

"I wish they knew what
they'd stolen from me"
child sexual abuse and
the Family Court

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This Report was written by Dr Morag MacSween. It documents research conducted by Tunya Petridis, Associate Professor Jodi Death, and Dr Morag MacSween.

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The findings and views reported in this report are those of the researchers.

I wish they knew what they'd stolen from me is a quote from research participant Isabella.

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Chapter 1 Background

“I wish they knew what they had stolen from me”: Child Sexual Abuse and the Family Court was funded by the National Centre for Action on Child Sexual Abuse (the National Centre) and addresses four of its identified challenges:

- people with lived and living experiences of child sexual abuse are often not believed and responded to with compassion
- children, young people, and adults with experiences of child sexual abuse are often not identified or are not well supported when they raise concerns or disclose
- victims and survivors of child sexual abuse are often unable to access the support and resources that meet their changing needs at different times in their lives
- child sexual abuse will not be stopped unless there is a comprehensive framework for addressing the power dynamics and factors which enable it.

Research Aims

The project has four core aims:

- providing a supportive pathway for adult victims and survivors of child sexual abuse to influence the Family Court’s response to child sexual abuse by adding their critical, often silenced voice to debate
- elevating expertise from lived experience by documenting evidence and perspectives which should be central to Family Court decision-making
- exploring the impact proceedings had on recovery from trauma for victims and survivors
- summarising of bodies of contemporary evidence which are relevant to Family Court decision-making where there are allegations of child sexual abuse.

Research Gaps and Opportunities

Children do not give evidence in the Family Court, and do not participate in decision-making. Our observation is that they are frequently framed as unreliable witnesses to their own experience. International activism to address custody reversal and parental alienation relies on the perspectives of adults; the direct experience and meaning making of child victims and survivors of sexual abuse has rarely been captured (Priolo-Filho et al. 2018).

Our research contributes to filling this gap by capturing both the perspective of the child and the reflections of the child as an adult. The strength of this approach is that it captures an unheard voice, and this remarkable dual perspective; the limitations are that the perspective of the child is not contemporaneous, and our participants could not share documents with us. Set against that limitation, we found that speaking with adults looking back at their experiences challenges the notion of children as unreliable or coached witnesses and clearly demonstrates children’s strategic agency.

Methodology

We knew from earlier research and contemporary discussion that adults who were subjected to child sexual abuse and were involved in the Family Court would be a hard-to-reach group, potentially because of the enduring impact of, and anxiety in relation to, the proscription on sharing information about Family Court proceedings. Our background research located only four instances in which these experiences have been shared (Nelson 2022; Clark & Davoren 2019). For these reasons, our research uses the case study approach, one of the most widely used and accepted means of qualitative research methods in the social sciences (Bloomberg & Volpe 2022).

Coombs argues that the case study approach allows us to explore complex issues and to provide insights into specific phenomena or situations...to gain detailed and nuanced understanding of the case subject and to generate new theories or insights (Coombs 2022).

Case study research can adopt a single or multiple case study approach, with the latter allowing us:

to compare cases to identify common patterns, relationships, or similarities. In a multiple case study, the cases may be similar in nature, or they may be diverse, but the researcher is looking for patterns or relationships across cases...this method is often used when the phenomenon being studied is rare or difficult to observe (Yin 2018).

George and Bennet argue that case studies allow researchers to:

- capture different views of reality
- generate concrete, practical (context-dependent) knowledge
- discover the unknown within well-known borders
- analyse qualitatively complex events
- identify causal mechanisms: *Y happened because of A, in spite of B* (George & Bennett 2005).

Finally, case study methodology allows researchers to explore and deepen theoretical and conceptual frameworks through in-depth exploration of lived and living experience (Eisenhardt 1989; Salter et al. 2025). Our research has allowed us to:

- test the frameworks used in the Family Court to conceptualise child sexual abuse against the lived and living experience of our participants
- explore differences and similarities in the experience of our participants through the lens of the evidence on child sexual abuse, domestic abuse, and complex trauma.

Transcripts from semi-structured interviews were transcribed, read and separately coded by each author. An inductive approach to coding was taken; each member of the team coded independently, and the team then discussed results to test, identify and consolidate themes (Mayan 2023).

We have also summarised key information, data, and evidence to demonstrate the complex context which sits around the experience of child sexual abuse victims and survivors in the Family Court. The Family Court is continuously reforming, and the literatures on child sexual abuse, domestic abuse, complex trauma and children's voice and agency are both significant and continuously developing. Our first aim is to provide sufficient information and data on the Family Court to contextualise our case studies for readers who are unfamiliar with the Court, doing justice to the Court's efforts to improve its responses, particularly to family violence, and to critique of those efforts. Our second aim is to provide sufficient information and analysis for readers who are familiar with the Court, but less familiar with child sexual abuse, domestic abuse, complex trauma and children's voice and agency.

Our research is multidisciplinary. Jodi Death is a criminologist and former child protection caseworker with an extensive body of published research on child sexual abuse and the Family Court. Tunya Petridis is a clinical supervisor and former child trauma therapist, with extensive experience of working therapeutically with children involved in the Family Court. Morag MacSween is a clinical supervisor, researcher and former sexual violence counsellor and child protection executive. She led the statutory child protection contribution when the Magellan List began operating in the Sydney Registry of the Family Court. Our research draws on expertise from a range of fields, allowing us to explore complex issues from multiple perspectives.

Expert Advisory Group

Our Expert Advisory Group (Table 1 below) reviewed the first draft of this research report and provided feedback on our understanding of Family Court process, our analysis of contemporary evidence on family violence and child sexual abuse, and on the themes and issues we identified as most significant.

Table 1: Expert Advisory Group

Expert Advisory Group	
Kerri Collins	Therapeutic Services Manager, Laurel House Lived Experience Advocate
Clare Colquhoun	Former Independent Children’s Lawyer Quentin Bryce Scholar, researching children’s access to justice
Carol Ronken	Director of Research, Bravehearts Foundation

Ethics approval was provided by Queensland University of Technology (QUT HREA Approval 7841). Particular consideration was given to consent, confidentiality and potential retraumatisation.

Significance

The Family Court has been subject to significant criticism and repeated reform since its inception in 1975 (Australian Law Reform Commission 2019). Current reforms focus on redefining the Best Interests of the Child to prioritise safety and exploring the competence of Independent Children’s Lawyers and Family Consultants to advise the Court on decision-making which supports those interests (Parker 2021). The Court is increasingly focussed on Family Violence.

Our research considers the challenges and opportunities for the Family Court in reaching decisions on matters which include allegations of child sexual abuse, drawing on the lived experience of our participants and contemporary research evidence.

Our research will be sent directly to all Family Court Judges, to the Family Court Children’s Service for distribution to Family Consultants and to National Legal Aid for distribution to Independent Children’s Lawyers.

Structure

This report is written in six chapters, with this first Chapter setting out the background to our research.

Chapter Two outlines the history of the Family Court, how the Court currently operates, the Court's approach to domestic violence and child sexual abuse and criticism and reform of the Court.

Chapter Three summarises the contemporary evidence on child sexual abuse, domestic abuse and complex trauma, focussing on findings which are of greatest relevance to Family Court matters involving allegations of child sexual abuse.

Chapter Four presents three in-depth Case Studies, identifying how our participants made sense of their experiences as children, and sharing their insights and advice as adults.

Chapter Five explores differences and similarities in our participants' experiences, through the lens of the evidence on child sexual abuse, domestic abuse and complex trauma. We explore two key themes from the Case Studies: Safety and Protection; Voice and Agency. This chapter also compares the conceptual frameworks used by the Courts to understand and manage matters involving allegations of child sexual abuse with the experiences of our participants and the research evidence.

In Chapter Six we share our two key observations as researchers: the Family Court functions in practice as a retraumatising and anti-recovery experience for victims and survivors of complex or continuous trauma, including child sexual abuse; and the Court functions in practice as a parallel child sexual abuse investigation agency.

We explore what could be done to offer a more trauma- and child sexual abuse-informed victim experience in the Family Courts. We propose that the central issues for matters involving child sexual abuse and the Family Court are specialism and capacity, not coordination, information exchange or jurisdiction, and conclude that it is currently unsafe in most cases for the Family Court to reach conclusions on whether child sexual abuse has or has not occurred.

Key themes and conclusions are captured in the [Research Summary](#).

Key findings on disclosure are set out in the [Disclosure Summary](#).

Chapter 2 The Family Court

The History of the Family Court

The Family Court was established in Australia in 1976, following the contentious introduction of separation as the sole grounds for divorce in the Family Law Act 1975 (i.e. 'no-fault' divorce). The Court was intended to manage divorce proceedings less formally and more speedily. It was not expected to, or designed to, manage allegations of child abuse (Laing et al. 2018).

