whether the test of ***frequency*** in s102QB(1)(a) is satisfied in **each specific case.**

The amendments of the Act was said to have been (Explanatory Memoranda Access to Justice (Federal Jurisdiction) Amendment bill 2011

- Are designed to provide a consistent more comprehensive legislative framework for Federal Courts to deal with proceedings brought by persons who had frequently instituted or conducted vexatious proceedings in Australian courts and tribunals, or who are acting in concert with others that have done so.
- In 2003, the Standing Committee of Attorney-Generals endorsed a model law dealing with vexatious proceedings, based in part on the Western Australian Vexatious Proceedings Restriction Act 2002.
  The purpose of the model law is to harmonise laws dealing with vexatious proceedings across Australia. This is expected to discourage vexatious litigants from forum shopping, In Family Law secondary parents often do this not out of mischief but because there is an inherent problem with the way the Act directs judges to determine the level on contact that is in the best interest of the child so they are seeking a place to address this inherent problem that the family courts cant address. Curtail vexatious litigants acting in concert with other vexatious litigants from other jurisdictions, and enable similar results consequences between jurisdictions from the making of vexatious proceedings orders. Legislation based on the Standing Committee of Attorney –General model of law has been enacted in Queensland (Vexatious Proceedings Act 2005), the Northern Territory (Vexatious Proceedings Act 2005), and New South Wales (Vexatious Proceedings Act 2008). Schedule 3 of the Bill will implement the Standing Committee of Attorney-General vexatious proceedings model of law at the Commonwealth level, in relation to proceedings in the Family Court of Australia, the Federal Court of Australia, the Federal Magistrates Court and the High Court of Australia and other courts exercising jurisdiction under the Family Law Act 1975.

As to Division 2 containing s.102QB the Explanatory Memorandum set out, in Part 209. Subsection 102QB(1) expressly allows a court to take into account vexatious proceedings instituted or conducted by a person in any other Australian court or tribunal, as well as in that particular court, so that a person need not to have a history of vexatious proceedings just in that particular court before the court could consider making a vexatious proceedings order against them. One of the purposes of this provision is to minimise the possibility of a person unsuccessfully pursuing vexatious proceedings in one court, and then trying again with similar vexatious proceedings in another court. This means Judges can't have regard to Police Family Violence Orders as they are not orders of a court or Tribunal (in Tasmania, the Family Violence Act 2004 (Tas) enables Tasmanian Police to issue family violence orders against a person, if satisfied that a person committed or is likely to commit a family violence offence. A police family violence order operates for 12 months from the date the order is served on the respondent. Such an order may be varied by Police if the affected person and the respondent consent and variation will not adversely affect the safety and interests of the affected person or child. A court may also vary such order. A police family violence order is revoked if a court makes a final or interim family violence order in respect of the same parties. A court may revoke a police family violence order.)

The Explanatory Memorandum goes on to set out:
210. The threshold that will need to be met under paragraph 102QB(1)(a) is that a person has instituted or conducted vexatious proceedings in Australian courts and tribunals '**frequenty**'. Clause 5 of the Standing Committee of Attorney-General vexatious proceedings model of law provides a choice between this test and a test that requires a court to be satisfied that a person *'habitually and persistently'* instituted and conducted vexatious proceedings, which was the traditional test.
Section 102QA of the Act makes it clear that the powers that the court may otherwise have available to it are not affected by the amendments, including a dismissal of vexatious proceedings pursuant to the new iteration of s.118 The Explanatory Memorandum notes at paragraph 205, section 102QA clarifies that Part XIB does not limit or otherwise effect any other powers (including implied powers) that a court has apart from that Part to deal with vexatious proceedings. For Example Part XIB will not affect a court's existing powers to dismiss or otherwise deal with a particular vexatious proceedings brought by a person who did not have a history of bringing vexatious proceedings.

There is then to base such an order a two part threshold which needs to be met, namely:

i) That there have been vexatious proceedings instituted or conducted in Australian courts or tribunals;

ii) That the person, has frequently instituted or conducted such proceedings. It is here without knowledge of the Acts impact on meaningful secondary attachments and contact levels that we begin to see the secondary parent's higher susceptibility to being caught in this situation.

Consider then the legislative pathway to vexatious proceedings orders.

1. In accordance with s.102QB(1) determine which proceedings constitute vexatious proceedings instituted or conducted in Australian courts or tribunals,

2. If there have been vexatious proceedings, then determine whether such proceedings have been conducted or instituted **frequently**, the courts are able to have regard to proceedings instituted (or attempted to be instituted) or conducted in any Australian court of tribunal, orders made in such proceedings, including overall conduct in such proceedings, including compliance with orders made by that court or tribunal (including proceedings instituted (or attempted to be instituted) or conducted before the commencement of Part XIB of the Act); and
3. If the threshold is met, then consider whether to exercise the discretion set out in s.102QB(2) of the Act and make a vexatious proceedings order. In considering whether to make a vexatious proceedings order consider the scope and nature of the orders sought and made.

The Term Vexatious proceedings is defined in S.102Q(1) vexatious proceedings includes

(a) Proceedings that are **an abuse of the process** of court or tribunal. Pay attention to later as we try to demonstrate how the definition of an abuse of process in relation to how the Family Law Act determines the best interest of children's level of contact leaves secondary parents wide open.
(b) Proceedings instituted in a court or tribunal to **harass or annoy**, to cause delay or **detriment** without reasonable ground. Pay attention to later as we try to demonstrate how the definition of an detriment without reasonable grounds in relation to how the Family Law Act determines the best interest of children's level of contact leaves secondary parents wide open.
(c) Proceedings instituted or pursued in a court or tribunal without reasonable grounds no regard for the desperation that the Family Law Act creates via the process for determining the best interests of children in secondary parents as reasonable grounds.
(d) Proceedings conducted in a court or tribunal in a way so as to harass or annoy, or delay or **detriment**, or **achieve another wrongful purpose.** Pay attention to later as we try to demonstrate how the definition of an detriment and achieve another wrongful purpose in relation to how the Family Law Act determines the best interest of children's level of contact leaves secondary parents wide open.

This is not an exhaustive list and the Explanatory Memorandum says of this definition 202. The definition of vexatious proceedings is an inclusive definition, which lists some examples of various kinds of proceedings which could give rise to a vexatious proceedings order.

In Marsden&Winch 2013 the Full Court comprising Bryant, Ainslie-Wallace and Ryan discussed the test to be applied in determining whether proceedings are vexatious. At paragraphs 150 and 151 of the reasons their Honours referred to the decision of Attorney-General v Wentworth where Roden said 150. Meaning of "vexatious" This is obviously a critical term, and can hardly be regarded as mere surplusage. If as I believe must be the case, "habitually and persistently and without any reasonable ground institutes legal proceedings", means something different from "habitually and persistently and without any reasonable ground institutes legal proceedings", then relevant vexation cannot be found simply in the habitual or persistent manner in which legal proceedings are instituted, in a lack of reasonable ground for their institution, or in a combination of those factors. Something more is required. Similarly, the use of the words "without any reasonable ground", implies that it would be possible to institute vexatious legal proceedings, and indeed to do so habitually and persistently, with reasonable grounds.

151. A subjective element, such as malice definition of malice is important in relation to the Family Law process for determining the best interest of children. Lack of bona fides, or ulterior motivation, seems to be both appropriate and necessary to give significance to the term vexatious within the context of s.84(1). It provides the required something more than is conveyed by the other words in the section, and it is consistent with legal proceedings instituted either with or without reasonable ground. If I were unaided by judicial authority, I would opt for such a construction here. I appreciate that isolated from its context, the expression of vexatious legal proceedings could mean legal proceedings which vex, irrespective of the motives of the person instituting them. A construction requiring a purely objective test might also be applied to the word when used in the expression vexatious litigants, which also appears in the section, although it would sit less happily there. The construction required for present purpose, however, is a construction within the context of the section as a whole; and for the reasons stated, I would, on first impression, opt for the inclusion of a subjective element.

