Submission to Family Law Council

Your details

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VOCAL

Victims Of Crime Assistance League Inc NSW

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Thank you for agreeing to accept my submission, on behalf of my members, staff and clients.

I give permission for my submission to be published

VOCAL began in 1989 as a registered charity formed to support families after homicide, at a time where support for crime victims was almost non-existent. There were many homicides, and many circumstances – the killing of children, youth, mothers, fathers, sons and daughters, friends and family. It became clear that people needed help in all manner of societal issues, for all types of crimes, particularly those issues of violence, child protection and with ongoing safety needs. We extended our support to people and community affected by crime and similar tragedy, and do not require a legal finding of guilt to 'qualify'. We were introduced to the complexity of life and the unsuitability and inconsistency found at every level of societal and court responses for our clients. We were able to procure funding to launch our Family and Child Safety Unit to more directly address the constant flow, over the past 20 years of cases where state courts, children's court and family law matters were involved. We believe we are one of the few agencies with a holistic approach to the needs of this group of clients and their children and trust this submission will be useful.

Regards

Robyn Cotterell-Jones
Chief Executive Officer
Victims of Crime Assistance League Inc NSW
Victim Support Unit
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1.What are the experiences of children & families who are involved in both child protection and family law proceedings? How might these experiences be improved?

You will note our submission speaks primarily to the experience only of our women clients who are mothers with children, and generally women with a DV history with the father of the child. That cohort of clients was so consistent over twenty years that we sought and gained funding for a Family and Child Safety Unit, responding to the cross-section of cases caught collectively in state, criminal, Children's and Family Court matters. To our understanding, there are few similar services, thus clients, groups, practitioners and service providers, even from other states, ask for our help. There is clearly a need for either systemic change, or better support for these complex cases.

This cohort illustrates a gendered phenomenon of our service delivery over the past 20+ years. While 20% of our clients are *male*, and some have issues with child protection and Family Court, *they* simply do NOT seek service over the complicated issues discussed herein. *Their* disclosures tell quite a different story about *how they have been treated* within systems; they do not appear to suffer in the same types of ways that female client's repeatedly and consistently report about their experiences.

This then appears to be an equity issue among many systemic problems for these families, especially regarding safety and protection of children.

Simplistically, our experience shows how frequently men are more likely to be believed over women and children, how children, if heard at all, are frequently misheard and misunderstood by practitioners who may have little training, or real comprehension of how children's voices are affected by trauma and threat of payback. It shows how violence, abusive behaviour and sexual abuse of and affecting children becomes very difficult to prove <u>because of</u> the very way our legal and other systems respond. It shows how the psychological impact of that abuse and violence on them *and how* the way systems respond exacerbates the futility of mothers trying to keep their children safe to accepted social norms (where the physical and sexual abuse of children is criminal). It shows most frequently that little or no responsibility for causing damage falls to the perpetrator or the system, which then, in its powerful wisdom, frequently judges the trauma-caused stress reaction of the mother to be a mental illness that somehow renders her unsuitable as a parent and which then rewards the litigious perpetrator by awarding him the child and restricting or stopping her access to the child. See also Maternal alienation…attached.

Is paternal sexual abuse of the child a crime or not? Is grooming to be tolerated? Ignored? At what point is risk 'sufficient'? Is any of it more damaging than depriving or limiting access to the child for its father? Is it better to err on the side of caution and safety for the child's wellbeing? Is it something women ought to know before bearing children, that if, the unbelievable happens and suddenly they believe their child's disclosures that there is risk from the father, that they have a right to try but they ought to expect little support from the state? Is father really more important than the worst of his behaviour? These are not frivolous questions – they are the ones we frequently find ourselves asking in our daily work to keep kids safe, watching cases unfold and systemic and legal responses and seemingly wrong decisions.

In order to properly address how experiences may be improved, may we begin by pointing out what we immediately recognise as a limiting feature of the question itself? **First, the complex word 'family' must accommodate the variables**. What once was a family is now broken. The adults become individuals albeit linked by children and property and a variety of 'family-like' relationships. Blended families are unblended, wholly or partially, there may be biological and step children, ex-partners, and ex-relationships, frequently with new relationships, often more than one, and extended families of all into the mix. The complications in

the mix need consideration as societal strategies based on simple cases do not serve more complicated ones, as frequently demonstrated by our clients, especially when stringent legal tests are applied after societal processes have already been enacted. This will be explained more, later.

Next, in our view, the sentence must include the term 'Family Violence' so it would read 'who are involved in family violence, child protection and family law proceedings.

The continuing separation of child protection from Domestic Violence, when we are well aware that family is the place where most children are abused, is obstructive, creating gaps and problems that can be resolved. The need for child protection frequently occurs in a framework of known pre-existing and continuing Domestic and Family Violence. It is often intergenerational, and frequently inter-family. The victim child may have several alleged perpetrators working individually or together within their abuse experiences, and over time. Separating them as if Child Protection is something separate and different is naive, the real face of it and the enormity, complexity and failure of child protection in these circumstances will prevail and an even greater majority of children who need it will be denied child protection by state agencies and courts.

Child protection is often part of the same gendered continuum – women and children are seen as property, to be used, abused, silenced etc, functioning to serve the dominant – the abuser, and sadly, in adversarial courts, the one with the capacity to have legal representation and access to funds – is more often the male, and less likely the mother and never the child.

To address this issue with any actual hope of turning the tide positively for the children of this nation, the techniques of power, control, abuse, violent behaviours and the sense of entitlement of the abuser on and within the family must be fully understood, the problem must be unmasked, it must be centre-staged not sidelined, or simplified or trivialised because of inadequate resources. Responses will continue to fail to protect vulnerable children (who can't vote yet) and their protective family until courage to address the threats, implied and real, from disenfranchised father's groups which clearly wield significant political weight. And attacks on federal judges.