John Fogarty was a Judge in the Court from its inception until 1998. He notes that the establishment of a federal Family Court was a last-minute addition to the Bill:

But where was the Family Court of Australia? In particular, where was the money and the administrative expertise to set up such a substantial organisation in such a short time and by a government and a department which had had no serious experience in court administration?

To put it at its mildest, when the Court opened its doors in some (but not all) of the capital cities of Australia it was completely unprepared for the task. But there was a strong feeling that the considerable public expectations should not be disappointed (Fogarty 2001).

Adding to these issues, only Western Australia took up the option to develop its own State-based but federally funded Family Court, and in other States and Territories there was a bulk transfer of matters from State courts to the Family Court, including complex cases, and those where applicants preferred to wait for no-fault grounds:

In some registries files came from the Supreme Court to the Family Court literally by the truckload. Thus, overnight the Family Court developed a backlog from which it has never recovered (Fogarty 2001).¹

In relation to children, Fogarty (2001) comments:

There had been no doubt that the fault-based grounds of the past were artificial and hypocritical and led to much unnecessary pain, anguish and cost, especially tied up as they were with issues of property and children. But the crossover to twelve months separation was a dramatic turnabout. In addition, the unanswered question was - removal of fault from what? - in particular, in relation to children and property. These were not seriously addressed at the time or in the legislation, and it has taken the Family Court the next 25 years to work through these issues.

Finally, Fogarty notes that the unrealistic expectations of what the Family Court could do without undue formality have, over time, shifted into skepticism and criticism. Informality, in his view, pleased no-one, and the initial proscription against wigs and gowns was subsequently overturned.

The Family Court has continued to undergo significant change and reform, with the Family Law Act being amended over 130 times since 1975 (Rathus 2025). The type of matters coming before the Family Court, and the systems with which it interacts, have also changed significantly. In the rest of this chapter, we summarise issues which are key to understanding the experience of child victims and survivors of sexual abuse in the Family Court today.

¹ Annual Reports demonstrate that the Court have made enormous steps in managing both the backlog and the increase in matters e.g. FCFCOA 2025 c.

The Family Court Today

The Family Court of Australia was merged with the Federal Circuit Court in 2021 into the Federal Circuit and Family Court of Australia.² The Court is structured in two Divisions. Division 1 is a specialist family law court where specialist family law judges hear the most complex family law trials and appeals. Division 2 has a broader remit, including family law, migration, fair work, bankruptcy, intellectual property, consumer law, human rights and administrative law. Judges hearing family law matters in either Division are required to be suitable to hear matters involving family violence (<https://www.fcfcoa.gov.au/about>; accessed March 2025).

The Court's website describes the merged arrangements as delivering modern, innovative courts leading change where:

with confidence and integrity, the expertise of judges, judicial registrars, court child experts and staff, will guide and lead the delivery of a world-leading federal law system
(<https://www.fcfcoa.gov.au/about>; accessed March 2025).

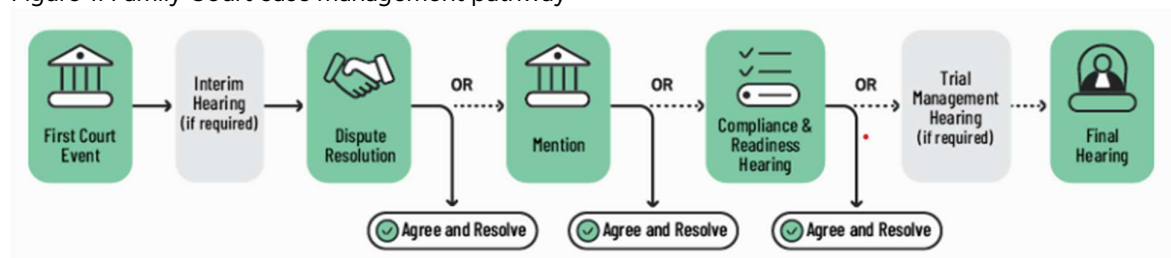
We have opted to refer to the Family Court as the name most familiar to stakeholders.

Independent Statutory Review of the impact of the merger was conducted between September 2024 and March 2025 by Dessau and Rhoades. (Dessau & Rhoades 2025). Conclusions of particular note for our research are that the introduction of a single point of entry for family law matters and the specialisation requirement for judicial officers have met their aims.

Case Management

Reforms to case management were introduced following the merger of the courts, following a nationally consistent case management pathway:

Figure 1: Family Court case management pathway



(<https://www.fcfcoa.gov.au/about>; accessed March 2025)

The most recent Annual Report notes continued improvements in performance. In 2024-25, 101,092 first instance family law applications were filed across both courts. The Court achieved clearance rates of 99% of Final Orders, 100% of Interim Orders, and 100% of appeals (Federal Circuit and Family Court of Australia 2025c). Other developments relevant to children who have experienced sexual abuse are:

- expansion of the Court's therapy dog program
- training and process changes to capitalise the potential of the Children's Court Service to *bring the voice of the child into the decision-making process*
- the development and rollout of training on sexual violence towards adults and children, and the intersection of domestic and sexual family violence (ibid).

² The merger of the Courts the most significant reform in the history of the Family Court, designed to respond to criticisms about delays and cost. As noted above, Western Australia was the only State or Territory which opted to form its own Family Court. *The Federal Circuit and Family Court of Australia Act 2021* requires review of the Act. The review is expected to be published in 2025.

Matters before the Family Court

The vast majority (97%) of separating parents resolve custody and contact issues without Court intervention (Australian Institute of Family Studies 2019). Despite that, and looking only at applications for Final Orders, over 9000 matters involving parenting disputes were filed in the Family Court in 2024-2025 (Federal Circuit and Family Court of Australia 2025 c).³

Most of those matters are complex. The 2024 – 2025 Annual Report notes that child abuse or risk of child abuse was alleged in 77% of matters, rising from 70% over the four years during which this data has been collected. Four or more risks were alleged in 73% of matters, rising from 68%. Eighty-two per cent of parenting matters were referred to State or Territory child protection agencies (Federal Circuit and Family Court of Australia 2025 c). At its 2024 National Family Violence Symposium, the President of the Court advised participants that current data shows that 91% of parenting matters now include at least one major risk factor (Federal Circuit and Family Court of Australia 2024).

We could not find data on the response of child protection agencies to risks reported by the Family Court, and in response to an inquiry from the ABC, the Court advised that it does not have data specific to child sexual abuse (Federal Circuit and Family Court of Australia 2024).

Children's Voice in the Family Court

The core principle shaping children's voice in the Family Court is the need to balance protecting children from conflict between their parents with upholding their right to have a voice in decisions affecting them (How the voice of the child is heard? | Federal Circuit and Family Court of Australia; accessed March 2025).

In 2025 the Court released its Children's Charter, in adult and child-friendly versions. The Charter sets out principles to strengthen and make more consistent the commitment to the child being at the centre of process and decisions.

On children's voice, the Charter notes that:

A child has a right to express a view about what is happening in their lives and what they would like to happen but also has a right not to express a view.

A child should be given the opportunity to express their view, and when doing so should be informed about whether or not their views can be kept confidential.

A child must be treated with dignity and respect at all times and their views must be listened to and respectfully considered.

(Federal Circuit and Family Court of Australia 2025). The Court also introduced Kids' Corner, an information hub for children and young people (Federal Circuit and Family Court of Australia 2025 a). Southern Cross University has developed Family Law 4 Kids, an online resource to help children and young people understand and exercise their right to participate in family law processes when their parents separate. (Southern Cross University 2025)

Children do not generally appear in the Family Court. (Federal Circuit Court and Family Court of Australia 2024 b). Their views are shared with the Court as part of advice provided by an Independent Children's Lawyer or a Family Consultant.

³ Division 1: 1015 applications for Final Orders, of which 52.7% included parenting only and 13% included parenting and property (667). Division 2: 14,243 applications for Final Orders, 46.2% parenting 14.6% property and parenting (8660). There were an additional 21,060 applications for Interim Orders, but the breakdown by type of Order sought is not provided.

Independent Children's Lawyers

Independent Children's Lawyers (ICLs) are appointed by the Court, on application by a party to the matter, to represent the best interests of a child, in specified circumstances, including where there are allegations of child abuse.⁴ ICLs are either directly employed by Legal Aid or are private practitioners appointed to a Legal Aid Panel.⁵

Following the 2023 reform of the *Family Law Act*, the role of the ICL is to:

- meet with children over the age of five who wish to meet with them and give them an opportunity to express their views⁶
- ensure that any views expressed by the child are fully put before the Court
- make their own independent assessment of what is in the child's best interests
- advise the Court about the weight to be placed on the views of the child in a hearing
- explain their role, the court process, the role of other experts, the limits of confidentiality, the advice that they will provide to the Court, and the rationale for their advice (Independent Children's Lawyers 2024).