152. We observe that while Roden was concerned with the meaning of the words within the context of a difference statue, that difference is not material to our consideration. We agree with his Honour's construction of the word vexation and in particular his rejection of the meaning being legal proceedings which vex.

Roden ten concluded at 491 with the test which is set out at 81 of those reasons. His Honour then referred to the Oxford Dictionary definition of the word to vex, which he summarised as being to cause distress, whilst in its more modern meaning is to make somebody feel annoyed, frustrated, worried, irritated or unhappy. Having determined that **the father's desire to spend time with his child was not frivolous,** here then is a recognition that desire to see more of a child is not frivolous, his Honour turned his attention to whether the proceedings initiated by the father were vexatious. His Honour cited Attorney-General (NSW) v Wentworth (1988) where in the context of the then s.84 of the Supreme Court Act 1970 (NSW) Roden set out a test for determining whether proceedings are vexatious.

1. Proceedings are vexatious if they are instituted with the intention of annoying or embarrassing the person against whom they are brought. Difficult possible in terms of primary claims of sexual abuse by secondary parents as the embarrassment of having to have explored your sexuality in an open forum is necessary due to the number of cases with real sexual abuse.

2. They are vexatious if they are brought for collateral purposes, and not for the purpose of having the court adjudicate on the issues to which they give rise.

3. They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless.

This definition of Vexatious which has been adopted by the Full Court in Marsden And Winch now has to be considered in the context of the wider definition provided in section 102Q(1) of the Act. The definition is not cumulative, it includes concepts such as delay or another wrongful purpose or proceedings instituted or pursued with reasonable grounds. This later expression seems somewhat less stringent than the obviously untenable or manifestly groundless as to be utterly hopeless, contained in Roden's test.

Davies in Attorney General in the state of NSW v Gargan when he set out the principles relating to vexatious litigants via reference to the judgement of Perram in Official Trustee in Bankruptcy v Gargan to see the principles. Whilst acknowledging that the test his Honour had to consider was the

test under s 84 Supreme Court Act and is a more demanding test than is required under the Vexatious Proceedings Act 2008, much of what his Honour sets out is relevant.

A comprehensive explanation of what makes a proceeding vexatious is difficult to proffer for the boundary between the persistent and over-zealous on the one hand, and the vexatious on the other, which may at times be indistinct. First the making of such an order is an extreme remedy depriving its object of recourse to the enforcement of the law which is every citizen's right. This is an important point to remember given that it is almost always the disadvantaged secondary parent and child who suffers. It is therefore, not lightly to be made.

Secondly, the purpose of the order is not to impose condign punishment for past litigious misdeeds; it serves instead to shield both the public, whose individual members might be molested by vexatious proceedings, and the Court itself, whose limited resources and needs must be carefully managed and protected from expense, burden and inconvenience of baseless and repetitious suits.

Thirdly, as might naturally be expected, such a severe power is not enlivened by the mere single occurrence of a vexatious claim. Note the term occurrence not terms like single sitting. To err is human and transient lapses of judgement, even serious ones, may be found in the most reasonable of places. Instead, the power to make the order is conditional upon the litigant having commenced not only a single vexatious proceeding but also upon having commenced similar such proceedings in this court or in other Australian courts (or tribunals).

Fourthly, the qualities of vexation to which this is addressed are to be found in the commencement by litigant of proceedings which lack reasonable grounds. It is fair to say under the current Family Law Act as interpreted by the Judges and the application of attachment theory as endorsed by the Attorney General's office as best practice any application for contact above the minimum prescribed for a meaningful relationship in the absence of extreme primary parent abuse greater than the child brain not developing or where the primary parent fails to drop a false allegation of secondary abuse will lack reasonable grounds. Where the litigant's institution of such proceedings may fairly be said to be both habitual and persistent. This is not the safety net you might expect when you see how easy it is to fit the criteria of persistent.

Fifthly, whether a proceeding is instituted without reasonable grounds is a different question to, although not wholly disconnected from, the inquiry into a proceeding's legal merits. Even with legal merit the proceedings can be called vexatious based on without reasonable grounds, and the other way, proceedings with reasonable grounds can be called vexatious due to lack of legal merit. The wheat, no doubt, must be separated from the chaff but in this area the question is whether what is before the Court contains any wheat at all. Although often enough, no great guidance is obtained by exchanging one formula of words with another, it will be usual of some assistance, limited perhaps, to ask whether the issues brought to the Court for determination are manifestly hopeless or devoid of merit. Hopeless is the key word as most situations from the secondary parent and most legal options for the secondary are hopeless which is why secondary parents are becoming desperate and just trying everything even appeals, and minor contravention orders. It is, in that context, important to distinguish the difficult from the ridiculous and the unlikely from the hopeless.

Sixthly, although the ways in which unreasonable grounds may manifest themselves are myriad, one form often to be found in the baggage of vexatious is a failure, often a refusal, to understand the principles of finality of litigation which rescue court and litigant alike from a Samasara of past forensic encounters. Finality. That is an interesting subject. The family law Act makes it a finality with extreme unlikeliness and extreme difficulty to improve on levels of contact imposed at younger

years, or imposed at a time when the unilaterally imposed contact restrictions by the now primary parent and ratified by the Family Law Act for the rest of the childhood, has disturbed the secondary victim (or now secondary parent) (with the primary victims the children often not seeing therefor not suffering until many years later)

Seventhly, it is the related quality of repetition which underpins, again repetition is easy as will be explained later. In part, a need for the institution of the proceedings to deserve the appellations habitual and persistent. The litigant's conduct will be habitual where the commencement of proceedings occurs as a matter of course when appropriate conditions for their commencement are present as was explained by Roden in Attorney General v Wentworth. The formulation may not wholly explain the litigant who commences proceedings on any occasion and without the presence of any conditions, whether appropriate or otherwise. In such cases, the idea of constant repetition driven by habit and symptomatic of an inability not to engage in the behaviour may be more useful. Persistence, on the other hand, generally suggests stubborn determination but, in the context of the vexatious, carries with it a capacity to endure failure beyond the point at which a rational person would abandon the field. Under the current Family Law Act it must be said with all the advantages imbued to the now primary parent as being in the best interest of the child it is **only** the stubborn determination, and the capacity to endure failure beyond the point at which 'a rational person would abandon the field', which offers any hope of a child seeing more of a secondary parent than the primary parent wants to give up enjoying.

Eighthly, each of these notions – the want of reasonable grounds, habitual institution and persistent institution – are to be gauged objectively. But this does not mean that a litigant's own protestation as to his or her own mental state is irrelevant; frequently enough, the vexatious are betrayed out of their own mouths. Actually betrayed out of the secondary parents own mouths is common in family law as a whole. If a secondary parent says the primary does not respect the secondary meaningful relationship due to continue long interstate holidays with incomplete catch up. The secondary has betrayed themselves out of their own mouth as they have demonstrated a bad attitude to the primary parents desire to continually limit the secondary parents contact through regular long holidays, and demonstrated conflict and poor communication, all three features making near equal and equal contact not in the best interest of the child. Instead of demonstrating that the secondary parent might more likely respect the contact that the child should have with the other parent which non court people would consider a better indicator of the best interest of the child. Rather, the need for objective determination protects courts from the vexatious litigant who is genuinely, but misguidedly, Persuaded as to the correctness of his or her own conduct. Misguided is an interesting word, perhaps instead of the Family Law Act only having recourse to Vexatious Proceedings, a decidedly confrontational and antagonistic term, perhaps a second option can be introduced to the Family Law Act, and called Judicial Guidance orders. These orders would not have to be as encompassing of attempts to verify the finality of final orders etc, and in conjunction with other amendments such as replacing Final orders with a new type of order such as Transitional orders might actually serve to both reduce the tendency towards vexatious behaviours in the first place as well as offer protective mechanisms to secondary parents such as preventing the secondary parents from wasting money, instead of only protecting the courts and primary parents.