Unless we seriously address these issues, society will continue to pay for the enormous, preventable and foreseeable cost of dysfunction as the children grow up – children damaging other children, entering into relationships of dysfunction and on it goes. Claiming their crimes, drug addictions, alcoholism and mental health issues are because of being abused while children, and costing ever-increasing amounts albeit from a different bucket of money, yet nevertheless of taxpayers' money, being denied treatment and coming out from jail more damaged than before. It's quite a silly system really. I like to ask 'who benefits?' It isn't the children.

Even today, we are so slow to respond to what we know for certain. Suddenly the voices who have clamoured for attention for decades are being heard and there's a 'new awareness' of disgraceful child protection failures exposed as the Royal Commission into Institutional Child Abuse currently being heard, multiple mea culpas and squabbling over restitution and responsibility. We already know the most prevalent need for child protection occurs in the most common institution of all, family – which is excluded. Yet that is where our experience demonstrates that we (society) most often fail. If family violence is not respected, why should society take responsibility for the same behaviours in institutions? That seems to be a reasonable question.

The reality for these children and the mothers who are obligated to protect them, yet ostracised if they do, is this: To a victim in a domestic violence situation, threats and even minor acts that could harm, even kill a child (shaking/ dragging/ threatening to throw or punch, to smash a car while driving etc.) are entirely believable, based on an up-close-and-personal integration of just what an abuser can and will do. Children who understand the power of the abuser through the lens of family life report being subjected to threats of dire consequences for breaking the silence of abuse they suffer, and are going to be reluctant to speak if they

cannot be protected or understood. Threats, backed by that convincing 'knowing' that an abuser will indeed carry out the threats, are frequently part of a complex and cogent strategy used to control the woman/ mother/ step-mother/ own mother, partner/child / others. Yet threats of even the most imminent, vicious and deadly violence leave little evidence. Witness evidence, if any, is likely to be from a child – of little consequence to the legal system. If it were important, a way would be found to permit children to be able to give evidence, in age appropriate ways, and it would not be tested under the accused-protective adversarial system. If we truly want it to stop. If we hope to validate the experiences of victims.

Psychological abuse is frequently reported by victims of it, to be actually worse than physical violence in its damaging effects on the self-esteem and capacity of victims. There's rarely good evidence for that either – and the reports of professionals in their field are frequently ignored in favour of court-appointed-favourites, who may not be experts at all. Can you imagine what it is like for the children, asked to speak about family violence and any abuse they suffered, who may well understand the 'don't tell' rule, who know, or later discover what they said is fed back to the perpetrator, who then punishes them for telling. Not just once, but daily, often, for a long time. Yet so often the children are not properly interviewed, not believed, poorly and inaccurately quoted, misunderstood, and wrongly reported about? Because that is the experience of so many of our women – who naively asked the system to help.

And each week, women being threatened with death see the death toll mount, of other women who tried to leave.

So why is all that important?

The children themselves may be direct victims of emotional, physical, sexual assault and financial abuse themselves, or may 'just' witness attacks and threats of new harm against the mother, other victims, their pets, others – friends or family, be forced to watch, may accidentally see the sexual abuse of another child, may 'just' hear the ranting, threats, violence and abuse, may be terrified and traumatised by the tumult, or afterwards, then, somehow, when things calm down, they are expected to manage whatever state the mother is in as she 'recovers'. While going to school and trying to be compliant. Often with daddy denying anyone the opportunity to say how they feel. Besides, after the explosion, the violence, the sexual assault on their child, now he 'loves everyone' and wheedles his way back into their 'good books' which of course is always under implied threat of 'someone will suffer unless you all comply!' "You'll all be rewarded if you comply"

The kids learn where the power lies.

Do you think such a child is going to 'behave' or 'misbehave' in the presence of the father? Could they appear to be far more compliant and cooperative, even delighted to see him while safely in the company of a court expert? Do you think that child is free to transpose their fears and language into the situation and say "Daddy, I hate it when you hurt my privates in the night!" "I hate it when you tell us you are going to kill mummy!"

This is the cycle of violence – yet unfortunately it is something our experience frequently shows that victims themselves (and perpetrators) frequently do not even recognise that what's happening in their home is DV. It is clearly hard to recognise without education, and very hard to see patterns while they are in the relationship, lurching from one issue to the next, trying to please, stay sane and alert, because so much is at stake.

Frustratingly, our work shows that far too many so called judgemental experts 'assume they know how it would be' rather than 'know factually' what these relationships are really like across the spectrum. Our cases and contacts show that many of these 'experts' have significant ignorance and misunderstandings about DV, justice, the law, most particularly what actually happens in court processes at all levels. Many experts refuse to participate in court processes to give evidence, either on economic loss grounds or awareness of the ordeal and disrespect of cross-examination. (Refusal of a treating professional to participate in a subsequent court matter is rarely negotiated when a victim is seeking help – because they haven't thought that far ahead yet.)

Yet, the unrepresented victim, without proof, without evidence from these treating experts, without guilty findings, with family members and new partners taking sides, the limiting personal beliefs of courts and court appointed experts and ICL's, the concealing of evidence by solicitors and barristers for *their* clients interest (not the child's wellbeing), and the often lazy preparation and representation of legal representatives, courts in turn *frequently reject* or *trivialise* the experience of violence. This is particularly so in cases of alleged paternal sexual assault of a minor – although it ought to be noted that even today, even criminal spousal rape cases are also unlikely to succeed. What is worse, is that the courts and their servants frequently punish the victim for reporting violence and trying to protect their child, by labelling them with a ridiculous diagnoses like 'factitious disorder' with completely inadequate investigation, or pontificating that Post Traumatic Stress Disorder, caused by the violence, has apparently rendered the victim incapable of parenting, so the children go to their abuser. Exposure, or accountability via the media, of this type of abject cruelty to protective parents is protected by Section 121 of the Family Law Act. Court experts do not have to, and do not comply with standards and ethics of their professional organisations because they are protected by Section 121. It is wrong.