Guidelines for ICLs were produced by National Legal Aid, via the subgroup Independent Children's Lawyers, and are endorsed by the Chief Justices of the Family Courts and the Chief Judge of the Family Court of Western Australia. (Independent Children's Lawyers 2024). Child sexual abuse is not mentioned in the Guidelines.

ICLs have access to a range of child-friendly resources.⁷

The lack of a direct unfiltered voice for children is one of the key criticisms of the Family Court considered below.

Family Consultants

Family Consultants prepare Child Impact Reports and Family Reports ordered by the Court to assist Judges in determining the best outcomes for children. There are two types of Family Consultant: Child Court Experts are employed by the Court; FCFCOA Panel Family Consultants are private practitioners engaged by the Court on a fee for service basis. (Federal Circuit Court and Family Court of Australia 2024 band 2025 c). Family Consultants are psychologists or social workers who have expertise in issues for children when their parents separate. They are considered to be expert witnesses, and their reports are accepted as expert evidence.⁸ They have *influence and kudos* (Rathus 2025).

The Family Court, Federal Circuit Court and Family Court of Western Australia published Standards of Practice for Family Assessments and Reporting in 2015.

⁴ Other circumstances include: *there is a high level of conflict and dispute between the parents; there are allegations made as to the views of a child, and the child is of a mature age to express their views; there are allegations of family violence; serious mental health issues exist in relation to one or both of the parents, or the child, and/or there are difficult and complex issues involved in the matter.* <https://www.fcfcga.gov.au/fl/children/icl> accessed April 2025

⁵ ICLs appointed to the Legal Aid panel are senior lawyers who have been identified as having the skills and experience required to deliver the role and undergo training. Appointment as an ICL in Legal Aid is *a huge honour*. Clare Colquhoun, Expert Advisory Panel

⁶ The Court may concur with the ICLs assessment that exceptional circumstances mean that a meeting with a child over five who wishes to meet with them should not occur because this would a. expose the child to a risk of physical or psychological harm that cannot be safely managed, or b. have a significant adverse effect on the wellbeing of the child (Federal Circuit Court and Family Court of Australia 2024b.)

⁷ The ICL website has information explaining the role of the ICL for children. (member-only access) The Best for Kids website also has a video for children explaining the role of the ICLs: [Legal Aid NSW - Best for Kids; For Kids - When Families Separate](#)

⁸ <https://www.fcfcga.gov.au/fl/pubs/court-child-experts-faq> accessed April 2025. Family Consultants can also act as family counsellors; where they do so, information shared with a family counsellor is confidential and the Family Consultant cannot simultaneously act as an expert witness. Regulation 40 Family Consultants can also be engaged privately by parties, and by Legal Aid.

The Standards are similar to the Guidelines for ICLs:

- the family assessor should specify the weight given to the child's stated perceptions and/or sentiments and should assess the extent that the child is of sufficient developmental maturity to independently express informed views
- children should be interviewed and/or observed in person if they have reasonable receptive and expressive language skills; younger children can be assessed by observations
- children must be advised of the purpose of the interviews and informed of what will happen with the information they provide to the assessor
- children must be informed that they do not have to provide information, answer questions or express views about which parent they may wish to live with or spend time with, or about any aspect of their parenting arrangements
- interviews with children should commence by informing children that what they tell the family assessor is not confidential.

The Standards add that, in reporting children's views to the adults or a court, the family assessor must be cognisant of any risks to the children in doing so and take steps to minimise these risks by recommending some variation or limiting the process by which parties are informed, and the extent to which they are informed of the children's views (Family Court of Australia, Federal Circuit Court of Australia, Family Court of Western Australia 2015).

Child sexual abuse is not mentioned in the Standards of Practice.

The Family Law Act 1975

The *Family Law Act 1975* guides the Court. The Act was significantly reformed in May 2024 when the *Family Law Amendment Act 2023* and the *Family Law Amendment (Information Sharing) Act 2023* came into effect. The Office of the Attorney-General explained:

*The changes will make what is an often-confusing and overly complex system easier to navigate for families going through a challenging period of their lives. These two pieces of legislation recognise the need for a simpler and safer family law system, and improved information sharing to address family safety risks. Significantly, it is now law that the resolution of parenting disputes should always be based solely on what is in the best interests of the child.*⁹

Critically, the *Amendment Act* removed the *presumption of equal shared parental responsibility*, clarifying that decisions about parenting arrangements must be based on the best interests of the child, set out in a new, simplified and child-focussed definition. In addition, the *Amendment Act* requires ICLs to meet directly with children and seek their views and establishes the power for Government to regulate Family Report Writers. Table 2 sets out the revised definition of the best interest of the child.

Table 2: *Family Law Act 1975* Chapter 60CC

Family Law Act 1975 Chapter 60CC
2) ...the court must consider the following matters: (a) what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of (i) the child and (ii) each person who has care of the child (whether or not a person has parental responsibility for the child); (b) any views expressed by the child; (c) the developmental, psychological, emotional and cultural needs of the child; (d) the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs ; (e) the benefit to the child of being able to have a relationship with the child's parents, and other people who are significant to the child, where it is safe to do so; (f) anything else that is relevant to the particular circumstances of the child.

⁹ [Landmark Family Law Act reforms come into effect | Our ministers - Attorney-General's portfolio](#)
[I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts](#)

(2A) In considering the matters set out in paragraph (2)(a), the court must include consideration of:

- (a) any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and
- (b) any family violence order that applies or has applied to the child or a member of the child's family.

The *Family Law Act* includes a definition of child sexual abuse:

- (a) an assault, including a sexual assault, of the child; or
- (b) a person (the first person) involving the child in a sexual activity with the first person or another person in which the child is used, directly or indirectly, as a sexual object by the first person or the other person, and where there is unequal power in the relationship between the child and the first person.

(FAMILY LAW ACT 1975 - SECT 4 Interpretation; accessed March 2025)

The University of Technology, Sydney is undertaking research on the impact of the reform in practice, including:

- are processes safer for children experiencing child abuse or domestic abuse?
- are outcomes supporting children's safety?
- is the Court better recognising coercive control and its impact on children?

Led by Industry Professor Jess Hill, researchers will be hearing from both parents and professionals (Callout for Participants; accessed February 2026).

The History of the Best Interests Principle

The *Family Law Act* did not include a best interests principle in 1975. Indeed, arguments for such a principle and an accompanying substitute-decision-maker model were strongly rejected. The Act obliged Judges to listen to children, and to consider their wishes in decision making. Chapter 64 [1] (b) stated that the Court could not make an Order contrary to the child's wishes once they were 14 unless special circumstances applied. Chapter 64 [8] stipulated that Orders could be vacated or varied if they did not align with the young person's wishes once they had reached the age of 14 (Nelson 2022).

Nelson argues that these provisions were ignored, overruled and obscured before being formally repealed in 1983 on the basis that children and young people's moral judgments have not usually reached the level considered acceptable for adult decision-making. From this point onwards ever more extensive and complex lists of best interests principles were included in the Act to guide substitute decision-making by adults on what was in the best interests of the child, regardless of their age or capability. The Family Law Amendment (Shared Parental Responsibility) Act 2006 established primary and secondary considerations about best interests, with primary considerations being the child's right to know and be cared for by both their parents, and the need to protect the child from harm. While safety was defined as predominant, in practice the considerations were treated as equal, i.e., as the twin pillars of the law. A secondary consideration, known as the friendly parent or the hostile parent provision, obliged Judges to take into consideration in forming a view of the child's best interests each party's willingness to facilitate another party's involvement in a child's welfare. In practice, some parents did not disclose family violence or child sexual abuse because they feared being seen as an unfriendly parent (Parliament of Australia 2013).

Nelson argues that lobbying by men's rights groups and conservative women's groups was highly influential in the move away from the original intention of the legislation to give children a real voice. The current best interests principle prioritises safety and includes children's views as one of six considerations. However, the substitute decision-maker model continues, with focus being on improving how it operates, rather than adopting a different model. Nelson argues that the amendments miss the opportunity to bring Family Law into better alignment with the principles of the United Nations Convention on the Rights of the Child i.e. children's capacity to express their views should be presumed to exist; wherever possible, children should be heard directly; children's capacity evolves as they grow (Nelson 2023).

Rathus (2025) argues that the amendments demonstrated that critics of the Act were listened to on some key issues, most significantly the repeal of the presumption that equal shared parenting responsibility was routinely in the best interests of children. However, she strikes two notes of caution.