Such an amendment to include guidance orders would have to be structured to demonstrate good faith towards protection of the secondary parent from making mistakes and not as a step towards full vexatious proceedings. For example the following aspect would have to be nullified in the amendment: Related is that even when leave is not granted for the target of a vexatious proceedings order, their application for leave to issue even when denied constitutes instituted. In considering the

term frequent Barker in Fuller v Tomas had regard to the comments of Toohey in Jones v Cusack. "there is a question here, as there was in the application against Mr Skyring, whether process which has been refused leave to issue is a legal proceeding which has been instituted. For the reasons given in the other application, I am of the opinion that, while the process itself has not been issued, the application for leave to issue the process does itself constitute the institution of legal proceedings."

Ninthly, the power to make the order arises when proceedings commenced in the way described are found to exist. But the notion of a proceeding is a broad one including a substantive proceeding directed at the attainment of final relief and collateral applications within such a proceeding; further, it extends outside the proceeding itself and embraces appeals therefrom and applications which whilst not made in the proceedings, are properly to be seen as collateral thereto. This is that aspect of seeking recourse outside for inappropriate methodology for determining the best interest of children applied current under this iteration of the Family Law Act where no effective recourse can be found within the Family Court itself. So much flows from the definition of proceeding in s.4 of the Federal Court of Australia Act 1976.

Finally, once it is concluded that the Court's power to prevent a litigant from commencing or pursuing proceedings has been enlivened, the considerations germane to the exercise of that power are unconfined. However, the factors which will be relevant are informed by the protective purpose which the order serves. Where a litigant displays insight into their previous litigious history this will, no doubt, be relevant for it will suggest – although not determine – a diminution in the risk posed to the public. On the other hand, the manner in which a litigant conducts herself in her affairs generally is also capable of throwing light on whether the commencement of further vexatious proceedings is likely. Those general affairs include the litigant's defence to the proceedings by which the order restraining him is sought. Because of the protective nature of the jurisdiction it is also relevant to know the extent of the damage and inconvenience the litigant's forays into the courts have caused, pecuniary or otherwise. This is important but you would miss this if you did not realise that Attachment theory, and protection from harm have a peculiar aspect under the Family Law Act as interpreted by the judges. As you would know in the past parents sort psychological reports demonstrating the lesser fitness or capacity to tend to the needs of the child's best interest of the other parent. The notion was if the other is less capable the word best would increase contact with the more capable. Now this no longer holds true as results of psychological reports differ to how it impact the best interest of children through contact levels based on if you are primary or secondary parent. So if you are a secondary parent less psychologically fit, even a little it is in the best interest of the child for the first person who got the child to have significantly more contact than the substantial contact the secondary parent can have. But if you are a primary parent being less psychologically capable makes it in the best interest of the child for the first parent who got the child to have significantly more time unless the report is not equal to or less than the child's brain not developing as a result of child anxiety. (the exception being failure of the primary to drop false allegations of secondary parent abuse in the trial, which is sometimes reported as extreme or as failing to demonstrate facility of a meaningful secondary relationship under the Act.) This mechanism works in two ways, first under attachment theory it distracts the primary from being able to read the child's cues and the theory says only the first to get a child can do this. (The effect is considered the same as the child being physically removed)

The second mechanism is the Act's elevation of the, protect the child from harm section. If a secondary parent psychological report indicates even minor levels of risk of harm to the child you reduce the level of contact a child has with them. If a secondary parent displays distress in front of

the secondary parent has acted inappropriately regardless of if it is innocent or deliberate decrease secondary parent child contact.

If however the primary parent can't hide their distress from the child. Distress caused by the secondary parent trying to undo the loss of contact unilaterally imposed on them by the now primary, often for invalidated reasons then the secondary parent is accused of harming the child. Not the primary for imposing restrictions leading to the secondary going to court, and not the primary for involving the child. (innocent or deliberate by the primary, does not matter as this is determined by creditability and as secondary parents are seeking what attachment theory says is of no additional value to children, the primary parent who drops false allegations from secondary parent risk of harm will on credit be found innocent not deliberate in showing their distress to the child)

So it is common now for primary parents to seek medical reports for proof of psychological disturbance both in the other parent as well as in themselves, as both reports advance the support of the Family Law Act in favour of the primary parent ending up with more time than the now secondary parent at Final orders.

- **Application for contravention, can contain multiple allegations of contraventions. Hence repetitive is established in a single court action because legally. Proceedings can contain a number of parts which are in themselves proceedings**

Related is that even when leave is not granted for the target of a vexatious proceedings order, their application for leave to issue even when denied constitutes instituted. In considering the term frequent Barker in Fuller v Tomas had regard to the comments of Toohey in Jones v Cusack. "there is a question here, as there was in the application against Mr Skyring, whether process which has been refused leave to issue is a legal proceeding which has been instituted. For the reasons given in the other application, I am of the opinion that, while the process itself has not been issued, the application for leave to issue the process does itself constitute the institution of legal proceedings."

In a similar manner then filing a notice of appeal by a secondary parent who then finds they can't do it such as if not gaining legal aid, a common problem, would fit the part of the context aspect.

- **Fragile state of the primary parents demonstrated indicating an abuse of power finding.** (such as statements from a communication book) If any failed legal attempts happen more than once the secondary parent has engaged in abuse of power as they would have known from the first contact in court that the secondary parent trying to redress the needless loss of contact is reported by the primary as distressing.
- **Secondary parents not caring about the majority of minor,** often this is included to demonstrate that the pattern of the primary parent is what makes the issues problematic, these included common patterns such as, primary reports child is too sick to travel which is tricky for secondary parents because every now and then it is true. Regular small lateness to drop the child of by the child of but only by a few minutes every time, to the general public this sounds like the secondary is being petty, but when the primary and the courts limit contact to one hour a week or only a few days a fortnight for no other reason than the primary was successfully able to limit the contact with the courts help every minute is precious. Or continually taking the child on holidays on days that are important such as Christmas or birthdays, again sounds like the secondary is being nasty stopping holidays but when you have only been allowed to see the child for a couple of hours each special day it's painful to experience.

- **Minor legal word errors**. A common one here is the term “up to” secondary parents often miss this when the orders are being prepared and when expecting two phone calls a week discover zero, one, or two calls are written down.

Benefit of conflict for primary parent removes motivation to stop conflict, in fact it encourages the primary to engage in conflict.

Benefit of greater possession being the bases to court rulings to ratify contact imposed by the first parent to get the child, that removes motivation for the primary parent to negotiate or consider equal time.

(Attachment Theory according to Dr. Jennifer McIntosh, promotes the following false ideas, which make up 50% of how Judges get around the Family Law Act considering equal time.)

1. Greater possession they say means greater attachment, or primary care giver must be primary emotional attachment giver.

2. Under attachment theory, time with another adult the child feels safe with will produce the same failure to develop neurologically as abusing the child does (we strongly refute this finding from Dr. McIntosh's research) So unless the primary is poisoning the child against the secondary parent, which stops the meaningful relationship requirements of the family law act, or sexual abuse by primary, or severe beatings by primary there is no improvement to the failure to develop neurologically so you leave the child with the child abuser if the abuser is the first parent to get the child. (do not assume removal of the child from primary parent means greater time with the secondary parent, judges often give the child to a third party who is aligned with the primary parent instead.)

3. They say only the first parent to get the child can prevent neurological failure to develop.

4. Any secondary parent seeking more than the minimum time needed for a meaningful relationship is asking for something of no value to children so must be acting more for their own needs and you discredit the secondary parents evidence. (but under the Family Law Act judges will not consider a level of contact not applied for by the parents)

4.1 This also translate into real life cases to result in Primary parents not needing to provide any evidence to support either their allegations of the secondary parent being a cause of risk or their claims that they themselves lack the capacity to meet the child's needs so must have more time in the best interests of the child.

(The other 50% of the reason is the legal definition of the words

1. First

2. Consider

3. Best

4. Conflict

5. Meaningful secondary relationship vs essential primary attachment.

6. Equal (is in the Act but of no best interest value to children) vs near equal (not in the Act so not considered and also of no best interest value to children) vs significant and substantial (in the Act and defined by the minimum Dr McIntosh says is needed for a meaningful secondary parent relationship)

7. Stop the parent conflict as a priority to best interest.(so if child safe from all levels of child abuse by secondary, safe from extreme child abuse only by primary, and loves the secondary ie has a secondary meaningful relationship, then best interest is stop parent conflict and this is best done under the Act by just letting the first parent to get the child keep more time for the remaining years of childhood.