Recommendation: Review Section 121 of the Act so that while children can continue to be protected and be anonymous, any process, especially those funded by taxpayer dollars, can be open to scrutiny, reported in the media. Then perhaps future litigants and practitioners would have some idea of what lies ahead, and the spectre of corruption and unaccountability that brings disrespect to the legal profession and courts can be reduced.

The Family Courts expect a standard of proof of violence and child protection issues that often is almost impossible to achieve, and is statistically inconsistent with the known actual numbers of victims who even report DV at all. So in effect, the product response paid for by taxpayer dollars doesn't fit the task. Perpetrators benefit. People paid in the system benefit. The children frequently suffer.

Trauma: While the long-term, but treatable, damaging impact of trauma - emotional, physical, sexual and financial abuse - on developing child brains - is well known externally, it is more often than not ignored, misunderstood, misjudged, manipulated or rejected in family law processes. Little respect or comprehension about the impact of ongoing trauma on memory, anxiety etc is given. Where mother is very open to being labelled with all manner of social wrongs, mental health diagnoses often based on little more than the "charming" father's say-so, the court experts seem remarkably blind to anti-social personality disorders, narcissism, sociopathy, psychopathy, or even the common behaviour of trying to escape a narcissistic abuser – the types who are charming snakes, wearing a suit today, who hate to lose and have promised to beat the bitch and punish her for leaving – irrespective of his own criminal behaviour towards her and their children, and manipulating the children's relationship to hurt her, and the final joy of turning them against her.

We have noted that unless a very high level of proof can be given in Family Courts, 'father' is generally regarded as 'more important than the worst of his behaviour' and the children are forced into the company or stewardship of someone who has harmed them. Evidence from children in this position who are now older, young adults, report suffering ongoing abuse and violence, a sense of being deserted by society, a disrespect for the law. They often successfully claim Victims Compensation for the damage they suffered at the hands of their father that the courts found were entitled to parent them. There is no compensation for mother being removed wrongly. So far the courts seem protected from litigation.

So, woe betide any victim who has not reported to police – although estimates put people in that category at about 50% - with the ones in most danger, most likely to suffer revenge being least likely to report.

Woe betide any victim where police did not attend, for there will be no official record – and lack of resources of police at that time and the victim's own testimony will not be enough to convince a court – even an AVO court.

Woe betide any victim where a prosecution failed – although she had no representation or rights.

And woe betide the mother who presents a child to the authorities regarding suspected child sexual abuse by the father, especially if the child is younger than a minimum of 7 years of age – because unless there is clear damage, specifically caused by a sexual act and DNA, preferably with a witness - a prosecution is unlikely to succeed, so no investigation will take place, outcome is abuse unsubstantiated, so there will be no court case.

The alleged perpetrator may not even be spoken to. You should also note that the questioning of young children, by police, often includes the question 'Who told you to tell us this?' Mum may have simply assured a nervous child that it was OK to tell the policemen what happened to them. The child answers 'Mummy'. The police decide mummy has coached the child. End of case, Mummy is making it up, case over, unsubstantiated. Bad mummy deserves to lose her children if she persists, no matter what the child continues to report is happening to them.

Given that our criminal code requires victims of any type to be able to withstand the Adversarial Criminal Justice System and if required, give high quality, specific evidence, irrespective of the reality, complexity, the impacts of trauma on the brain, it is extremely unlike that young children can give their evidence that can withstand such scrutiny. This system must change, unless the family law is somehow determined and entitled to remain separate and unconvinced by National Strategy to deal with the scourge of domestic violence, child abuse, mental health, medical costs, suicides, in favour of abusers.

Legal abuse: For many years now, it has been no secret that the abuse of children, (if you can't control the mother anymore – get to her via the children) - and the use of legal process are favoured ways of certain abusive men to continue the abuse, power, manipulation and control over the family, particularly the woman who left them, long after separation. See 'Why does he do that – inside the minds of angry and controlling men" by Lundy Bancroft. The seemingly **charming**, successful, rational man is almost always believed over his victims – especially women and children, unless there is significant evidence to disprove his claims. That is an enormously strong remnant of more fully patriarchal society. Yet the family court refers to 'entrenched conflict' as if it is equal, as if somehow the choice to litigate freely existed. The only choice is try to fight back or lose your kids to an abuser, which is no choice at all.

Financial abuse: Related to legal abuse, but also different: This aspect is also overlooked in many family law matters. Some abusers don't care how much they lose in order to beat the woman who left them. It seems irrational 'Why would he do that?' But it is frequent. While trying to get sole custody they do not want, they will be uncooperative, manipulate the system, bully the children, refuse to pay child support, self-represent knowing their victim cannot and won't have the money for legal fees, forcing the victim to beg for scarce legal aid that is often refused, or exhaust any family money fighting to protect a child. And there is nowhere for the victim to legally go to explain what is happening, to seek a sensible remedy because of Section 121. Lawyers will not 'take on the system' yet Section 121 restricts litigants as to who they can ask for help – and many have no legal representative. Money, power of service providers and restrictions on help-seeking ought not decide or limit children's safety.

State systems:

What then surely needs to be factored into the discussion, and understood by courts and their workers, oversight bodies and Government seeking recommendations, is an accurate understanding of how systems at the state level actually respond to reports of domestic violence where a child is present and the child protection system that swings into action (or protestingly may respond). Without examining these processes, recognising their limitations and gaps, then being satisfied that nothing at the state level can be improved, how can anyone fairly promote the capacity of the Family Law System or Children's Court to understand and

act properly, honourably, sensibly, fairly and with justice, predicating safety as legislated in the 2012 amendments to the Family Law Act?