Firstly, she notes a turn to the future in the wording – what could happen, what each parent may be able to do – how will this work in practice? There was active debate during the consultation period about the extent to which evidence of past violence needs to be considered to assess parenting in the future. In her submission, Rathus argued that post-separation contact means that children see their father without their usual protector; children must feel safe as well as be safe; and past behaviour can be critical to explaining why children do not want to see their father. Advocacy was successful, and the final version of the Act included a provision that the Court must consider the history of violence, abuse, or neglect towards a child, or towards any adult caring for the child.

Secondly, Rathus describes the culture of the Court as strongly pro-contact, and within this, makes two key points relevant to matters where there are allegations of sexual abuse:

- *there may be a deeply embedded, but unacknowledged culture of disbelief in allegations of sexual abuse in the family courts*¹⁰
- *'parental alienation' is still alive and well within our courts and unevaluated family 'reunification programs' are spreading* (Rathus 2025).

The Standing Committee on Social Policy and Legal Affairs Inquiry into Family Violence Orders was similarly cautious. Having heard numerous submissions about a pro contact culture that prioritises time spent with both parents, there needs to be *robust monitoring and evaluation* to assess the effectiveness of recent legislative reforms (Standing Committee on Social Policy and Legal Affairs 2025).

¹⁰ This view is emerging in Rathus' current research (Rathus 2025). While this research is at an early stage with small numbers, it aligns with findings from Ferguson (2018) Webb (2022) and Meier (2020).

Child Sexual Abuse and the Family Court

Family Violence

The Family Court has invested significant energy in understanding and adapting to the predominance of family violence in matters coming before it, and its approach to child sexual abuse sits within this broader context. The Court has established a Family Violence Committee to develop Best Practice Principles to guide all stakeholders involved in matters which include family violence and to articulate the knowledge of family violence the Court expects of professionals involved in family violence matters.

The Lighthouse initiative screens for risks related to family violence, mental health concerns, drug and alcohol misuse and child abuse and neglect, allowing for earlier intervention. The Evatt List allows for intensive case management of high-risk matters by a team of specialist staff. ([Family violence: Overview | Federal Circuit and Family Court of Australia](#) accessed April 2025) ¹¹

The Family Violence Framework establishes the principles which shape the Court’s stance on family violence. Table 3 sets out those principles.

Table 3: Guiding Principles in Responding to Family Violence

Guiding Principles in Responding to Family Violence
• Safety is a right and a priority for everyone. • Family violence affects everyone in a family. • The Courts have a particular concern about both the immediate and longer-term impacts of family violence on children. • Family violence can occur before, during and after separation. This may affect an individual's ability to make choices about their family law matter and to take part in court events. • Not all family violence involves physical violence. It can take many forms such as sexual violence and coercion, emotional abuse (including denigration), financial abuse, and spiritual or cultural abuse. • The definition of child abuse includes serious psychological harm arising from the child being subjected to or exposed to family violence. • Research consistently indicates that all forms of family violence can cause short or long term physical and/or emotional trauma for children, young people and adults. • Family violence can also affect a person’s willingness and ability: to initiate legal proceedings; to come to the Court; to participate in court events, and/or to achieve settlement of their dispute through negotiation. • Protecting families and children from the effects of family violence and ensuring that all court users are treated with dignity and respect are priorities for the Courts.

([Family Violence Best Practice Principles | Federal Circuit and Family Court of Australia](#); accessed March 2025) ¹²

¹¹ The Magellan List manages matters where there are allegations of sexual abuse and serious physical abuse of children and is discussed below.

¹² While the Courts define Family Violence as multi-faceted, their definition does not currently include legal systems abuse.

Established in 2017, the Family Advocacy and Support Service is located in Family Courts in all States and Territories and offers free legal advice and support to people who have been subjected to, or have been alleged to have perpetrated, family violence (Inside Policy 2018).

In July 2023 the Court appointed Hayley Foster to the new role of Director Family Violence and Indigenous Programs. The role focuses on continued improvement in the Court's response to family violence and Indigenous programs. Ms Foster is described as having a long history in family and sexual violence, and an enduring commitment to child safety (Federal Circuit and Family Court of Australia 2023).

In April 2024 the Court held its first National Family Violence Symposium, inviting leaders from across the range of agencies involved in family violence to join the Court in discussing family violence <https://www.fcfcga.gov.au/news-and-media-centre/media-releases>; accessed March 2025). Ms Foster told participants:

The FCFCOA is relied upon to set the tone for how families separate in the context of family violence in this country. That is why the Courts have implemented a suite of reforms to elevate the focus on safety and are working with leading experts, including those with lived expertise, to aim even higher. We, each of us, know that if we're going to end gender-based violence in one generation, we need to take bold, innovative steps and target our collective expertise and resources towards evidence-based interventions that yield tangible results.¹³

Chief Justice William Alstergren told participants:

The prevalence of family violence throughout our communities is a national disgrace. We're not even halfway through the year, and yet 28 women have reportedly been killed in 2024 so far. Family violence is simply unacceptable and it must stop.

In recent years the FCFCOA has been actively focused on improving the identification of risk and making enormous change to how it responds to cases that involve allegations of family violence ... Through recent and sophisticated risk assessment methods and sharing of information with police and child protection, the Courts have better and more timely access to critical information about the families and children involved in proceedings and the various risks facing those families. This information assists with better informed decisions around the safety and best interests of children.

Although a significant amount of work has been done, especially by advocates, victim survivors, government and those working in the domestic and family violence sector, more can be done. This forum provides a platform for experts to come together in the one room to exchange insights, share information and explore opportunities to work together.

It will help to build upon the important work already done, allow for continued engagement and provide a pathway towards action, with the shared objective of combatting and eradicating the unacceptable levels of family violence currently facing our nation.

The success of the Family Violence Symposium led to the establishment of the Family Violence Reference Group, which provides a regular opportunity for discussion on family violence. The Reference Group held several meetings in 2024 – 2025 (Federal Circuit and Family Court of Australia 2025 c).

The Magellan List

The Magellan List is a longstanding response providing a specialist case management pathway for cases involving sexual and serious physical abuse of a child. In Magellan matters the advice of the statutory child protection agency is sought to enable interagency coordination. An Independent Children's Lawyer is appointed in every Magellan case. The definition and criteria for the Magellan List were updated in August 2023 following advice from the Courts' Family Violence Committee, and the List operates Australia-wide, in both Divisions of the Court (Federal Circuit and Family Court of Australia 2023 b).

¹³ Ms Foster is now Director Family Violence, Access, Equity and Inclusion
I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts

Table 4: Criteria for inclusion on the Magellan List 2023

Criteria for inclusion on the Magellan List 2023	
(a) sexual abuse of a child; and/or (b) serious physical abuse of a child; and/or (c) fresh allegations of historical sexual or physical abuse of a child which had never previously been disclosed; and/or (d) activity by a party to the proceedings or a relevant adult (such as a step parent or relative) which: i. poses a risk of direct or indirect sexual abuse to the child, including activity directed towards children who are the subject of the proceedings or any other child/ren; and/or ii. involves an allegation, charge or conviction for offences related to the production, possession and distribution of Child Exploitation Material (CEM), whether or not the images relate to children the subject of the proceedings; (e) and/or serious or escalating physical abuse of a subject child of the proceedings.	

(Federal Circuit and Family Court of Australia 2023 b)

The Family Court Annual Report 2024-2025 advises that not all allegations will necessarily result in the case being classified as a Magellan matter. As of 30 June 2025, there were 129 active Magellan cases, and 119 Magellan matters had been finalised (Federal Circuit and Family Court of Australia 2025 c).

Other forms of child abuse are managed through the Lighthouse project and the Evatt List (Lighthouse information sheet for parties - risk screening | Federal Circuit and Family Court of Australia; accessed January 2025).

Analysis

In this section we consider the three most relevant analyses of how matters involving allegations of child sexual abuse are managed in the Family Court.

Webb et al.’s Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012 – 2019 was published in 2021 (Webb et al. 2021). 14 The study identified and analysed 581 published judgements from the Family Court of Australia between 2012 and 2019 which included allegations that a child was at risk of sexual harm in the care of one of their parents.

Salter et al analysed 65 final proceeding the Family Court where child sexual abuse was alleged in the context of domestic violence. The matters were heard between 1 January 2018 and 30 June 2023 (Salter et al 2025).

The Family Court Accountability Network’s Children Ignored: Closing the Magellan Gap in the FCFCOA: a Review of Child Sexual Abuse Outcomes in Family Court (2023–2025) identified and analysed 20 matters managed via the Magellan list between 2023 and 2025 where child sexual abuse was alleged (Family Court Accountability Network 2025).

Webb et al and Salter et al analysed cases before the most recent changes to the Family Law Act, and the Family Court Accountability Network considered cases heard subsequent to those changes. 15

14 For critique of Webb et al’s methodology see Parkinson, P. (2021). For their response to that critique, see Webb, N. et al (2022)

15 Salter et al’s analysis included a small number of cases in the first month of legislative change i.e. before changes to practice could reasonably be expected.

