

Children in Crisis

Executive Summary
Urgent actions required
to protect children in divided families
Family Law Reform Coalition - 3 December 2015



Protecting Children
Transforming Family Separation

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The Problem:

For a child, few crises are bigger than the loss of a loving parent; this is a major childhood trauma - especially when linked to family separation and years-long court proceedings - that causes immense personal suffering, increased lifetime risks of physical & mental illness, and even suicide.

Yet, today, tens of thousands of Australian children are being allowed, or wrongly forced, to experience such major trauma - and to grow up without one of their parents and other loving family members, often in a psychologically abusive environment - as a direct result of the actions (or inaction) of Australia's adversarial, family court system.

- ❖ **Our family courts are not fit-for-purpose.** The fundamental characteristics of these courts - being adversarial, unaffordable, slow, and even intimidating - are profoundly incompatible with "the best interests" of children;
- ❖ Family courts and lawyers are neither qualified to assess children, nor to assess the competence of other professionals, and **insufficient professionals have the highly specialized skills necessary for assessing children and families** involved in separation, dispute or litigation, where the incidence of family violence & abusive parental behaviour, including extreme psychological manipulation of children, is very high;
- ❖ By exposing children to unqualified "professionals", by taking years to make decisions, and by greatly exacerbating parental conflict & stress, **our courts contribute directly to the occurrence of psychological child abuse and family violence;**
- ❖ **Our courts restrict public scrutiny and fail to obtain feedback** on the outcomes of the thousands of life-changing decisions they make each year; theirs is not the open, evidence-based approach our children need and deserve;
- ❖ Through the actions of our family courts, which typically result in a dramatic reduction, or loss, of loving, important relationships between children and parents (or a failure to restore such relationships), Australia is failing in its obligations as a signatory to the UN Convention on the Rights of the Child & the Universal Declaration of Human Rights: **we are denying some of the most fundamental rights, and needs, to tens of thousands of Australian children and to their families;**
- ❖ The annual cost of our family court system in federal funding, consequent welfare dependency and lost income: billions of dollars. **The cost in human loss and suffering: incalculable.**

Key Principles

Towards a solution for family separation

- ❖ **Decisions involving children are urgent:** children have but one childhood. The current, 1- to 5-year decision-making processes are unconscionable & unacceptable;
- ❖ Children must be protected from all forms of harm during family separation. Children may need to be removed from unfit parents; **children should not be removed (or allowed to be kept) from a parent who has not been proven unfit.** The widespread presumption that the precautionary removal of a child, following an unsubstantiated allegation, is the lowest risk option is wrong. Wrongful removal causes great harm;
- ❖ **Children should have significant, substantial and, where possible, equal time with each of their parents** following separation (as well as time with other, loving, family members), unless one parent is proven to be unfit mentally, physically or behaviourally, or both parents have agreed otherwise. This is the evidence-based conclusion of the best research into children's long-term welfare and a conclusion also of some of the most of internationally recognized of human rights;
- ❖ Family separation is **a societal problem needing supportive, educational solutions:** for the sake of children, parents need help being brought together, not help being torn further apart by an adversarial, legal system;
- ❖ **Family separation must be affordable to all;** anything else is morally unacceptable;
- ❖ **Incentives for harmful parental behaviour must be eliminated**, e.g.:
 - Decisions/orders must be pro-actively enforced; breaches must have consequences;
 - Refusal to mediate should be taken into consideration in any further process;
 - Care should be taken if linking financial settlement to proportion of parental care;
 - Children should not be involved in legal proceedings; giving high weight (without skilled analysis) to what a child says inevitably rewards abusive, psychological manipulation of a child, which our family courts have demonstrated they do not have the expertise either to recognize or to reverse.



Recommendations

- 1) A national Family Commission - with separate Finance & Parental Care sections, expertise in appropriate disciplines, and potentially under the auspices of the Administrative Appeals Tribunal - should replace our various Family Courts (Family Court of Australia, Family Court of WA, Federal Circuit Court). Demonstrated failures to adhere to orders and decisions should be referred automatically to the local court for expedited rulings and enforcement;
- 2) Allegations of abuse or domestic violence should be dealt with urgently and independently by a local court, adhering to proper standards of evidence;
- 3) There should be an immediate, substantial shift of resources from the family court system to mediation and collaborative, educational processes, enabling families to be better informed of, and to make use of, such services at low cost;
- 4) First hearings at the Family Commission - involving both parents, other family members, family friends, and other, relevant evidence, but no lawyers - should take place within 28 days of initial application and should result in substantive rulings;
- 5) The Family Law Act should be revised, simplified, considerably shortened, and based on the core principles of: the paramountcy of the long-term welfare of children; gender equality; equal parental care and responsibility, when neither parent has been proven unfit; and not allowing a child to be denied access to a parent, even temporarily, unless that parent has been proven unfit. Section 121 should be amended as a priority; the absence of public scrutiny & a lack of transparency are not in children's best interests;
- 6) Follow-up research into the short- and long-term outcomes of decisions should be mandatory, and should provide feedback that is widely disseminated and acted upon;
- 7) Professionals involved should be required to have recognized accreditation in the highly specialized field of assessing children in divided families (including, but not limited to, training in objective observation skills; report writing; child suggestibility; and forms of psychological child abuse commonly associated with separation);
- 8) Funding should be made available for a national educational campaign on the potentially harmful consequences to children of family separation; on the extreme risks, consequences and prevalence of psychological child abuse during separation; and on the availability of mediation, family-friendly resolution services, and substantially improved online resources for separating parents and for their children.