EXAMPLES: (Simplified)

- In NSW, for example, police may (or frequently may not) attend a call to a DV situation.
- If police attend, they may decide there is risk of further harm to the identified victim and issue a Provisional Application for a Domestic Violence Protection Order to be heard in a local court, before a magistrate in the near future. Children needing protection may be included on the ADVO application. There may also be charge matters in the case of actual violence, often 'Common Assault'.
- There is often no independent witness, apart from the children present, but children's testimony is generally unwelcome in any court matter, so rarely is evidence taken from them, no matter what they saw or heard, leaving the victim somewhat at a disadvantage, and the child silenced, possibly helpless, angry and vulnerable.
- If a child is present at an incident, a mandatory report by police is made to the child protection agency (FACS). That's a new case 'in', another statistic.
- FACS strategies include assessing the level of risk to the child.
- There are already, constantly, far too many cases EVEN at 'Imminent risk of significant harm' (risk of death) to be managed.
- In fact, a FACS manager in 2014 advised '**We only ever get to about 20% of high risk cases**. Some children may be on that highest level of risk for months and never be reached.
- Sexual assault is not generally seen as 'High risk', compared with those cases.
- Logically then, strategically as a department with too many cases, if FACS ordered the mother to remove the child from the possibility of further exposure to danger, once the child was no longer exposed to the conflict, then FACS would get that case off their very long, active list.
- Common practice of FACS is to approach the victim-mother, who has become 'the bad mother who failed to protect'. The actual violent perpetrator begins to fade away from view.
- FACS **threatens the victim** that either they must leave the dangerous situation and remove the children from it, or FACS will remove the children from the victim-mother, placing them into some form of care.
- Not only do many victims at this point get little practical guidance, or preparation for what in this example is already two separate issues for court, (ADVO and assault) and now the threat of Children's Court, they get little recognition regarding their needs, legal position or assistance to recover from the violence, and no coordinated strategy to help them make decisions or move away safely, with whatever belongings they can take – if there is somewhere to go. This is because too many responses are siloed and uncoordinated.
- **She** has become the problem from a child protection perspective – the alleged perpetrator seemingly disappears at this point from the picture, and the focus is on her responsibility, not his actions. One can only be clear in recognising this is a complex set of challenges for anyone, let alone someone suffering from trauma from violence with its recognised and complicated aftermath. Remember, only now may that victim be beginning to have explained to her, to help her recognise and understand DV and its complexities, and now she's being threatened with losing her relationship, home, and her identity and role as 'mother' too. Obviously there are frequently significant financial impacts too.
- Her trauma, needs, rights, decisions, financial situation, work obligations, children's schooling, a place to live etc are irrelevant to the various parts of the largely unrelated, siloed and inconsistent system now, and in the future.

- If the mother obeys the threat from FACS, and does leave her home, it is frequently in an unplanned way – often leaving the alleged perpetrator in the home with access to records, diaries, documents, finances, furniture, children's beds, toys and belongings. Her car is taken back by the alleged perpetrator etc.
- Resources that might partially assist have been cut – there were never enough prior to the recent cuts, let alone now, and Government housing, either short-term or long is very difficult to find and so families are often moved from motel to motel, every few days. Not a good state to co-manage the legal system and other challenges.
- Let's hope the perpetrator at this stage is leaving them alone. Often they are not. However, now kids are not living with the alleged perpetrator, perhaps FACS decide the children are 'not at risk' because they are safe with mum, and no investigation by the authority takes place, and the children are no longer an active case. It doesn't matter she's in her third motel in two weeks or what her other problems are. Tick! One less case. So dad's at home, in the family home, and the mother is homeless. Who looks the most settled to the Family Court?
- It is unlikely that FACS will record 'mother directed to leave premises or lose the children, to protect the children from the father' should their file be subpoenaed
- If our victim takes the children and leaves the area to be safe, she can quickly be forced to return by family law order (but no information to that effect may be given to her) – setting her up to fail again.
- If the father in any similar case as this example, decides to make application to the Family court, there will be no evidence from FACS – or if there is, it is minimal and unconvincing because there was no investigation – to confirm that they determined he was a risk to the children. There may be an unsubstantiated observation by the attending police officer, which might make it into the police file.
- Without independent evidence, the victim/mother's experience, her evidence of the danger his behaviour created for the children, her knowledge of the even sort of person he is under pressure of caring for children (if he ever actually did that), and even the actual history of violence against any or all members of the family is reduced to one event, this event, for court. With no chance to give the history, the father will in all likelihood be given access to the children, now without the protection the mother was able to provide while she was present.

Or if FACS take the children because mum didn't protect them

- If FACS have taken the children because mum was unable to protect them from HIS violence, they will still advise him of any upcoming Children's court case and his rights to seek access or custody, may organise mediation with him, and a myriad of other things that are inconsistent with any semblance of holding the perpetrator accountable.

    - In one current case, Housing advised they would 'take him off the lease so <u>he</u> didn't accrue his part of the rent debt', police advised he was 'on the run' then didn't oppose bail when they finally found him, FACS tightly controlled the mother to ensure no contact with him, then forgot to tell the mother they had told him about the Children's Court case where he attended, shocking the mother, explaining he could apply for the kids to live with him, because his assault matters hadn't been heard yet. The mother was receiving messages threatening her, obliged to report them to FACS, getting rebuked by FACS as being unable to protect, then placed within arm's length of him at court where he could try to get the children!
    - Doesn't it seem rather 'mad' that his behaviour is regarded as sufficient for FACS to take the children from the mother for 'fail to protect' , but insufficient to make him accountable?

- So to her ordeal, add Children's Court to ADVO court, any breaches, the criminal court, and Family Court – all uncoordinated and different processes. Each breach of the order by him, if reported, makes it less likely FACS will see her as safe and able to be restored to her children, each breach will be investigated by a different police officer, unrelated to other matters, and present another set of details she must give evidence about in court. He of course has the right to silence. She has no representative as the often non-legally qualified police prosecutor represents the state, but he must have a lawyer. He's a drug provider – he has plenty of money. Who would you put your money on?