Allegations of child sexual abuse: an empirical analysis of published judgements from the Family Court of Australia 2012 – 2019

Of the 581 matters identified and analysed by Webb et al., 71 were uncontested and in a further 70 the allegations were withdrawn before the trial. In the remaining 380 cases the allegations were considered at trial i.e. were fully contested.

¹⁶ Of these:

- in 14% of cases judicial officers expressed a direct or clearly implied belief that the allegations of child sexual abuse were true
- risk of sexual harm to a child was found in 12% of judgements
- when no risk of sexual harm was found, judges were more than twice as likely to regard the allegations as genuine but mistaken rather than to have been deliberately misleading
- just under two-thirds of allegedly unsafe parents had the time they spent with their child(ren) increased by the court
- in 17% of judgements, children's living arrangements were changed to the allegedly unsafe parent (Webb et al. 2021).

Webb et al. note that their findings are broadly in line with those reported by Ferguson et al. (2018) in Australia and by Meier (2021) in the United States.

The findings relate to matters considered by the Family Court prior to its merger with the Federal Circuit Court in 2021, prior to the most recent changes to the Family Law Act, and prior to clarification that a finding of unacceptable risk does not require a finding that child sexual abuse occurred (Isles & Nelissen [2022] FedCFamC1A 97; accessed April 2025). This analysis is of matters where judgements relied on the previous definition of the best interests of the child which included the presumption of the value of equal shared parental responsibility. This may have influenced judgements on the balance between safety and contact, and on findings of unacceptable risk.

Improving legal, policy and practice responses to the intersection of domestic violence perpetration and child sexual abuse offending (2025)

Family Law case analysis was part of a broader project seeking to understand the co-occurrence, system response, practitioner observation and survivor experience where child sexual abuse and domestic abuse are alleged to have been perpetrated by the same person within the same family. Key findings relevant to our research are as follows:

- of the 65 cases, in only 10 had the allegations of child sexual abuse been substantiated by police or child protection
- only 16 of the cases were managed on the Magellan List
- where an Independent Children's Lawyer was appointed, they were much more likely to support the position of the parent against whom allegations had been made than the position of the parent making the allegation
- the Court's findings usually align with the position taken by the Independent Children's Lawyer, meaning that *the most common outcome for child residence was for the children to reside with the parent against whom child sexual abuse and domestic violence was alleged, following the ICL's support of that same parent (60.3%, n=38)* (Salter et al, 2025).

Practitioner interviews noted that mothers continued to be advised not to report allegations of child sexual abuse to avoid the risk of contact and/or residence being awarded to the alleged perpetrator. Interviews also included the observation that alleged perpetrators of domestic and/or child sexual abuse often groom services as well as victims:

Abusers also manipulate professionals. They may be charming, polite, calm, and pleasant to judges, police, and child protection workers. Manipulating family consultants, legal services, mental health services, schools, alcohol and other drug services, and family violence services can result in positive reports that cast doubt on abuse allegations and plant concerns about mothers as crazy, unfit, or overprotective (ibid).

¹⁶ By contrast, in uncontested hearings, judges expressed belief in the allegations of child sexual abuse in 73% of judgements and found risk of sexual harm in 65% of judgements.

Practitioners note that the Court that there is a very high bar for sole custody to the alleging parent or supervised contact with the parent against whom allegation have been made, observing the necessity in the eyes of the Court that *the sexual abuse is clearly proven*.

Children Ignored: Closing the Magellan Gap in the FCFCOA: a Review of Child Sexual Abuse Outcomes in Family Court (2023–2025)

Children Ignored analysed 20 final judgements delivered between March 2023 and May 2025 on the Magellan List. (Family Court Accountability Network 2025) Mothers who had been parties in these matters were contacted via survivor networks, and a number participated in anonymised interviews, sharing their lived experience of the Magellan process. Of the 20 matters analysed, all allegations were made against fathers, and:

- sole parental responsibility was allocated to the father in 14 matters
- fathers retained supervised or unsupervised contact in 17 matters
- 13 mothers had their contact reduced, suspended or supervised after making allegations
- in 16 of the 20 cases, the Court did not believe allegations of child sexual abuse
- in 4 of the 20 cases, risk of harm was accepted, and contact was denied or supervised
- in 15 cases, children's disclosures of sexual abuse were dismissed, reframed or minimised
- in 8 matters, mothers were found to have alienated their child from the father.

The review found that allegations were accepted as valid in three circumstances: where there was a criminal conviction; where there was corroborated clinical evidence; and where there was crisis-level child behaviour (e.g. suicide attempts).¹⁷ The authors contrast their findings with the evidence on the rarity of false or coached allegations and conclude that there is a gap between the evidence and the operation of the Magellan List. They argue further that considering risk of harm separately to findings of abuse is inconsistent, and that Magellan prioritises speed and efficiency over the protection of children:

protective outcomes are the exception, not the rule. In the overwhelming majority of cases ... even where children disclosed harm or risk, the allegations were dismissed as implausible or treated as malicious.

The findings relate to matters considered by the Family Court following its merger with the Federal Circuit Court in 2021, the most recent changes to the Family Law Act, and the judgement on unacceptable risk in *Isles vs Nelissen*. This analysis is of matters adjudicated within the revised definition of the best interests of the child which removed the presumption of the value of equal shared parental responsibility, and where it has been made clear that judgements on risk do not require judgement that child sexual abuse has occurred. Accepting that this study has a small sample, the findings do not indicate any change in the Court's response to child sexual abuse.

Parental Alienation

Death, Ferguson and Burgess explain that parental alienation is said to occur when a parent deliberately acts to disrupt and prevent a child's ongoing relationship with the other parent. They argue:

Parental alienation is predominantly used as a defence to claims of child sexual abuse and is founded on the discourse of the innocent child, malleable and lacking the ability to know what is best for them (Death, Ferguson & Burgess 2019).

The Family Court Accountability Network note that parental alienation was found in eight of the twenty cases analysed (Family Court Accountability Network 2025).

Webb et al. did not code for allegations of, or reference to, parental alienation, but note that their findings are broadly in line with Ferguson's findings on parental alienation i.e.:

- in 25% of matters judicial officers concluded that the allegations of child sexual abuse were deliberately misleading; and
- restraining orders or warnings were directed toward the allegedly protective parent in 25% of the fully contested hearings (Webb et al. 2021).

¹⁷ There was also one matter where the Judge determined that child sexual abuse had occurred. This was where the Judge also considered coercive control and gaslighting to be present, and to family violence.

Webb et al. (2021) note:

The most common restraining order was one that prohibited the parent who made child abuse allegations from taking a child to sexual abuse counselling. Another common restraining order prohibited any further allegations of this nature being made except to the Family Court or the Independent Children's Lawyer. In some cases, the allegedly protective parent was warned that any further making of such allegations would result in having her or his children removed.

Expert Advisory Group member Kerri Collins told us that in her experience, when orders prohibiting counselling are encountered it is devastating for the protective parent and so detrimental for the child.

Parental alienation is further explored in our summary of the contemporary evidence, discussion of key themes arising from interviews, and as observations as researchers.

Decision Making in Cases involving Child Sexual Abuse

The core decision facing the Court when there are allegations of sexual abuse against a parent who is seeking custody or contact is whether contact will pose a level of risk to the child which is unacceptable. The standard of proof, as in all civil matters, is the balance of probabilities.

In making decisions on balance of probabilities, the Court relies on the Briginshaw Principle, which derives from remarks made by Justice Dixon in the High Court of Australia in 1938:

Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency

(<https://www.austlii.edu.au/au/cases/cth/HCA/1938/34.pdf>; accessed March 2025). 18

Briginshaw continues to apply today. For example, in *Murphy v Curtis* in 2016 Justice Faulks noted that in order to properly find that the father sexually abused the child I must feel an actual persuasion that the sexual abuse occurred (Webb et al. 2022).

Briginshaw is frequently interpreted to mean that a stronger standard of proof is necessary to support a judicial finding where there are serious allegations, including child sexual abuse:

put simply...Briginshaw should be seen as not as a standard of proof, but as a standard of satisfaction. That is to say, that the more serious the allegation, the more serious or anxious should be the consideration given by the decision maker that he or she has attained the necessary state of reasonable satisfaction or persuasion that the facts in dispute are more likely than not to exist (Pepper 2013).