8. Significant change of circumstances, (growing older is legally not significant regardless of attachment theory saying it is, because all children grow up)

9. Unconstitutional

We want to talk about Judges in family court, and what can be learnt looking at court cases and

what other Judges are saying in their continuing education material they are producing.

It means dealing with a Federal Act of Parliament, which is adversely affecting children all around Australia, children, who's voices are not being heard in Federal Parliament, the only place where their concerns can be addressed.

In essence children are being trapped for many years living mostly with one parent, and not necessarily the parent the child is happiest with, and not necessarily the parent best able to meet the Childs needs.

The assignment of who gets more, and why equal time can never be considered under the Family Law Act, is based on attachment theory, by Dr. Jennifer McIntosh, which when you boil it down means residency is allotted based on whoever gets the child first. (If they are not *too* abusive, and they don't chose to share contact equally or, don't communicate or co-operate on reasonable matter's)

And unfortunately not enough professionals are speaking up about the issue, either publicly or to the Attorney Generals office. And while this remains the case it is unlikely that, the Attorney General will amend the Act of Parliament, unlikely Judges in the circuit court will change, and unlikely that Attachment theory based on Dr. Jennifer McIntosh will ever be corrected in relation to children's residency on separation

Another problem is the Attorney General cites separation of courts from federal parliament means this Act can not be amended. The Australian Law Reform Society can't investigate and advise on this issue without direction from the Attorney General.

The last three Attorney General's, inclusive of Senator George Brandis, indicating that they can not make amendments to family law because to do so they would have to investigate individual cases. The need to have separation of the three bodies of government. (governance , legal, and legislative) means nobody in Australia, perhaps no organisation in Australia can make the needed amendments to the Family Law Act in order to achieve the "best interests of children".

We know that Senator Andrew Wilkie sort action in the senate around this issue in the Family Law Act and the impact it has on the child support legislation, upon which he received

resounding support by the senate, but it was over ruled by the then attorney general and the Prime Minister at the time, Julia Gillard

In family law each case is assessed on a case by case basis, unfortunately each individual case is determined through the twin lenses of the Family Law Act and attachment theory, primarily Australian research by people like Dr. Jennifer McIntosh, professor Chisholm etc, both of whom have the endorsement of the Attorney General's office.

Recently we attended the DOORS screening tool which they are using in Relationships Australia, an organization associated with the Attorney Generals office, so again endorsed by the Attorney General's office. And we note the author of this document Dr Claire Ralfs is deputy Manager of Relationships Australia, and she collaborated with Dr Jennifer McIntosh in the research and production of the DOORS screening tool, particularly domain 6 to do with psychological risk factors for children.

In her presentation she was saying that in all other fields of healthcare self reporting is a valid and accepted method of evaluation and data gathering but for some reason not in family law. I can perhaps add some thoughts on that. In therapy there is the advantage of receiving better assistance in self reporting, in family law there is and added element. In family law self reporting has the added benefit of increasing the amount of child residency your child has with you

. What does this means? It means there will be more allegations of child abuse raised in this area than almost any other in Australia, a higher number of substantiated claims will result, and a higher number of false allegations. – the family court never calls it a false claim of child sexual assault leaving the victim of false allegation with a long lasting social stigma. - how it works under the Family Law Act, is so long as the person who run of with the child before going to court, admits there is no longer a risk of child abuse at the time of trial, to demonstrate a good attitude towards the secondary parent, then the primary parent will be advised to switch to a new risk factor.After keeping the child away for evaluation of child abuse they change to say because the child was kept away from the secondary parent by the primary parent during the investigation the child is now primarily attached to the one who made the accusation, and will suffer a failure to develop psychologically due to the resulting establishment of primary parent separation anxiety.

Unfortunately self reporting by primary parents of their inability to comfort children is the principal tool focused on by Judges for determining residency levels. But this high level of both substantiated and false allegations in post separation and it's benefit to ending up with greater child residency, means self reporting especially around child anxiety symptoms, or domestic abuse, domestic violence and sexual abuse,(include in this organisations connected to separation, such as mediation services and men's and women's shelters) must be handled carefully.

It has been brought to our attention that Dr. McIntosh has responded to radio that the things she has said in her research findings are being miss understood.

It is possible this is the case but how is it that a professional researcher writes her findings so poorly that she is miss understood in so many ways, by so many organisation?

We have looked at some of the findings that Dr McIntosh has put down in her journal article which are referred to in court by Judges (as well as other attachment theory researchers interviewed by Dr. McIntosh, especially from those journal articles judges refer to in their decision making)

We feel that just saying this on TV or radio is not going to help future children, the only way to fix this would be for Dr McIntosh to submit to the legal journals that judges are using, a "clarification of findings" article.

If Dr McIntosh likes how her research findings are being quoted then she need do nothing.

However if Dr McIntosh feels her reputation is being incorrectly smudged by the Attorney General's office and the family court judges then hopefully Dr McIntosh will take steps to help the children. (those children already with court orders are trapped now and can never be helped as any amendment to the Act always carries the rider that a change in legislation does not constitute a significant change on circumstances, but hopefully future children can be spared this)

because as the Judges and the Attorney General are all pointing the fingers at Dr. McIntosh and blaming her she is the only person in Australia who can clarify this, the only one who can help the children, if she wants to.

The following is an explanation of how the Family Law Act directs judges to apply what Dr. McIntosh has said in determining the residency for children that is in the children's best interest. I will endeavour to place markers at key statements judges say are directly related to what Dr. McIntosh has said in her research findings.

In family law judges apply attachment theory (based, attachment theorists say, on neuroscience. However this is a bit of a subconscious mind game. By leaning on neuroscience it gives the impression to the average person that the same high standards of research applied to neuroscience has been applied to attachment theory research as well. Or that because neuroscience research is sound, the idea that a night away from one parent the child loves spent with another parent the child loves produces the levels of trauma that neuroscience says prevents neurological development in young people) when you determine residency of children.

We wish to stress here attachment theory, Dr McIntosh, and the Family Law judges say it is in the best interests of children to end up with more time to go to the primary parent not more time to mum, Maternal qualities ie gender are no longer the legal psychological issue addressed

under the Family Law Act. (We realize under the act you can contest this theory and Dr. McIntosh's reported findings, but I have never found a case where this was successfully, even psychologists appointed to be single expert witnesses can't refute this successfully in court. And every single case requires this to be attempted by solicitors because every single case where domestic abuse is unsubstantiated is based on Dr. Macintosh's findings around attachment theory)

I boils down to, if the primary parent can't or wont communicate or co-operate (unless they are too severely abusive such as poisoning a child's mind against the secondary parent) then because the child has only ever known having more time with the parent who grabbed the child first (because the first parent with court help never allowed the child to try equal time) they made the child so dependent on the parent who first grab the child, that it's now in the best interests of the child to remain significantly more with the parent who grabbed the child first for the rest of their childhood years. Or the child won't develop psychologically as demonstrated by the primary parent saying they can't reassure the child with 8 nights a fortnight despite the secondary parent being able to reassure the child with as little as 1 to 5 nights a fortnight. (keep in mind apparently having greater possession of the child's time over the other parent is supposed to make the child better able to regulate the parent who got them first in order to feel safe and, secure, not the other way around, according to what Dr. McIntosh says in her findings on attachment theory.)

It is worth noting if a secondary parent sexually abuses a child judges transfer total care to the primary parent, but if the primary parent sexually abuses a child they transfer the primary parents level of care to a family member who sides with the primary parent not to the secondary parent. This effectively leaves the primary parent in control by proxy and freezes out the secondary parent still. (similar happens with prison, if a secondary parent goes to prison the primary parent gets more time but if the primary parent goes to prison shared care is stopped and the primary gains sole parental decision making)

However statistically of the secondary parents who seek full involvement with their children, more often than not it is male who did not restrict the childs access to the other parent.

These Males tend to fall into 5 broad categories.