NOTE THOUGH:

- Of course if she had never called the police, none of this would have happened – unless a neighbour called them. Or if she'd just gone to apply for an ADVO direct from the court – of course that is a totally different and far more difficult 'road to go down' – it would be on the one hand be 'less serious' than a police application and on the other quite a different process. She might still have her home, her kids, her sanity.
- The next thing of course is a person being given an ADVO against them can accept without admissions. The Family Court find such an order even less convincing than one that was fully tested in court, and those seem to have little weight.

The next stage of comprehending why DV and FV must be included in the sentence, is to ensure the courts understand the police and court response that happened in *this particular* case, to avoid courts 'assuming' they 'know how things work' as they frequently do now. Because they don't know; even the local court and police see each event as separate, using different police, different prosecutors, and many false assumptions are made about the process of the case. Yet finally is the only outcome that matters – not the totally uneven playing field.

Simplistically, again: EXAMPLE:

- Even in cases of serious domestic assault that police do attend, the preferred strategy is just seek an ADVO – or protection order, especially in cases where there are no independent adult witnesses, thus truth-seeking investigations and prosecutions of violent DV crimes remain underwhelming. We have also observed that ADVO's don't mean much in family law matters – so while it is a cheap way of states managing huge numbers of cases, it isn't really helpful for crime victims to be recognised, respected, represented or believed.
- Frequently, again even in cases of serious assault, police charge at 'common assault' level, to avoid more expensive investigations. There is no obligation on police to charge to reflect the actual crime – or any history of criminal assaults – there is more the belief in following up only what will lead to a successful prosecution to get the case 'off the books' as quickly and as resource limited, as possible.
- And of course, the ADVO and criminal system only responds to current events, no history of ongoing matters is permitted.
- A Police Prosecutor on a list day in local court is often charged with 50 or 60 cases – AVO's and summary charges - in one sitting. This trivialises the entire process.
- Victims get no proper explanation of how the process works, they get minimal preparation, and they have no power to dictate anything in their own interests.
- No one scrutinises the process or outcomes from the victim's perspective.
- Rules for prosecution are far more restrictive than rules for an accused, but no respect returns to the victim in an unsuccessful application on a case – nevertheless it is the victim who bears the brunt of systemic failures, including any newly empowered perpetrator's behaviour caused by the system giving all benefit to the accused.

- Outcomes successful to the victim are hard to obtain – at any level, made more difficult because the reality of trauma is not just disrespected; it is deliberately manipulated in legal process to the advantage of an accused.
- Just this week a case was lost in court because a wife rang a husband. The was no rule or order that said she couldn't, his order was not to approach her, but his subsequent breach became 'her fault' not his.
- ADVO's are externally regarded as easily obtained and mean little – yet reality is they can be extremely difficult to get, to have policed, to have breaches successfully prosecuted.
- Our experience, observations and reports from our clients indicates that the Family Court is generally underwhelmed by the ADVO process, and certainly gives great weight to unsuccessful prosecutions – the negative weight of which frequently falls squarely against the victim/mother's good character.
- Yet, despite this complete imbalance between what happens in DV itself, then in and by the system in all its unrelated parts, or the fact that the adversarial system really best fits one-off stranger-danger type crimes and not multi-event relationship issues like DV so often is, or even that it applies the acid memory test to unrepresented victims – often of multiple events, the victim is seen to be the loser if a prosecution fails. A non-traumatised person would have grave difficulty passing such deliberately confusing tests in these circumstances, but a victim is expected to have perfect recall.
- Then, **what is also never respected or given proper credence is** - irrespective of the charges or the damage they have suffered as a result, or the age or incapacity of the victim, a victim in an AVO or criminal matter is <u>never</u> entitled to legal representation and are not party to the proceedings. Not so for the accused or the defendant.
- This glaring inequality is never acknowledged in later party-party matters – eg Family Law where the earlier court outcome is always far more relevant than any other matter, and the defendant found 'Not Guilty' is regarded very positively – as if it meant 'didn't do it! Which it does not.

Yet in Family Court, a far too often trait is to regard the violence, threat and behaviour as equally the fault of both parties, it is seen as conflict not violence and control, it is seen to have been presumed to have ended with separation and is frequently discounted 'It's not as if he hit you every Friday night' as some judges frequently say'. It is not uncommon for a judge to say, with an apparent belief in the system - as if it was a fair, even or reliable process "But if you are scared you would just call police" they claim when a victim is explaining why a certain event was not reported. The fact is, when victims do call police, the response is frequently no response, delayed response, trivial response, lazy response, victim-blaming response etc and the victim even risks being wrongly accused as the perpetrator – a statistic which is increasing. And of course the victim is not given any legal warning as to anything they may say can be used against them – unlike the accused.

- Move them to a defended matter – some of which can be in the system for years, and the victim be simultaneously in Family Court, AVO court, breaches of AVO, cross-applications by the accused – and only in the case where she becomes the accused is she entitled to her own legal representation, and in Children's Court and Family Court she's hoping Legal Aid will find merit in her case.
- How is that fair?
- Why courts are only focussed on individual outcome?
- Note also that each event that is responded to by police is supervised independently – not as collective matters. Different police and each officer in charge don't even know about other cases currently under investigation, other stages and the system looks at each matter separately.
- So for mum, trying to protect herself children from foreseeable harm, when there may already have been a history of abuse whilst pregnant, threats to harm the child pre-and post-birth, actual violence, terror of revenge and threatened or actual violence against a child, harm to the mother in front of the child, a child disclosing 'Daddy hurts my privates' please don't make me go!" when that woman tries

to tell what has happened, she is at risk of her children being given to the perpetrator by courts who apparently have no idea about what DV looks like, when you are in it.