¹⁸ The High Court was hearing an appeal against the judgement made in the Supreme Court in the matter of *Briginshaw v Briginshaw*. The matter at issue was the Supreme Court's finding that Mr Briginshaw's allegations of adultery by Mrs Briginshaw were not proved beyond reasonable doubt. Mr Briginshaw argued that the appropriate standard was balance of probabilities. This judgement is seen as establishing clearly that this is in fact the case. The judgement can be found at <https://www.austlii.edu.au/au/cases/cth/HCA/1938/34.pdf>

Until 2022, a decision that contact with a parent poses an unacceptable risk to a child required the Court to conclude that the alleged sexual abuse had occurred. In that year, the Appellate Division of the Court upheld a decision by the trial judge that unsupervised contact with their father exposed the children to unacceptable risk of harm, concluding:

In cases where allegations of child sexual abuse are made, it is incorrect to deal with the risk of the abuse being proven on the balance of probabilities, in the same way as facts are proven. The appellate court agreed with comments made by the trial judge that "the evidentiary fact-finding exercise is conducted to the standard of on the balance of probabilities pursuant to s140 of the Evidence Act whereas the predictive consideration of unacceptable risk, not being limited to findings of past fact, looks more to "possibilities" (Isles & Nelissen [2022] FedCFamC1A 97; accessed April 2025).

This judgement confirms that the correct test to determine whether children face unacceptable risk of harm is the possibility of a child being harmed in the future and whether that possibility amounts to an unacceptable risk. This determination can be made, as it was in this case, without a finding of positive fact that child sexual abuse occurred (Ragozzino & Zhou 2022).

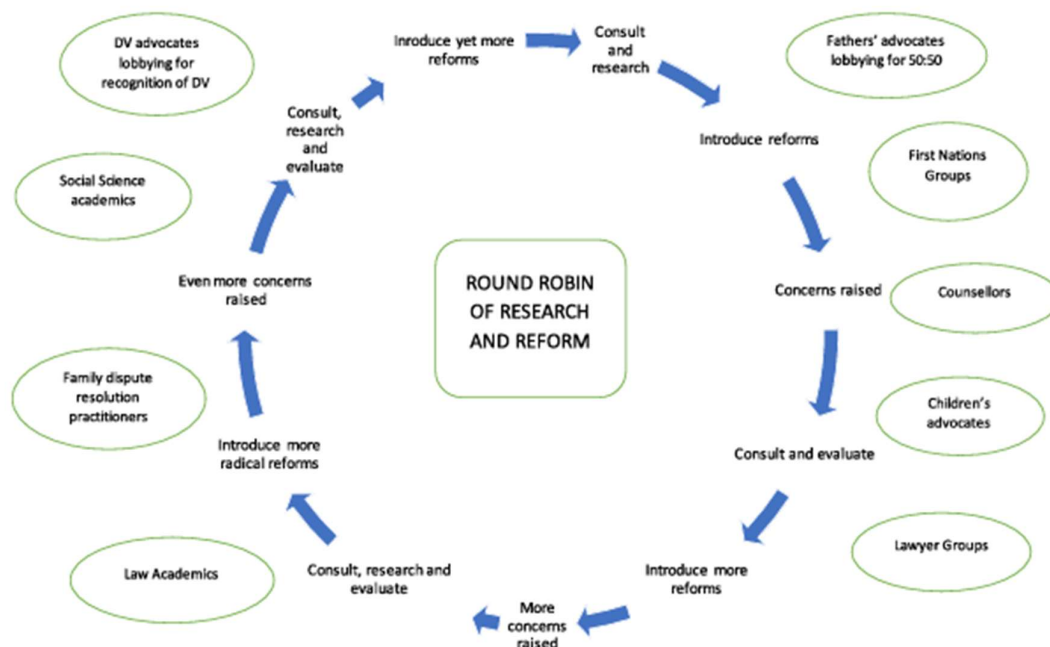
Criticism and Reform

The Family Court has been subject to serious and sustained criticism since its inception in 1975. There are a wide range of activist groups who hold similar concerns about the operation of family law in the US, the UK and Australia. In Australia, the Family Court Accountability Network argues that the Family Court causes systemic harm to survivors of family, domestic and sexual violence, and should be replaced with survivor-led alternatives ([About - Family Court Accountability Network \(FCAN\)](#); accessed November 2025). FCAN are currently undertaking a survey of the lived experience of the Family Court, including parents, carers and professionals ([National Family Court Survey - FCAN](#); accessed February 2026)

The Court has also undertaken - and been subjected to - continuous reform. As noted above, the Family Law Act has been revised 130 times. There have also been numerous inquiries, with the most recent noting that "inquiry fatigue" existed amongst those working in the sector (Standing Committee on Social Policy and Legal Affairs 2025).

It is beyond the scope of our research to review all critique or all reform, other than to note Rathus' astute observation that the Family Court is subject to a Round Robin of Research and Reform *i.e. a never-ending circle of expressed concerns, research, reform, and continued concerns* (Rathus 2018 & 2025).

Figure 3: The Round Robin of Research and Reform



We have chosen to focus on comments made by the recent Expert Panel on the prevention of gender-based violence (Rapid Review of Prevention Approaches 2024), and the three criticisms of the Family Court most relevant to its response to matters including allegations of child sexual abuse: that the Court takes a narrow perspective on the concept of parental alienation; that it over-relies on the presumed expertise of Family Consultants; and that it denies children a direct voice.

Prevention and the Family Court

In 2024 National Cabinet commissioned a rapid review of evidence-based approaches to prevent gender-based violence (Rapid Review of Prevention Approaches 2024). The Panel commented on family law and made recommendations in relation to the Family Court. These are set out below.

Table 5: Unlocking the Prevention Potential in the Family Court

Unlocking the Prevention Potential in the Family Court
The Expert Panel noted: <i>Evidence has long shown how the adversarial family law system can cause acute ongoing trauma for children...(which is)...a well-recognised source of systems abuse ... in which perpetrators attempt to drain the resources of victims and survivors through protracted and incessant legal proceedings; insisting on care arrangements which are unsafe and do not reflect the wishes of a child and, as research indicates, undermining the mother-child bond by coaching children to view their mother in a negative light.</i> The Panel recommended: • <i>immediate audits of the weaponisation of government systems by perpetrators of domestic and family violence, including the family law system</i> • <i>upskilling Independent Children's Lawyers</i> • <i>urgent legal assistance for victims and survivors</i> • <i>programmatic responses which maintain and repair a relationship with the protective parent</i> • <i>supporting families to resolve matters outside the Court's harmful adversarial processes.</i>

(Rapid Review of Prevention Approaches 2024)

The systems abuse audit has begun, with an initial focus on the child support, social security and tax systems, while not being limited to these systems.¹⁹

Parental Alienation: a narrow view

A complex issue from the social sciences can become a 'simple truth' in law (Rathus 2018).

The most common criticism of the Court's response to matters including child sexual abuse is the perspective it appears to have adopted on the concept of parental alienation i.e. understanding it as a form of psychological abuse and being unaware of, or dismissing, the alternative perspective that allegations of parental alienation are one form of deflection and denial of allegations or disclosures of child sexual abuse.²⁰

Brainwashing in Custody Cases: the Parental Alienation Syndrome, the first of many subsequent articles on parental alienation in Australian law journals, was published in 1989 and presented at the National Family Court Conference in 1990. Its core argument was that alienation is more likely than abuse (Byrne 1989). Rathus argues that the concept of parental alienation as a diagnosable psychiatric syndrome was accepted uncritically in the Family Court until it was scientifically discredited in 2005, but that the broader concept of parental alienation as a type of psychological harm continues to be influential. She argues:

Taken together, the contradictory narratives of meaningful contact with both parents being in the best interests of children after separation, and the requirement to protect children from the range of expressions of family violence have led to the mobilisation of the concept of parental alienation against mothers. Mothers who allege abuse are transformed from victims and survivors of family violence into perpetrators of the abuse of parental alienation (Rathus 2020).

¹⁹ See Office for Women systems abuse project: OFW-SystemsAbuse@pmc.gov.au.

²⁰ Criticisms are cited in the text below, and where we consider parental alienation.

Rathus argues that critique of the view that parental alienation is most usually a type of psychological abuse have been largely dismissed, and mothers are frequently advised by their own lawyers not to raise allegations of child sexual abuse or seek 'no contact' orders to avoid the risk that they are reframed as an alienating parent (Rathus 2025). Reunification camps have spread from the US to Australia, and the data that exists suggests that both scepticism and orders for participation are to be found in the Family Court (Rathus 2025). Barnett argues that a *PA industry* of lawyers, therapists and experts has developed (Barnett 2020), and that when parental alienation is raised in a case, it has the potential to dominate to the exclusion of all else (Barnett 2018).