1. Ones that leave the house to the mother set themselves up and come back a week later to collect the children for a visit with the children and are refused by the now primary parent.

2.Ones that leave the child under maternal quality consideration such as breast feeding, and religious ideology they come back in a year or two and are refused.

3. Those that say they were self absorbed at the time, but later feel they themselves grew up and come back wanting to give more to the children, but are refused, as they are viewed as no longer deserving.

4. Those that are so grateful to finally be allowed a weekend only contact knowing the courts views around attachment theory and what Dr McIntosh reported bow down to pressure by relationship mediators and accept the contact level set by the primary parent

(an interesting legal point is if a parent takes a child away from another parent after interim orders are put in place get recorded in the statistics as engaging in child abduction, which according to attachment theory results in neurological damage to children, but if a parent takes a child away from a parent before the other parent gets to court even if the child is more attached to the parent frozen out, it is not recorded as child abduction and according to attachment theory does no harm to children's neurological development. Maybe the experts think children under 3 years of age can tell the difference between being taken from a primary parent before court and after court, so know to only stop developing neurologically when separated from the primary attachment figure after interim orders)

Also you have to keep the child away for about three months to destroy the child's resilience and create primary parent attachment disorders in the child. Three months is about the time needed for the sexual assault services to investigate a child under allegations of sexual abuse, and about the time it takes for the intake process at a contact centre when the first person to grab the child makes allegations of the now secondary parent having done other forms of domestic abuse.

Also when looking at the parent who leaves the family home, statistically they say mothers are more likely to leave the house with the children. (this is supposed to be evidence that women are abused by men, but again how many of those cases are to begin with greater possession of the child to use primary parent separation anxiety to win significantly greater residency in court? Men's shelters do not allow children to go in with their fathers)

For these reasons more women (when there is no evidence of secondary parents abusing children) end up as primary parents leading into the application for interim orders, so attachment theory statistically favours women, but only on the behavioural difference between the genders, not because of a theoretical gender preference.

The evidence of trauma (based on the current theory of attachment) is a series of reports made by the primary parents (who gain extra residency under the Family Law Act if the child has anxiety or if there is parents in conflict), that the first person to get the child loses the ability to comfort the child or loses the ability to teach the child.Symptoms reported by primary parents, which occur only, or mostly occur, while the child is in the care of the primary parents are, children cry, bed wet, night mares, and developments delay, basically anxiety symptoms.(a disorder with anxiety as a possible symptom works just as well, leading primary parents to report symptoms that match disorders like Autism as well)

Keep in mind the primary parent gains greater residency if they can't comfort the child in their presence. (and at the same time in family court, secondary parents can always prove they can comfort a child because allegations of child abuse forces long periods of observation and

evaluation, we are not talking about cases where secondary parents can't comfort children, or where secondary parents have engaged in either domestic abuse or domestic violence)

(an important side note here is that many men who engage in domestic abuse during separation, are one of offenders who's actions happened during the separation process, as a result of the other parent limiting contact with the children. While no form of abuse is acceptable this aspect needs to be explored.

Try to step into their shoes, they are good parents, involved parents, non abusive, loving parents, but they did not grab the child and run at the first sign of marriage or de-facto break down, now they are told by the court and family dispute resolution services that because the other parent has successfully kept more sleeps away from you, it is now in the best interest of the child for the other parent to keep more sleeps than you until high school, and if you get upset or angry about this, then you just proved you have the capacity to be abusive like the other parent has accused you of being, so you had better not buckle under the pressure of loosing significant amounts of contact with this child you love for the rest of their child hood.

Instead your told you have to be a happy parent because the courts and the now primary parent want you to have equal shared parental decision making (but do what your told by the primary parent or the conflict means the primary gets more time)and they just don't want you to have equal shared access, as lots of time is only important to the bond between the child and first person to get the child.

The idea is to convince every body that very little time is important to the bond between child and secondary parents and secondary parents should be happy with just a meaningful relationship, and input in decisions the primary parent makes. But primary parents are allowed to see time as important because attachment theory according to Dr. McIntosh, says children need the first parent to get the child, to have both significantly more time and a stronger meaningful relationship if they, can't comfort the child, can't or wont communicate, or just don't want to share.

The child anxiety and the developmental issue is particularly distressing according to the children we encounter. They feel they can't show any emotion.

If they show love of the secondary parent they can't see more of the secondary because they now have a meaningful relationship.

If they have a sad day at the secondary parents they are told they must be needing the primary parent more as the primary then according to attachment theory are preferred for offering comfort.

If they show love of the primary parent attachment theory says the child must have more time with the primary parent,

if they get angry at the primary parent for being unfair, attachment theory says this is a strong emotional attachment even a negative one so they need more time with the primary.

They raise similar concerns regarding neurological development, wanting extra help for school work because if they do poorly at school in any area, attachment theory says this is evidence of not spending enough nights with primary parent, so the primary parent gets more nights.

#1# Next Dr. McIntosh research says at about age 4 when children can talk clearly no evidence of separation anxiety can be found. But Dr Jennifer McIntosh advises judges to play it safe and act as if it still manifests beyond the age of four.

#2# Further more, up to the age of 2 years attachment theory advise no overnight contact with a secondary parent because the dark is scary, even though primary parents report night mares and secondary parents prove no night mare in their care, and secondary parents can prove the child sleeps easily at their house.

but because the primary parent reports they can't get a child to fall asleep the primary has a stronger attachment, so should end up keeping more nights.

#3# From age 2-4 a child is to have only 1 night a week if the primary parent does not support greater contact. Because a) even as little as one night away from the first parent to get the child after separation is traumatic and b) this trauma will prevent neurological development. Or 1) the conflict caused by the secondary parent trying to get more time for the child to see them or 2) the poor communication between the parent, as the primary refuses to communicate, will prevent child neurological development.

#4# From age 5 the child should have no more than significant 5 nights a fortnight contact with a secondary parent because it is of no additional value to the child. To a child significant 5 nights feels the same as near equal 6 nights, the same as equal 7 nights. (and presumably the same as reversal of primary care giver 8, and 9 nights with the secondary parent, though the judges preferred argument is if 6 and 7 nights with a secondary parent is not in the best interest of a child how can reversal of care be.) even in cases of extreme child abuse by the primary you still can't consider equal or near equal or reversal with near equal because in these cases the primary parent contact needs to be much less)

Remember Judges also use under the family law Act, once the starting level of contact has been determined by the primary parent as greater than equal contact with the other parent, and the primary parent is not too abusive, and the primary parent won't communicate or co-operate no part of the Family Law Act directs judges not to consider near equal residency so you immediately gain significantly (9 nights a fortnight) more contact than the other parent who the child is limited to having only substantial contact. (5 nights a fortnight)

#5# Now if a child goes to trial age 4 they can not go back to court when old enough to be allowed more contact under attachment theory because the family law says a child growing up is not a significant change of circumstances.

(this is also an issue with cultural competence, many cultures feel it is in the best interests of a child to spend more time with a breast feeding mum like the Muslim religion, unfortunately under our Family Law Act, if this happens and at a later age usually around 2 yrs old when the secondary asks for more time, if the primary decides they like the extra residence they have, the secondary can't get back to court.)

#6# Now if a secondary parent applies for orders staging increase in line with attachment theory because attachment theory says you should only have 1 night a week at the childs current age, the family law says no, because it is unconstitutional to make orders for additional contact any more than 6 months into the future because you can never see that far into the future needs of a child. (And attachment theory says you must not increase contact to fast, so any faster than 1 additional night per year is grounds under family law to reduce a child's level of care with a secondary parent. This means no equal time applications can be court ordered until high school age.)

(but not the first year of high school, or the first year of primary school for that matter, because a new school is a stress for a child and seeing less of the primary parent attachment theory says is a stress for the child, school by law you have to attend, but a child doesn't have to see more of a secondary parent so long as the child has a meaningful relationship, therefore it's in the best interest of a child under attachment theory and the Family Law Act to not allow contact increases with a secondary parent in the first year of primary school or high school)

#7# Now you might mistakenly believe the Family Law Act obligates judges to consider equal time. This is wrong. Judges say the Act tells them to consider equal time only to the maximum extent that is in the best interest of a child. As Dr McIntosh says 5 nights with a secondary parent is the same to a child as near equal time, 5 nights and the same as equal time, 7 nights. Judges say legally this means as it does not improve the child's circumstance, increasing contact is the same, so can not be defined as the best interest for any child. (Despite the legal every individual child's story is different this trauma applies to all children because according to Dr. McIntosh, attachment theory says it is neurologically hard wired.)