- Judges have variously said
    - 'Oh, the child is too young to remember' despite current recognised trauma expertise that can prove developmental brain deficits caused pre and post birth by trauma,
    - 'Oh, it's not as if he beat you up every Friday night!' as if there is a quantum of violence that must be exceeded before it matters and
    - 'Yes, he has also hit his new wife, but they talked it out (she remembers *they used to 'talk it out too*)and I don't think he'll do that again!' (So the autistic and difficult child will be safe with him, a man with absolutely no patience).
    - 'it's just rougher than usual handling' when a father hurts a child
    - 'The child was only three when he held that sword against her chest – she won't remember that!'

Essentially, the woman is blamed for not leaving violence 'why didn't she leave?' and risks losing her child, to the person who was unsafe for them, if she does.

Allegations of Child Sexual abuse by a protective mother. It is indeed possible that some parents may make allegations against the other to minimise child support, and for revenge but research identifies the number of people who deliberate make false allegations is no greater than in the general population, and indeed research shows it is higher amongst men. It is indeed possible for parents to be alienated against the other, to manipulate the children to reject the other parent, but what seems frequently overlooked is it is extremely possible for a parent to alienate their own children by their own appalling, violent, abusive behaviour to that child, siblings and others.

What also seems to be overlooked is that a child can 'love' a person whose behaviour is also damaging to them. Our cases demonstrate an unbalanced position where only mothers are frequently accused of malicious accusation of child sexual assault by the father, proclaimed mad and bad by court appointed favourites, and lose their children, even in the face of finding of abuse at the state level – which in the system I have partially described, is somewhat of a miracle.

Disturbingly – or possibly corruptly, there is, and has for a long time been a determined negative bias against mothers who report disclosures of sexual abuse by fathers. Disturbingly, many damaged adults attend VOCAL for support after reporting sexual abuse by a father. We do see a broad cross-range of people.

Working in our field for so long, seeing so very many similar case across Australia, I vacillate between wondering if the courts think a father having sex with his own children is somehow not criminal, not damaging to the child and that incest is perfectly reasonable as one judge was recently quoted as saying, I shake my head and wonder could our courts follow the flawed and false research of that lunatic Dr RICHARD GARNER – the author of the Parental Alienation Syndrome – a fictitious disease only of lying mothers, or are women simply not to be believed because of some old-fashioned Freudian remnant beliefs, or have they never researched the mental health and life-force damage done to victims by sexual assault when children, and are they not aware of the Royal Commission into Child Sexual Assault by institutions – or are they exempt from recognising damage they facilitate or is it that they are safe from such exposure because of Section 121 and the independence of the court from Government, and the lack of oversight? Or is it fear of a political backlash or indeed violence against politicians and the judiciary? I could go on. I just don't get it! The mothers are 'damned if they do, and damned if they don't!'

So, a child makes a disclosure of being hurt by daddy. 'He hurts my privates; he pulls on my wee wee, he hurts my bottom'. Irrespective of what she herself believes or understands about this child's father, what exactly is mum supposed to do and where is that information?

IGNORE IT, or as Gardner said 'threaten, then beat the child for saying it if it persists?

NO ONE provides accessible information that explains what such a parent ought to do, must not say or do and who tells her what she needs to understand about what may lie ahead, or how close scrutiny of her responses and motives will be critically examined should she ask for help from authorities charged with child protection?

NO ONE has the function of being 'the contact' for the mother to seek information and advice about what to do.

The child's disclosure of sexual abuse might happen during the relationship, it may cause the separation, it might happen after the child has a particular access visit. The first disclosure might happen years down the track – when the child is ready - already the Royal Commission is showing it is common for children not to report sexual abuse by a person with authority over them for twenty years or more. Our clients abused in family tend to be coming forward in their late teens and early 20's. Yet current practises commonly discount children's disclosures – not because they didn't happen, but because they are too young to give evidence; because the police won't prosecute matters where the child is under 9 or 10; unless there is significant admissible evidence or witness; because police resources are limited; and because police frequently look for 'blame the mother responses, rather than properly and professionally give the child the safe, child-focussed, age appropriate opportunity to speak. Outcomes then may be 'not substantiated' where police should properly report – no chance of conviction, child too young. 'Not substantiated' easily becomes 'didn't happen' in the adversarial court processes that leads directly to Mad/Bad mother.

Although there is no regulated process for a mother whose child discloses sexual abuse by the father, the mother's actions, reactions and parenting will now be under close scrutiny. Not the alleged abuse, not the treatment of the child, not the managing of the child's behaviour, not the assessment of risk to or impacts on the child, and not the deterrence of the alleged abuser.

Not the overloaded state child protection services, not counsellors, not lawyers – no one. Yet that mother is setting herself up to lose that child, to the perpetrator, in the Family Court. They never know what lies ahead – as repeatedly demonstrated by our clients. God help them if they are relying on Legal Aid assistance. But even if they are self-funded, they will frequently lose their case when the money runs out, the solicitor dumps them, or when they self-represent.

'Father is more important than the worst of his behaviour' – federal magistrate

So the answer to the question 'what can we do', must include:

- An information process regarding Parental Alienation, Child Sexual Abuse, freely available to parents and litigants.
- An obligation on lawyers to fully explain the risks related to the absence of proof.
- Awareness from the court that evidence is difficult to obtain. Or a directive as to the level of proof required.
- Proper explanation accompanying legal advice. No excuse from lawyers or refusal to the Lodgement of Form 4 – notification of child at risk. Often lawyers refuse to lodge the form, and don't want any history of DV in the case, even when it has been serious and actually involved the child.) Clearly when DV is so downgraded, and not important to the lawyer, the woman who left DV is frequently seen as 'the problem' not 'the victim'.
- We could start erring on the side of caution – placing the well-being of the child as a priority.
- There could be a transparent complaints process where cases like these can be properly and fully reviewed without fear of retribution.

Question 2: What problems do practitioners and services face in supporting clients who are involved in both child protection and family law proceedings? How might these problems be addressed?