Nelson argues that:

Gender stereotypes flourish in legal culture, including the myth that violence towards a mother "doesn't make him a bad father." Paternalistic - indeed, patriarchal - logic is frequently reproduced in judicial decisions that characterise children as unreliable fantasists who make up stories about domestic or sexual abuse for "no reason," or else because they have been "schooled," "coached" or "influenced" by a parent. A persistent form of this narrative that is routinely employed by lawyers, and taken up with alarming alacrity by judges, describes a "malleable" child who "fabricates" allegations because they have been "alienated" by a parent who is "vengeful," "deceitful" and "manipulative" ... These narratives are also underpinned by the pervasive view that it is nearly always better to have contact with a dangerous parent, if some kind of protection can be put in place to defray the associated risks (Nelson 2022).²¹

Death, Ferguson and Burgess tested the argument that parental alienation understood as psychological abuse continues to be influential in their 2019 analysis of the 357 full text judgements of Family Court matters between 2010 and 2015 which included allegations of child sexual abuse. They found:

- 44 judgements referred to parental alienation, almost exclusively describing mothers or maternal grandmothers seeking to cease contact between children and their father
- 118 judgements referred to coaching, 112 of which alleged coaching by the mother or maternal grandmother
- in some cases, the Court was critical of the allegation, but in general mothers who made allegations of child sexual abuse were likely to be seen as either directly coaching or indirectly influencing the child (Death, Ferguson & Burgess 2019).

While the judgements considered unacceptable risk of both child sexual abuse and psychological abuse because of alienation, the authors argue that the challenges in substantiating child sexual abuse led to a stronger consideration of alienation:

Allegations of alienation and coaching in this study did not face the same rigour as allegations of CSA but appeared to be a readily accepted alternative explanation for disclosure of child sexual abuse (Death, Ferguson & Burgess 2019).

However, alienation resulted in reallocation of parental responsibility from the mother to the father in only six cases, a significantly lower proportion than in other jurisdictions. The Court in Australia took account of the trauma of forced contact, even where it considered that alienation had occurred:

There is genuine effort by the Court to acknowledging that ongoing trauma to the child through parental conflict may not be overcome, and parental rights should not be considered above the best interests of the child, even where alienation is considered to have occurred. This is very different to other jurisdictions, particularly the USA, where alienation is often considered the ultimate form of harm to children (Death, Ferguson & Burgess 2019).

The authors conclude that that despite acceptance by the Court that Parental Alienation Syndrome has been academically and clinically discredited, concepts related to parental alienation continue to be deployed in highly gendered ways, diverting attention from risk to children. Early assessments of the Magellan initiative suggest that parental alienation concepts also exert an influence on the specialist case management of child sexual abuse matters:

Research suggested that there was a culture of scepticism within the court; substantiations of allegations of child sexual abuse were rare; mothers were characterised as vengeful, delusional; and mothers and children were chastised for continuing to raise concerns about sexual abuse (Death, Ferguson & Burgess 2019).

²¹ In making this argument Nelson refers to Rathus (2020) and Rhoades (2002).
I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts

The Safe and Together Institute has now trained all Family Court Judges, Registrars, Court Child Experts and Indigenous Family Liaison Officers in their Safe and Together Model which argues for a pivot towards perpetrators, focusing on their patterns of violence and control, rather than on the perceived failure to protect by the adult victim.²² From this perspective, allegations of parental alienation are most commonly perpetrator attempts to manipulate systems, and the staff working in them, using grooming tactics (Mandel 2024). CEO of Safe and Together David Mandel identifies critical issues when considering allegations of parental alienation where there is domestic abuse:

When I talk about the myth of parental alienation ... if you accept it exists, it's a diagnosis of last resort and has a really high bar. It requires a prior positive relationship between the parent who says they're being alienated and the child, and it also requires that the (child's) desire for limiting contact is unreasonable and unjustified. As soon as you enter into the idea that domestic violence may be suspected, then the requirement is to vet fully and thoroughly and understand that even the accusation of being alienated could be part of (the perpetrator's) pattern (Davoren 2024a).

The argument that claims of parental alienation are a common form of systems abuse in the family law system was raised in both the Parliamentary Inquiry into Family Violence Orders, and the Rapid Review of Prevention Initiatives (Standing Committee on Social Policy and Legal Affairs 2025; Rapid Review of Prevention Approaches 2024). The Family Court is one site of the audit of systems abuse being carried out by the Commonwealth Office for Women (Office for Women 2024). It remains to be seen whether these actions will encourage a broader view of the concept of parental alienation in the Family Court. In our view, developing a broader view of parental alienation which understands it as a highly contested concept with both dominant (psychological abuse) and counter (deflection and denial) definitions is critical.

We explore these issues further in Chapter 3: The Evidence Base.

Expert Witnesses

Family Consultants, also known as Family Report Writers, and Independent Children's Lawyers (ICLs) have the status of expert witness in the Family Court.

There have been enduring concerns about the competence of Family Consultants to provide expert opinion on both family violence and child sexual abuse in Family Reports. The Parliamentary Inquiry into Family Law in 2017 recommended that the Courts abolish private family consultants *and introduce a national accreditation system with minimum standards and ongoing professional development for family consultants* (Standing Committee on Social Policy and Legal Affairs 2017).

The Australian Law Reform Commission recommended introducing mandatory accreditation for Family Consultants and making public information on their qualifications and experience. The Commission found that psychiatrists and psychologists in private practice who provide family reports played a crucial role in legal cases, but that there was no effective way of holding them to account if they failed to meet professional guidelines set by the court because these standards are not binding or enforceable, and there is no formal accreditation *or monitoring process for compliance in place* (Australian Law Reform Commission 2019; Robertson, Clark & Davoren 2019).

The Attorney-General responded by introducing into legislation a new power to *make regulations that set standards and requirements to be met by family report writers*; noting that this could be implemented via an accreditation scheme, or via another oversight mechanism, with the decision on approach to be confirmed (<https://consultations.ag.gov.au/family-law-amendment-bill/> accessed April 2025). A Consultation Paper seeking views was published in 2021, and a Summary of Submissions was published in 2023 (Attorney-General's Department 2021 & 2023). Rathus researched the perspectives of Family Consultant themselves (Rathus 2021). The key points from each of these sources are set out in Tables 6, 7 and 8.

²² The Safe & Together Model

Table 6: Concerns summarised in the Attorney General's Consultation Paper 2021

Concerns summarised in the Attorney General's Consultation Paper 2021
• Some family report writers have an insufficient understanding of family violence, child abuse and the impact of trauma. • Some reports do not adequately address allegations of violence or minimise allegations and concerns. • Conscious and unconscious bias. • Some assessments and recommendations are beyond the scope of the family report writer's competency and qualifications. • Some family report writers do not appropriately engage with or listen to children and do not accurately represent their views. • Family report writers do not do enough evidence gathering from third parties. • Some family reports are too general in nature and lack focus on specific issues raised in the proceedings such as family violence or child abuse.

(Attorney-General's Department 2021)

Table 7: Submissions made to the Attorney General's Consultation, reported in 2023.

Submissions made to the Attorney General's Consultation 2023
Submissions demonstrated a strong appetite for reform. Most submissions supported: • a legal definition of family report and family report writers, including either qualifications or competencies • mandatory content for family reports, mandatory core competencies for family report writers, and mandatory continuing professional development • suitability screening including working with children checks, criminal history checks, and fit and proper person assessment • quality assurance, via audits, peer review and dual report writers • information being available on qualifications, skills and experience, training, areas of expertise, professional or industry memberships, and whether there have been any findings of misconduct • amending the Family Law Act to allow names of report writers to be published • improved avenues to investigate complaints. Training was identified as the primary route to improvement, with gaps identified primarily in trauma, family and domestic violence, and coercive control. (Child sexual abuse was also identified as a training gap.) A range of views were expressed on the implementation of reform, with an external entity, a standalone regulatory body and the Court itself the most common suggestions. Views were also expressed on the methodology used in reports. Many stakeholders argued improvements to the competency or accountability of family report writers is not sufficient to deliver the change which is required, particularly in relation to the Court's perception of, and response to, family violence.

(Attorney-General's Department 2023)

Table 8: Concerns expressed by Family Report Writers

Concerns expressed by Family Report Writers
• report writers felt pressure to craft recommendations to align with the pro-contact and co-parenting culture of the Court: <i>to give the Court what it wants</i> • the quality and efficiency of training • access to resources, particularly continuing professional development • professional isolation, particularly for private practitioners: <i>at the court, you've got a whole floor of people who do the same work as you and understand</i> • the efficacy of the report writing process: <i>it's a snapshot, parents are typically on their best behaviour; I would like more time to think, and I would like to interview more people ... for that amount of money, you can't provide a really comprehensive report</i> • divergence of views on Family and Domestic Violence within the family law sector

(Rathus 2021)

Brown and Death argue that the widespread awareness of the concept of parental alienation among Family Court personnel, in combination with its promulgation in the media and legal community, means that *acceptance of PA as the status quo must be impacting report writing and therefore outcomes for abused children ...Family Consultants will consider a child's allegations of abuse within the prism of PA. Before a child's view is even ascertained there is an underlying bias* (Brown & Death 2025).