In short the Family Law Act directs judges to not consider equal time due to what Dr. McIntosh has said in her journal articles, when the primary parent wants more time than they want the other parent to have, because the conflict the secondary parent then has to engage in, to increase contact harms the child by preventing neurological development.

This is the problem with the Judges defining, starting consideration of equal time, as meaning to begin explaining why equal time is not in the childs best interest, rather than defining the Family Law Acts, begin, as meaning, if equal time was the first possibility.

instead of beginning from what ever arbitrary, unilaterally imposed contact the first parent to get the child is willing to allow.

#8# To simplify, the Family Law Act only discusses equal time first. But it begins consideration at the level of contact allowed by the first parent to get the child (Usually less than what Dr. McIntosh says is the minimum contact per age group to have a meaningful relationship with a secondary parent). Then assuming only non life threatening levels of abuse by the primary parent, the Family Law Act has to determine if it's in the best interest of the child to change the level of contact. To do this it looks at meaningful secondary relationship does it exist? Dr Jennifer McIntosh has said, according to age group, what the minimum levels of contact are, to demonstrate that a meaningful relationships exists and can be sustained, above which there is no additional benefit to the child. So the level of contact set by the primary parent is shifted to the level recommend my Dr. McIntosh which is less than equal, 7 nights and less than near equal, 6 nights and locked in place.

#9# Many people mistakenly think the Family Law Act says after awarding shared parental responsibility "first" consider equal contact to the maximum extent that is in the best interest of a child. Wrong. Judges say first consider means explain first not give greater value to equal or near equal contact as a starting level for consideration. (So explaining first why near equal or equal time is never in the best interest of a child if the secondary parent has to fight for more time satisfies the Family Law Act around first consider in their reasons for judgment). Therefor the Family Law Act instructs judges to begin consideration from the level of contact allowed by the parent who got the child first. This legal understanding is vital when considering the word best, when used in the Family Law Act. (because if we began consideration at equal contact, a ruling of no additional value based on what Dr. McIntosh has reported from her research findings, would result in no shift from equal time instead of no shift from what is allowed by the parent who got the child first, or no shift from the level of contact per age group the Dr. McIntosh reported allows a meaningful, relationship, as it does currently)

#10# Now legally if a secondary parent seeks more than the minimum level of contact required for a meaningful relationship, according to what Dr. McIntosh has reported from her research findings, then this judges say means

#11# a. The secondary parent's lack insight into the needs of their children and

#12# b. Secondary parents must be acting for their own best interest because they are asking for what is of no additional value to the child according to Dr. McIntosh research findings into attachment theory. (The only legal thing of value a secondary parent has to offer a child which warrants increased contact is a meaningful relationships. Once the child loves the secondary parent, the secondary now has nothing of value to offer the child to justify further contact increases, and indeed nothing left to justify retaining any additional contact the primary parent has allowed you to have above what Dr. McIntosh recommends.

Consider now, cases of spousal abuse which is carried over past separation if the spousal abuser was quick enough to grab the child first. Often such a primary will allow additional contact if, and only if the secondary obeys the primary, if the secondary refuse they create conflict and in

the best interest of the child to prevent neurological trauma contact with the secondary is reduced by judges).

A common example is the secondary parent may see the child more if the secondary save the primary parent money by being their baby sitter, and be available on demand, failure to do so in family law means the secondary did not take every opportunity to see their child, regardless of if the secondary was at work or in school.

Now there are two exceptions. First the Family Law Act, prioritizes safety, as the best interest of the child. This means if a secondary parent engages in any form of domestic abuse you reduce contact to limit exposure to the abuser, the degree of reduction determined by the severity of abuse and trying to maintain a meaningful relationship. (this makes sense to most people)

#13# But if a primary parent abuses a child, the best interest of the child principle legally changes, it does not mean the same as it did when the secondary engaged in the behaviour, now it means you measure the level of harm to the child caused by the primary parent harming the child against the level of harm attachment theory says primary parent separation anxiety will cause the child's impeded neurological development in the future, or the primary parent's reports of child anxiety symptoms while in the care of the primary parent. Dr McIntosh research says the level of harm of primary parent separation anxiety is as damaging as -most- forms of child abuse. So again if the level of trauma between primary parental abuse and primary separation anxiety is the same there is no benefit to allowing increase in secondary parent contact under the Family Law Act, and you leave the child with a child abuser if it's the first parent to get the child engaging in abuse, and the child abuse is not to severe.(regardless of how well the secondary looks after the child and keeps them safe) Only things like severe beatings,poisoning the Childs mind against the other parent, sexual abuse or starvation level neglect would increase secondary parent residency above what Dr. McIntosh has said is appropriate for each age group according to her research into attachment theory. In such a case of extreme primary parent child abuse this would warrant a reversal of residency not near equal or equal time. (an example of a non life threatening form of abuse a primary parent is allowed to engage in would be pretending a doctor has prescribed a medication for an illness, instead of giving the medication the doctor actually prescribed to make the child better, in order to extend the childs sickness for longer)

This is a good point to define the difference between primary parental attachment and secondary parental attachment.

#14# the secondary parental attachment is very important to children and is influenced mostly of quality of parental engagement. Dr. McIntosh has said grandparents with no overnight contact at all establish strong secondary attachments from children. Furthermore these secondary attachments can be formed any time in the child's future.

(but remember age is not a significant change in circumstances so secondary parents and children for many years can't correct the court orders)

#15# primary parent attachment is not just important like secondary attachments, but primary parent attachments are essential to the neurological development of children. The word primary denotes there can be only one, so only the person who got the child first can provided what is needed for this development.

#16# unlike secondary parent attachment, primary parent attachment is significantly associated with quantity of time or dependent on retaining significantly more contact than you allow the child to spend with the other parent. Dr. McIntosh said as little as one night a week, away from the first parent to get the child under 4 years, will produce sufficient trauma to cause neurological failure to develop in the future. Similar with reports of child anxiety symptoms, in every case before the courts primary parents report that despite parenting courses, and despite this magical bond they have with the children as a result of keeping the child more with them than allowing the other parent to have, primary parents consistently report they cannot comfort a child who has contact with a secondary parent, and they report anxiety symptoms. This is supported by judges because Dr. McIntosh said primary parent separation anxiety can occur only in the presence of the primary caregiver. The primary parent anxiety symptoms don't have to manifest when separating from the primary parent as expected, but often primary parent separation anxiety symptoms manifest only when in contact with the primary parent, or only when alone with the primary parent. This means a child happier when with the secondary parent or a child only suffering when with the primary parent means the child is more attached to the first parent to get the child, and that must be the primary attachment figure so it's in the best interest of the child under this situation for the first parent to get the child and retain significantly (9 nights a fort night) more residency than the other parent.

- Remember how the level of contact of a secondary parent with substantiated risk of severe domestic abuse has contact limited but the limit is curtailed by the need under the Family Law Act of a meaningful relationship, well unfortunately this is one area where the law leaves children wide open to abuse from both primary and secondary parents because it still appears to place this need for some level of contact to high over the substantiated abuse. (keep in mind there are many parents who were not in anyway abusive until the now primary parent sort to place them under emotional pressure to provoke the reaction or cases where the courts implemented attachment theory)

#17# The other exception to the rule is primary parent consent. If the primary parent wants you to have the child more. then the child biologically can cope. If the primary does not want you to have more contact, the conflict or poor communication caused by the secondary parent seeking contact increases, distracts the primary parent according to attachment theory, who then is unable to fill the duties that a child needs from the now primary attachment under neuroscience. (This leads to mediators and solicitors telling secondary parents not to harm their children by disagreeing with what the primary parent wants despite the courts awarding shared parental responsibility, pay particular notice here of Dr. Ralfs DOORS (Detection Of Overall Risk

Screen) which is being used now by Relationships Australia, commissioned or endorsed by the Commonwealth Attorney General's Department. This causes problems in mediation, the primary parent may be encourage to not look at mediation as legal, but never forget how child anxiety or poor communication strengthens primary parent's argument to retain significantly more residency if the secondary parent won't, can't or shouldn't as a responsible parent accept the demands of the primary parent. This child anxiety symptoms reported in the DOORS tool by either the primary or secondary parent creates a significant power in balance at mediation.

