# Submission to the Family Law Council

# from

# WEAVE Inc.

*How can exchange of information between the family courts and family relationship services be improved and facilitated in a way that maintains the integrity of therapeutic service provision?*

The Family Law Act makes clear that acting in a child's best interests must prioritise their access to safety. This principle of the safety of the child and their family must be the guiding principle in considering the exchange of information across services. Admissions of violence or abuse, convictions, restraint orders arising from past use of violence or abuse, threats to harm, must be able to be shared. What should not be shared are other aspects of a person's experiences such as health status, except where this provides a demonstrated risk to a parental capacity and to child's safety.

We would note that observational reports of children are only as good as the interpretation of the report. Victims of child abuse have a wide range of responses to their perpetrators and to their protective parent depending on their experiences, their ages and their understanding of what has happened. They may variously feel special, angry, scared, helpless or have wiped out their feelings in order to survive. Children who have alleged abuse and then been required by the court to be alone with their perpetrator will have learned the futility and risk of telling adults what is happening to them. The adults will tell the perpetrator, who will deny it and the child will be placed in the care of the perpetrator at some future point. The adult abuser will then be able to make good on the threats aimed to prevent children telling what is happening, knowing they have court-ordered clearance.

Currently it is normal for the family law system to blame protective parents for instigating child resistance to contact with the perpetrator parent. Thus an observational report that identified the child was strongly resisting seeing the parent is currently routinely interpreted as the mother's coaching of the child to resist, even if there is no evidence of that. It would be preferable for all child-contact centres to deploy video surveillance and to make extracts available to the court on request. In interpreting such recordings the court should not be able to make determinations

based on speculation that the child has been coached. Such speculations should be subjected to the Briginshaw approach to evidence.

For example the court should not be able to make a finding that an allegation of child sexual abuse was false based on speculation that a child's behaviour might have been coached by the mother. The court should inform itself about the inferences which could be drawn from observing the child by consulting a professional with expertise in child development, child trauma and dynamics of family violence. The court should not be able to remove children from residence or contact with their primary carer because she has a persistent belief that the child has been abused. This contradicts the principle of the child's right to a meaningful relationship with both parents and exposes the child to the risk of ongoing sexual abuse.

### Risk assessment in the family law system

The family law system should be able to contract with state and territory domestic violence and child protection systems to provide risk assessments on a cost-recovery basis. Bearing in mind that domestic/family violence is the most common context of familial child abuse it is important that risk assessments derive from domestic violence informed frameworks.

Parents with a criminal record for use of violence or with intervention orders should always be assessed in terms of current and continuing risk. A current major problem is the family law system's lack of recognition of state intervention orders. In his submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Family Law Family Violence Amendment Act, former Family Law Council Chair Prof. Patrick Parkinson opined at length that intervention orders were perceived as 'meaningless' and as 'tactical measures'. He did not establish that they were in fact meaningless or tactical insofar as police, victims and perpetrators were concerned – just they the family law system did not recognise them as having any probative weight. This view is one of the cornerstones of difficulty of establishing risk to children in the family law system set of cultural beliefs. If all domestic violence intervention orders are presumed tactical and all child abuse allegations are presumed coached then very few children will be found to be at risk.

Finding a common threshold of risk is one of the most complex aspects of bringing risk assessment tools together, particularly where the level of risk creates obligation for action. For example state based 'working with children' checks exclude people with a history of child sexual abuse from having care of children, whereas the family law system regularly produces judgements wherein parents with a history of child sex offending have care of a child. The family law system would need to become more aligned with community standards to properly assess risk to children. Currently family court decision-makers are much more prepared to expose children to risk of abuse than are state courts. Any common risk assessment would need to be

more robust than the family law system, which often favours domestic violence and child sex offenders ahead of protective parents.

### Information sharing with services outside the family law system

Child abuse thrives on secrecy. When risks to children's safety are raised or are flagged, relevant agencies should be required to provide information held about the parent/carer which may impact on the child's safety. In cases where ICLs are appointed, ICLs should be required to seek information from relevant agencies after consulting with each parent. We have received numerous reports of ICLs refusing information from parents and others with relevant information about the child.