Practitioners and services face too many unknowns, difficulty in confidently preparing clients for what lies ahead, a lack of direction, competing priorities and foci, which then feeds into Adversarial Systems which are ill-equipped to fully understand the reality of people's experiences, and fail to present the matters accurately or with any truth to courts which further reject evidence. Too expensive. Too much of a game.

"Child sexual abusers? Just kiddie fiddlers!"
As a leading barrister in a children's matter joked.

From a victim-protective parent, and an agency like ours which sees across all responses, and all courts, it's like the Frustration of Watching 'Reasonable Expectations of justice and seeking safety in this First World Country Dashed on the Law of Diminishing Returns'. Not stopping sexual abuse of children. Letting the perpetrators win. Seeing Good Mothers sacrificed on the Altar of Violence and the people who profit from the system. Heartbreaking. Then its handling the dysfunction, near-miss and threats of suicide from beaten, bankrupted, homeless, broken women who cannot see or protect their children.

So what do we see? Something happens that breaches the bonds of matrimony, relationship rules, a moral belief, a belief about the law, illegality, and an obligation, if not a life purpose to protect one's child from harm.

Problem 1. General Society (even those with University degrees and years of experience in related fields), often have no education as to what to do if a crime, or potential crime is committed. They may think they understand the law, but they rarely do. The law is too complicated. Too many ways to avoid responsibility.
"I'd have my own solicitor if I were a victim" said a local federal politician, who was surprised and reluctant to accept, when explained she could not.

We can't even agree on what is age appropriate language for body parts: thus one child who describes daddy's penis as 'Willy' may not be acceptable because he didn't say 'Penis', but the child who does say 'Penis' is said to have been coached.

Judges have their independent beliefs to accept or reject material and language and beliefs about what is age appropriate, like assuming three-year olds always masturbate, that it's perfectly natural for fathers to masturbate while bathing with their 2 year old daughters in the bath, but can you see why some mothers might find that unacceptable, might get really concerned if it continued when asked not to do so, and may not deserve to be called 'jealous of the child's relationship with father?' Judge rejects video evidence as 'staged' then says there is no evidence. Blaming anyone but dad even when the child names him? Sending two young girls to the father, a registered sex offender, saying they could lock themselves into the bedroom at night and they'd be safe because there were the two of them. (Oh? It only happens at night? Kids responsible for locks and their safety?) Or the case where the court gave a man dying of aids his very young daughter to look after him? What about the child's needs?

Outcome: Children suffer unnecessarily because our systems, society, fails to protect and stupid decisions, made safe because people cannot afford to appeal.
Response: Education, social campaigns. Information about what is required.
Stipulate acceptable definitions of names of body parts, encouragement of all parents to comply, and all police, judges to comply too. Stop playing words games. Accountability, transparency.
Penalties for false accusation clearly described. Becomes common knowledge.
Subject can now be discussed whereas years ago it was taboo.

Do we really reject child sexual abuse? If so, how come kids are matched against barristers? If we do, how come our penalties are so unrelated to the impact of the crimes?

Problem 2: Few people have any idea what to do, but may believe they must report to some authority – a doctor, counsellor, a police officer, a child protection agency, family, or friends. How they respond, is scrutinised, criticised, judged, and blamed on the mother.

Problem 3: Can a parent or child victim even expect a fair go in an Adversarial System?
Is there any bias against women? Mothers? Children? This has been described in simplistic detail earlier.
Problem 4: Services are not coordinated – they are siloed. And often have secret practices.
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How can they be addressed?

- Education, information campaigns,
- Support for the ones directly affected.
- Clearly articulated and available information about certainty of punishment for deliberate or malicious allegations.
- Coordination. Instead of silos that actually make things worse, the requirement for a huge range of different legal processes, legal documentation, fees, processes and decision-making that is complex, onerous, frightening, frequently unfair, damaging court appearances; why not develop a comprehensive system that includes complex case management for complex cases - like we do. If we can do it, and it works, so can Government.
- An inquisitorial style (truth seeking Tribunal made up of legal, DV, child protection and victim support members) which can look at the whole picture – not parts as if they are unrelated and inconsistent.
- In a truth seeking model, everyone is entitled to full and frank exposure. Judges can seek material, not rely only on what is tendered to them by self-interested legal people. So, for example

    - Any record taken at interview by anyone – FACS, Police, Family Consultants, Family Report writers MUST be videoed, and transcript/report correction possible. Too many wrong reports find their way into courts, and the report writers are virtually unaccountable.
    - For example, some court-appointed psychiatrists have been shown to cut-and-paste from other reports.
    - Others 'experts' are not expert at all, but deemed to be so as loyal supporters of the current regime.
    - Independent Children's Representatives are frequently biased, dangerous and failing if protection of children is the reason for their existence. They ought not to be able to exclude information a truth-seeking judge ought to see.
    - ICL's appoint Family Report Writers and there is high potential for corruption
    - FACS workers have been found to erroneously report. Litigants need the capacity to contest, other than by cross-examine in a hostile/expert-protective environment. (That's a whole other paper!)
    - Police records have frequently proved to be quite inadequate

Question 3: What are the possible benefits for families of enabling Children's Courts to make parenting orders under Part VII of the Family Law Act? In what circumstances would this power be useful? What would be the likely challenges for practice that might be created by this change?

The power would be useful under my more streamline model – hopefully it might create a consistency of outcome. An Inquisitorial –truth-seeking model would be preferable. However, the Children's Court ought to be able to make parenting Orders under Part V11 of the Family Court Act, provided that:

- It could be a place where all the practitioners needed to develop expertise and current accreditation in the various associated fields as they relate to the work, such as Child protection and children and domestic violence. Not <u>legal experience</u> litigating such cases, <u>expertise to understand</u> these complex specialty areas

- In fact, the biggest 'benefit' could be that it could, in principle, become the primary place to determine all Child-related decision making and procedures to one court, which would be a bonus in multiple ways to litigants. That's not to say it is currently always fair or just to the child.