Next you look at evidence handling under the Family Law Act.

Under the Family Law Act judges can remove any evidence that does not help their decision making. (so if it won't change their mind that its in the best interest for a child to remain mostly with the parent who got the child first, they remove it, or allow it to be removed by the primary parent, or based on what Dr. McIntosh has written in her journal articles, they assigned favorable or non favorable meaning to events, depending on who got the child first)

This is hard to explain so I am going to share from actual separations here, to try and clarify this issue.

Example

Primary parents often make allegations of risk of harm by secondary parent abuse, then despite building evidence disproving this hold onto the claim to justify keeping contact below 5 nights a fortnight for as long as possible. Then walking into the trial with massive pages in their affidavits of abuse to continue justification of reduced secondary parent contact.

But under the Family Law Act parental attitude is a residency factor so primary parents drop the allegations in trial, and switch harm from secondary parent for harm from primary parent separation anxiety now they have successfully kept the child away for so long.

The judge now has no evidence that the primary parent has a poor attitude towards the secondary parent. This legally means because there is no evidence before the judge of primary parent poor creditability, Judges can now rule the primary parent is the more credible witness, and their evidence reports of primary parent separation anxiety only in the primary parent's presence gains strength.

(just a tangent here but this greatly concerns us at Tas Family Compassion in another way, because of the cases where growing evidence in the case points to secondary parent abuse but the primary drops the allegations. In this case a primary parent who can genuinely demonstrate risk of harm from the secondary parent never gets a determination in trial so never gets substantiated. In this situation primary parents report the hard decision stick to the assured 9 nights a fortnight according to attachment theory expert Dr McIntosh, where the child risk is limited to abuse over 5 nights a fortnight, or risk a finding of poor attitude and have primary residency reversed and have the child at risk of abuse for 9 nights a fortnight.)

Another example

If a single expert psychologist, or family consultant says the child should remain more with the parent who got the child first they say how fortunate they were to have the expertise of the expert in informing them of the best interests of the child.

But

If the expert says residency should increase above the minimum needed for a meaningful relationship under attachment theory as reported by Dr. McIntosh, they say Judges make court orders not experts.

#18# Another example, and take note here to be fair, judges never say they won't consider equal time could be in the best interest of a child, even if the parents are in conflict. The closest they will come is to say the secondary parent's solicitor or independent children's lawyer is going to have to work very hard to convince them it is. They then proceed to the following evaluation of possible location of anxiety symptoms reported by the primary parent. (note how in the following cases every situation means it's not in the best interest of the child to increase contact if the primary does not want to give up the privilege of time with the child, which negates the Family Law Acts "rebuttable" component regarding rebuttable presumptions)

#19# If a child screams (or displays any anxiety symptom) in the care of both parents they say the child has two disordered attachments, and needs to just have one strong attachment. Of course that strong attachment must be with the parent that got the child first,

#20# If the child screams -only- at the secondary parents this they say means the child is missing the primary parent and you increase primary parent contact. (most people jump to accept this as making sense, but consider. Do children cry for reasons other than primary parent separation anxiety? When children get shy or scared surely you have seen cases where a child takes shelter or comfort behind a grandparent or working parent? But in court if a psychologist says this they say "please just answer the question, *could* it be primary parent separation anxiety?" to which the psychologists must answer, "yes it could."

#21# If the child really is screaming *only* or *mostly* at the primary parents, according to the primary parents reports Dr. McIntosh studies show this is because they were away from the primary parent, as its a symptom of primary parent separation anxiety so you increase primary parent residency.

#22# If by some miracle a secondary parent can prove the child is not screaming behind closed doors at the primary parents home the judges say the child is then happy at both parents, each house is the same and same has no increase benefit so you can't say its in the best interest of the child to increase contact with the secondary parent. (hence the problem starting consideration at what the first parent to get the child wants and staying at that level under the Family Law Act, instead of starting at equal contact and staying at that level)

Note: This argument wins your case regardless of the source of anxiety, so primary parents often mimic disorders in their children which have anxiety as a possible symptom. Such as food allergy by giving tablets that produce stomach upsets, or employ methods to slow speech development for autism diagnosis, or delayed educational capacity.

Example

#23# If a child cries only once at the secondary parents place over a 4 year period. Judges remove the four year time frame and say the incident proves the child is not coping with that amount of contact away from the primary parent, or that this shows the primary parent is a more creditable witness in reporting primary parent separation anxiety symptoms.

Example

If a secondary parent changes home, or the child's school, but does not tell the primary parent who takes this to court, the secondary has acted poorly.

But if the primary parent does moves house or school without notifying the secondary parent. When the secondary notifies court the judges says a. They are making a mountain out of a mole hill and

#23# b. The primary parent is in conflict and communication is poor so the primary parent in the best interest of the child needs to have more residency. As according to Dr. McIntosh the poor communication or parental conflict interferes with the primary parent's capacity to engage with the child which is like separating the child physically from the primary parent.

Ok so if a secondary parent raises concerns of improper conduct they are told the legal system has a safe guard of an appeal in front of three judges.

But

- these judges are doing the same thing in first instance trials

- under the act legal aid will not fund appeals if you can not win. Despite your evidence or the merit of complaint.

- if you lose at appeal you pay the winners legal fees

If you pay a solicitor be prepared for about $50,000 debt to them.(appeals are technically more difficult than first instant trials so self litigation is not as viable in appeals)

#23a# (Before appeal you have 1 month to purchase transcripts at $1800 a day, a trial is between 4 to 8 days long, and pay for professionally bound appeal books.)

- I always find it interesting that judges say family law has to be about the Childs best interests which the judges go on to say means there is no room in family law for parental rights.

But anything the primary parent does not like causes neurological harm to the child.

And morally or ethically any act of parliament should state that all people should have a legal right to, fair evaluation of evidence and non biased judgment.

#23b# books must be paid by the defendant to be professionally bound, with 5 copies paid for.

#24# Oh and to apply for a judge under family law to be dismissed you must prove to the judge that he should dismiss himself because a stranger in the back of the room would see him as biased. Good luck getting a judge to admit that about themselves. Especially as Judges can present in trial the journal papers writing by Dr. McIntosh and what she has said in her findings, that the judges are doing what a medical expert says is in the best interests of children.

- Some people say the courts favour woman. We feel the laws view on this needs to be clarified.

Judges do not say secondary parents or dads are not important. They say these parents are very important to children hence the Family Law Act's section supporting meaningful relationship with significant others.

But

#25# As a result of Dr. McIntosh, Judges meet this need without equal, near equal contact (nowhere in the Family Law Act are judges directed to consider near equal time, 6 nights after rejecting equal time, so you jump straight to significant time 5 nights a fort night. And even if the Act did include consideration of near equal contact, judges are ready to dismiss near equal as Dr. Jennifer McIntosh says near equal causes the same level of harm to a child as equal time) or reversal of residency because.

- Attachment theory says according to the research conducted by the psychologist appointed by the attorney generals office Dr. Jennifer McIntosh.

1. Grand parents with no overnight contact have meaningful relationships with children this proves meaningful secondary attachments are not a product of quantity of contact. (indeed facebook or skype and phone calls is all you need)

2. #26# Primary parent relationship is solely or predominantly dependent on retaining greater residency than the other parent. And has a direct association which means increase separation to two nights increases the trauma and neurological impairment in development in an increasing nature. And as little as one night away from the primary parent is significantly harmful neurologically due to trauma,

#27# and made worse by repeating this every fortnight. So if the maximum length of each separation is 1 night for children under 4 years, according to Dr. McIntosh having a second visit later that week increases the trauma and neurological impairment.