Remove the reference to the Briginshaw rules on evidence in child sex abuse allegation cases. The Briginshaw standard ensures that information relevant to the child's safety can be excluded as inadmissible, even as speculative possibilities, such as maternal coaching, are accepted as potential explanations for the child's disclosures.

The risks which should be privileged in issues of information sharing are risks to safety, rather than risk of being found to be abusing the child. Currently the family law system culture mirrors those of the institutions being examined in the Royal Commission into Institutional Responses to Sex Abuse, in that the child complainant is silenced, derogated and punished for speaking about their abuse.

The child is silenced through the systemic barriers between their experience and the court. In the first instance child complainants need to overcome the threats of their perpetrators, the person receiving the child's disclosure needs to report to state authorities in such a way that the report is seen as credible and investigated. If investigated, and the perpetrator denies the allegation, and there is no corroborating evidence, no charges will be laid. If the child is under seven years old no charges will be laid. Without sufficient evidence to make a positive finding the state must advise the report as 'unsubstantiated'. Even in cases where the state child protection system substantiates abuse the federal family court is not obligated by such a finding to act in any particular way. The federal family court informs itself about child complainants of abuse by appointing an Independent Children's Lawyer who commissions a report by a family report 'expert' to assess the child's best interests. The ICL is not obliged to meet or speak with the child and can present the expert's report. There is however a problem in the way some experts make these assessments.

One such expert, Dr Rikard-Bell, who, on Radio National Background Briefing program on June 14 http://www.abc.net.au/radionational/programs/backgroundbriefing/in-the-childs-best-interests-v2/6533660

stated that he had conducted over 2000 assessments of child abuse allegations for the family law system and found 90% to be false, on the basis that when he placed the child victim in the company of the alleged offender and questioned the child about the offender, he could tell that the claims were false. These practices were questioned by another professional psychiatrist Dr Quadrio, and a child victim who had had such an experience. The practices of 'experts' should be scrutinised to ensure they are consistent with contemporary best practice in order to reduce 'quackery' in investigating child sex abuse allegations.

Having silenced child victims through the multiple perpetrator, family, state system, federal system filters, the child complainant is derogated for having false beliefs and ordered to be cured of them. Because the mother is also usually derogated along with the child as the source of the child's false beliefs, the punishment response is enacted by abruptly severing the care relationship between the child and the protective primary carer and placing the child in the sole day to day control of the alleged perpetrator. Such actions are enormously psychologically damaging to children, and the severity of developmental trauma is related to the age of the child, with younger children being more adversely affected. Children not only suffer the loss of their primary relationship with safety and security, they also face a higher risk of further abuse. Severing the primary carer relationship also contradicts the principle of the child having a meaningful relationship with both parents. The patterns of judicial decision-making in such cases reveal an entrenched institutional culture enacting the interests of perpetrators in much the same way as that identified in the Royal Commission in Institutional Responses to Child Sexual Abuse.

### What services are needed?

Given that domestic violence is the single most common context of child abuse in families it is vital that the expertise and involvement of domestic violence services are accessible to support and restore the parenting bond between the non-offending parent and the child. Children also need access to experts in child development and trauma to recover from abuse.

Children's exposures to abuse would greatly reduce if evidence of violence and children's allegations of abuse were accepted by the family law system as prima facie indicators of abuse and children were not forced to bear the risk that the court's decisions have exposed them to continuing risk.

When the family law system determines that a child's allegations of abuse are not true, but in the child's experience they are true, support services can be very damaging if they seek to force the child to adopt a perspective which is inconsistent with their experience. This in itself is a form of abuse of the child perpetrated by the court system.

When the family law system orders that a child cannot attend a doctor or a therapist, this is a breach of the child's right to medical and therapeutic care.

When the family law system orders a child to spend time with a person they have named as perpetrating abuse against them, this is an abuse of the child.

While the family law system is able to continue to make decisions which place children in the care of perpetrators of family violence, the death tolls of women and children will rise inexorably.

The Royal Commission into Institutional Responses to Child Sexual Abuse needs to inquire into the culture, beliefs and practices in the family law system which fail to protect children being abused in the family home.