- For a protective parent/domestic violence victim – the emotional and financial costs of litigation against their abuser over children is currently terrible and as previously described, permits little time for unlearning coping behaviours caused by the violence, managing demands of various, uncoordinated systems, and working out life decisions etc. It is a positive thing to reduce that strain. However, many of our clients have had dealings with the child protection system – FACS - and what we have found is those clients have needed and benefitted from independent, not legal, advocates who can go with them, support them, explain how things work and frequently rectify errors, omissions, mistakes and lack of knowledge made by FACS and others, offering context that may be missing, current research evidence and the like.

- As well as FACS, our advocates have been able to support clients dealing with lawyers and barristers. It has been very successful, leading to better outcomes. When experts in one field do not comprehend, investigate or research their client's situation and experience, they can sometimes jeopardise outcomes that are appropriate and child-protective. **THIS CASE'S** features are currently often muddied because of preceding cases, yet each case is different.

- Our experience demonstrates that with this 'go-between' advocacy, the generally inexperience and unfunded clients and the service providers get better, safer results, and trust in the system rises.

- Conversely, it would be very troubling for us if there was no systemic review calling for better liaison, education and openness – if the current dominant system were to simply 'add' parenting orders to the tasks to be performed by courts. The complaints and disrespect about FACS, about legal practitioners being lazy, not available, refusing to answer questions, not advocating as agreed, so frequently reported by our clients would no doubt increase, and the chances of child victims being given to their abusers or other carers would rise. This would be unacceptable.

- Legal practitioners would need to be more accountable

Question 4: What are the possible benefits for families of enabling the family courts to make Children's Court orders? In what circumstances would this power be useful? What challenges for practice might be created by this change?

Logically it would put the cases into one court, thereby presumably reducing the pathways of litigation and costs for families, and for Legal Aid. It would no doubt get a consistent outcome, more so than if two courts are involved. I do worry about the quality and commitment of Legal Aid solicitors in these complex cases.

I am reminded of a story told, with a sense of pride, by a Family Court Judge, at a Pathways conference in Newcastle. She described a case before the court where the mother was alleging violence against herself and the child. In her speech to the conference, the judge said words to the effect of "On the evidence, I was about to find that the child should live with the father." Immediately prior to the decision, she became aware that FACS had entered the case, and was asked "Didn't anyone tell you the boy was in hospital, on life support, because the father threw him into the fridge this time?"

The judge was pleased to announced that she changed her decision, and provided the child survived, he would be under the sole custody of the mother.

The audience clapped. I and my staff were horrified, mortified, angry. I wondered whether it was the level of damage contained in the words 'life support' that convinced her. Was it being thrown into a fridge? Was it the luck of timing of being advised? If that man had just thrown the child, and NOT caused brain damage, would she have ever known? And that little boy would be living with daddy.

And that poor mother would possibly be just like the ones already described.

This is the sort of chance of relying on Family Court – if this is an example, do they get the right information? Can they really be trusted to make child-safe decisions? How much pain, abuse and anguish should a child tolerate before a mother can confidently seek support from the state and the courts?

I also imagine that some legal practitioners may, ought and should , lose income from the changes, but believe it would be better spent of victim/advocates with expertise across social response services and a general comprehension of all the aspects of cases. These cases need properly educated at the level of reality, for advocacy at all levels

Question 5: Are there any legislative or practice changes that would help to minimise the duplication of reports involved when families move between the family courts and Children's Courts?

This question is outside our remit. Clearly one set of reliable reports, to acceptable standards, open to review by the litigants prior to a court hearing, preferably videoed to facilitate accuracy and compliance and minimising bias are desirable and ought to equip courts with appropriate information.

Question 6: How could the sharing of information and collaborative relationships between the family courts and child protection agencies be improved?

I am reading the words 'Child protection agencies' as broader than FACS and am including family, school, medical practitioners, psychological services, early childhood, police, Contact centres etc as the 'feeder services' and the courts.

There appears to us to be a great deal of professional separation between the belief, aims and various claims to, and forces of, child protection, the various layers of response within society, and between courts. Perhaps that is because the systems are established and maintained in mostly isolation due to various funding streams and accountabilities. Exclusive expertise in various fields grows, mitigated by sheer weight of numbers and sharing with others reduces. As previously explained, a victim caught in the cross-fire (so to speak) between state legal processes, children's and family courts and all these unmapped pathways is disadvantaged from the beginning because there are so many differences of approach, and no roadmap, and it is the victim who must accommodate and respond correctly all the various policies, procedures, privacy, personalities and legalities from a range of agencies or be judged as 'the problem'.

By way of example, please imagine a dart board where individual sections represent these various agencies and courts, and place the protection-seeker in the middle, at the bull's eye. The majority of knowledge and information would be owned and managed by the senior levels of agencies, so located more toward the 'triple score' zones, than the bull'' eye, the place where the protector has contact. Each agency has its own rules, that interact or link in part with others, and have no contact or knowledge of, at all, of others.

This model has many obvious gaps, beginning with tertiary education that doesn't prepare graduates for work in the real world. It is these gaps – all foreseeable and common – except to the new person trying to protect their child, right now. It is these gaps through which protective parents fall or are pushed, and the goal, the protection of children is lost. I don't have all the answers, but I do have a fair representation of what's wrong.

Until these barriers are mapped and responded to from the child's needs up, rather than bureaucratically and down, not much will change.

In the meantime, get child protection agencies using the same language, ordinary English to be understood by the masses, make their activities and attitudes known and promulgated, and let's, as they say, 'get on the same page'. At the moment not only are agencies not on the same page, they are reading from different books, written at different stages, may be way out of date, kept secret and not generally available.

I am happy to answer questions.

Regards

Robyn Cotterell-Jones
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Victims of Crime Assistance League Inc NSW
Victim Support Unit
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- Please see Email Attachment: Maternal Madness