#28# Similarly if the minimum contact according to Dr. McIntosh needed for a meaningful secondary parent attachment is 5 nights a fortnight resulting in court order for a five nights in one week, it is not in the best interests of a child under attachment theory to have 2 additional nights in week two to make up to equal contact. As during the extra visit change over, the primary parent might not be able to stop her anxiety leaking onto the child a second time during that fortnight, or the multiple repeat separation will multiply the anxiety from separation trauma. Both of which will prevent the child developing neurologically.

#29# And according to Dr. McIntosh, only the support of the first parent to get the child can prevent a failure to develop neurologically.

#30# In terms of the Family Law Act, best interest of the child. It is self evident according to attachment theory that it's harder for a child to have to learn about two parents and regulate two parents, much easier for a child to only have to know 1 parent so its in the best interest of a child not to force them to have to know and understand two parents.

Remember attachment theory only applies if the secondary parent causes conflict by not agreeing to the primary parents terms and conditions or level of contact. (i.e. they are in court)

It's hard to explain all this because the Family Law Act uses such beautiful words like, best interest, consider equal time if...., even the courts are careful to only record statistics on men and woman, an obsolete issue and refuse to keep statistics on who started with more time to who got ordered more time at determination, or after being told this at mediation. (They also refuse to record near equal and equal time separately claiming equal time when in fact it’s a lot of 8/6 splits)

These beautiful words used in the Family Law Act behave like a type of shield or disguise which protect judges from being looked at too closely.

Independent children’s lawyers put appearing neutrality to high. This causes them to advocate a level of contact between the equal time requested by secondary parents and the significant time requested by the primary parent. Or to stick to the recommendations made by Dr. McIntosh and other attachment theory researcher Dr. McIntosh interviews and comments on.

I conclude with this part of the Family Law Act. "findings of fact by a judge are now actual facts" and ask you to consider this in regards to the Family Law Acts over riding principle of "the best interest of the child".

The Family Law Act may call a finding of fact an actual fact.

But.

Such a fact, found by judges altering or removing key evidence,

Or such a fact, found based of incorrect understanding of what Dr McIntosh has written in her research findings,

Or such a fact, found by assigning creditability to the evidence based on who got the child first instead of basing creditability to the parent based on the strength of the evidence,

Or such a fact found on selecting an improper reason for events by judges, based on the judges desired outcome, or application of attachment theory, (example primary parent sleeps with child which might be age inappropriate and impedes the development of resilience means under attachment theory that the greater physical contact produces primary attachment to that parent who got the child first and they should now get significantly more residency in the child's best interest)(secondary parents accused of sexual abuse won't sleep with their kids like the primary parent safely can)

These are not true factual facts.

It therefore suggests you can never achieve the over riding principle of best interest of a child for levels of contact.

At best, all you can say is had this child truly experienced events as described, or had those events meant what attachment theory says it means, then the contact orders made could have been in the best interest of this child.

But as children are saying once they are old enough to speak freely, they wanted the orders that where really in their best interest, and they wanted another say when they could speak and understand. It's clear the best interests of children can never be met under the current Family Law Act and attachment theory.

(We recognize separation is a complex issue with competing things that need consideration, but this should not suggest we don't address obvious issues in the process for addressing those considerations. Especially when each individual thread appears to give the same outcome despite the Family Law Act saying each presumption should be rebuttable

Ultimately we hope that oneday what Dr McIntosh has written in her research finding, and submitted to journals, which she says has been miss understood, can be addressed by Dr. McIntosh in a clarification journal article (must be in the legal journals) as this is the only way to protect children from this in the future.

There is also an issue with assigning attachment theory as an explanation for observations.

Ie a primary parent co-sleeps with an older child which psychologically is seen as age inappropriate because it is a form of child abuse which serves to impede development of resilience in children. But they apply attachment theory, it now means the extra physical contact likely produces extra primary parent attachment so it is in the best interest of the child to have significantly more residency with the parent who sleeps with them, especially when the secondary won't co-sleep with the child after being accused of child sexual abuse when the parents separated. Of course ask the child and often they say no sleeping with the parent does

not mean they want more sleeps with that parent, or the child never wanted the parent to sleep with them in the first place.

Another ie. Child gets upset on change over at school (this is a typical order for school change over as primary parents report they will leak their anxiety onto the child if they have to see the secondary parent, and in cases where the parents argue in front of the child. Attachment theory is applied and it means the child is not coping with current contact and needs more time with the primary, or the child is suffering primary parent separation anxiety and needs more time with the primary. Evidential investigation however reveals child did not know who would look after her between the morning one parent drops of and the afternoon when the other parent collects them from school. Solution explain to the child up to 12pm this parent after 12pm that parent and the teachers know which parent to call at what time, child is no longer upset, but the attachment theory solution is to give the primary parent more residency.

The no mans land or primary parent separation item issue. This is a common problem where primary parents send a comfort device from the primary parents home to the secondary parents home to “comfort the child and smooth transition for the child between house holds, claiming the primary parent has lost the ability to comfort the child, dispite the secondary parent still being able to comfort the child. This sounds like a nice thing to do and a sensible thing to do so the secondary parent must allow it. The primary parent then says without the comfort device the child is incapable of transition, so its now primary parent separation anxiety evidence, primary parent gets significantly more residency. If the secondary parent demonstrates the child does not need the device when in the presence of the secondary parent so refuses to allow the device to be sent, the parent is deemed to have created a battle front, no mans land between the house holds, primary parent gets significantly more residency. (it need not be a device like toy, teddy or blanket, locket etc. It can be the primary sends a sleep routine, or instructions on what foods to feed the child, the same rules, this can reach the point that the secondary parent has to almost exactly mimic the primary parent household, at which point solicitors start talking about how creepy the secondary parent is acting.)

The last two points to consider.

First other than an appeal before the full court (three other judges) with the inherent inability of many to access, there is no other way for parents to bring to light what judges are upto.

There should be an independent audit system of judges assignment of what the evidence means. An audit of the evidence the judges has either discounted or removed from the trial, and the auditor must be independent.

In fact there needs to be a step between the reason for judgement written up by judges and the appeal process called a right of response by parents to the Judge about his reasons. This allows without paying thousands of dollars, for judges to reconsider their assignment of what events might mean, and to look at evidence which only became necessary to show after the judge gave their reasons.

The other important issue is the children's anger at long term final orders. The legal and psychological idea behind childhood long final orders without significant change of circumstances is to stop the parental conflict they say hurts children, but many children want one of the parents to keep fighting for more time and despite what attachment theory says about children preferring to be with the parent who first grabbed the child and kept them most away from the secondary parent, many children actually want more time with the secondary parent. The children do not believe they will be mentally damaged by spending more time with the parent they want to spend more time with. Despite what attachment theory says.

Therefore final orders needs to be removed from the Family Law Act, in cases of unsubstantiated secondary parental child abuse, and be replaced with maximum 3 year contact orders. This will mean non abusive secondary parents won't be broken emotionally or become violent in many cases because every three years they can apply for increased contact.

For primary parents if the child is suffering they can apply to reduce contact.

For children they do not have to be scared to be seen as happy or sad, they don't have to be scared of choosing the wrong level of care, or of saying the wrong thing to the family consultant because if they don't like the orders in three years they can apply for a change. And if they are to young to understand at the first 3 year order they need only wait form the second 3year order. Or if they were tricked or pressured by a parent the next 3 year order may reveal that.

In summary, Dr. McIntosh says there is no benefit only neurological danger to a child having contact with a secondary parent above the minimum needed for a meaningful relationship, (which she has calculated per age of the child) unless the primary parent wants to share better.

The Attorney General George Brandis knows all this.

The really sad part is even if years into the future the Family Law Act can be amended, amendments always say "the amendments don't constitute a significant change of circumstances" so those children will still not be allowed back into court.(but we feel when judgment was originally made under a mistaken theory, or made by judges altering evidence, then acknowledgement of that is a significant change of circumstances, the significant change occurred back then)

Yours truly

Sabian Mison-Popow

Tas Family Compassion