Nelson argues that, as currently constituted, Family Reports are primarily intended as a forensic tool to test the veracity of the parents' *evidentiary claims, not to discover what the child thinks or how the child constructs their experience - or, indeed, what the child needs* (Nelson 2022).

Rathus argues that Family Report writers experience contradictory pressures. On the one hand, they are considered to be the experts in assessing future parenting arrangements. On the other, they are strongly influenced by what they perceive to be the expectations of the Court:

They are the only expert and have come to feel that they must be neutral, and that neutrality means not talking about past violence (Rathus 2025).

While criticism has focused more on Family Consultants than Independent Children's Lawyers (ICLs), there are both overlapping and additional concerns about ICLs:

- research into children's experience of engagement with Family Consultants and ICLs concludes that children find that engagement *intimidating, insensitive, age-inappropriate and hostile* (Carson et al. 2019; Nelson 2022)
- the Australian Law Reform Commission describes the refusal of some ICLs to meet with school-age children in person or hear views directly as indicative of a failure to adequately consider children's voices (Australian Law Reform Commission 2019) ²³
- ICLs rarely explain to children why they have reached a decision about their best interests, resulting in children feeling betrayed (Kaspiew et al. 2014; Carson 2014; Ross 2012).

Fernando argues that the available research suggests that children are unclear about, and dissatisfied with, their views being represented by Family Consultants and Independent Children's Lawyers. Children have expressed concerns about lack of confidentiality, their views being misunderstood or distorted by the report writer, their views not being taken seriously, and the use of trick questions. Children are bemused by the ICL advocating for their best interests rather than advocating for them and often feel marginalised as a result (Fernando 2013).

²³ As noted above, ICLs must now meet with children over five, unless there are exceptional circumstances.
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In our view, taking the breadth of concerns together - the depth of training gaps identified, the absence of guidance or standards and inconsistency of focus or methodology - means that the current system of substitute decision-making is inadequate to the task of advising Judges on whether child sexual abuse occurred and whether unacceptable risk exists. We explore our argument further in Chapter 6, where we contrast the approach taken by Family Court report writers with the integrated investigative and protective approach taken in child protection.

Children's Voice

Nelson argues that legal traditions are built on a cultural assumption that children are unable to articulate their own interests ... (and are) ... *vulnerable beings with inadequate cognition and erroneous opinions about the world* (Nelson 2022). Similarly, Brown and Death argue that the concept of the voiceless child ... who doesn't know their own mind has a long history and continued influence. Despite Article 12 of the UN Charter on the Rights of the Child establishing the right for children to express their views in matters which affect them, in practice adults continue to be the arbiters, interpreters, curators, and creators of discourses of childhood and abuse (Brown & Death 2025).

Noting that in recent decades, public awareness and acceptance of the frequency of child abuse, including child sexual abuse has grown, Brown and Death comment:

While there is an acceptance of the existence of abuse, the social discourse remains, children are not to be trusted about claims of abuse. Rather, the prevailing narrative is that children are vulnerable, easily manipulated, lack the capacity to recognise abuse directed at them, will lie about abuse, and are unable to adequately articulate their experiences, needs and hopes (Brown & Death 2025).²⁴

Brown and Death argue that these views are replicated in the Family Court's approach to parenting matters, leaving children feeling powerless, disbelieved, deliberately ignored and kept uniformed (Brown & Death 2025).

Research on children and young people's views about their involvement in Family Court consistently finds that while children and young people generally do not want to make decisions, they do want a greater voice. Being heard equates to feeling respected and valued, being respected and valued leads to a greater sense of control, and a greater sense of control promotes children and young people's psychological and physical health (Fernando 2013).

Carson et al. explored the experiences of children and young people from separated families in the Family Court (Carson et al. 2018). They found that most children and young people were dissatisfied with their involvement in decision-making about parenting arrangements and thought that the decision-making process had not been adequately explained to them. The key recommendation made by children and young people was to give children a bigger voice, more of the time. Carson et al. argue that a child-inclusive approach would involve children and young people being involved, informed and accurately heard. A child-inclusive approach should also include access to therapeutic support and the flexibility to respond to changes in parenting arrangements.

Graham and Cashmore surveyed the views of children accessing Independent Children's Lawyers via NSW Legal Aid (Graham & Cashmore 2018). What mattered most to children and young people was:

- being able to understand the role of the ICL, be able to trust them, and know who the ICL will talk to about their views
- being listened to, and being heard
- being able to talk to the ICL when they need to, and being able to ask the ICL what they are allowed to say in Court.

They argue that it is now accepted that children have legitimate views and important things to say about what matters to them. Children want their views to be heard, but most children do not want to take responsibility for decisions, or to upset their parents. Against this background:

Children are likely to be unsure about talking to a lawyer and what they should and should not say. They may be concerned about the repercussions, and even their safety, if they go against a parent's claims. This can mean that children may not share information that could help determine what would be in their best interests (Graham & Cashmore 2018).

²⁴ Brown & Death note Tucci and Mitchell's 2022 research which found scepticism and disbelief to be a common response of the Australian adult community to allegations of child abuse, belief that children make up stories of being abused, and lack of recognition and reporting of child abuse by adults.

Finally, Graham & Cashmore (2018) argue that giving children a voice requires changed legislation and policy and critically, changed assumptions:

legislative reform and policy change won't make a difference while we carry assumptions that children can't or shouldn't contribute meaningfully to post-separation decisions.

Nelson and Lumbly found that the adversarial culture of the court and associated legal institutions work to marginalise children, and can profoundly silence them, including when children express safety concerns (Nelson & Lumbly 2021). Building on this earlier research, Nelson interviewed seven adults whose parents had been involved in Family Court between 1990 and 2010. All were victims and survivors of family violence, and two were also victims and survivors of child sexual abuse (Nelson 2022). In relation to voice, she found essentially the same experience as had Carson, Graham and Cashmore. Nelson (2022) argues that for her research participants:

The common theme in every instance is the hostile situation in which adult actors do not offer a safe space in which children can freely speak, do not listen carefully when children attempt to speak, frequently limit children's access to important information that affects their circumstances, or else ignore, discredit, or silence children.

In common with Carson, Graham and Cashmore, Nelson found that where ICLs met with children, their experience was better, with one of her participants reporting that her ICL appeared to accept that Mei was a competent witness to her own life and experience and had a right to an age-appropriate measure of decisional autonomy. This experience, she argues, is rare (Nelson 2022).

Children are rarely given the opportunity to speak directly to a judge, despite most children considering that they should have this option. Fernando interviewed four Family Court Judges and surveyed all Judges for her Australian Institute of Family Studies article, Children's Direct Participation and the View of Australian Judges (Fernando 2013).

While many of the Australia judges in Fernando's study identified similar benefits from direct meetings with children, few had met with children, and few intended to do so in future. Most believed that they did not have the skills or training to meet with children and interpret their views. Almost all believed that judicial meetings would lead to parents pressuring or manipulating children to express views which supported the parent's application. However, this overall consistency of views included sharp differences of perspective:

I'm a strong supporter ... of the participation of children in proceedings affecting their interests, and as part of that the idea of judicial interviews with children ... Even ... that brief exposure ... where I did (speak with a child) had an impact on me, that I had the opportunity to see and speak to the children about whom I was making a very important decision. (Stephen O'Ryan, former Family Court judge, Radio National Law Report, 26 June 2012)

If the family consultant is going to be there anyway ... then you may as well have the family consultant do it and tell you what happened rather than be involved in the process ... If all I am doing is seeing the child and knowing what their face looks like, I don't need to do that. (Judge D, Family Court judge, in interview with the author, 2009)

Judges in some other jurisdictions ²⁵ have identified benefits to direct meetings with children in family law proceedings:

- hearing the direct evidence of the child without a filter
- forming a picture of the child as a unique individual
- recognition of the right of the child to be heard
- the opportunity to explain decisions directly to the child.
- allowing children to feel valued and respected
- allowing the judge to discover matters which are important to the child (Fernando 2013).

We unpack in detail our participants experience of being silenced in Chapter 4 below. They strongly support the right of children to have a direct voice in the Family Court but also note the disincentive of knowing that anything they say will be shared with their parents. In our view, the voice of child victims and survivors of sexual abuse will not be fully heard in the absence of confidentiality. Their voice will also not be fully heard in the absence of an understanding of how children disclose, and the pressures on them not to disclose.

We return to this argument in our final chapter.

²⁵ New Zealand and Scotland
I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts

Chapter 3 The Evidence Base

The evidence bases on child sexual abuse, domestic abuse, complex trauma and children's agency are continually expanding and deepening. In this chapter, we summarise the contemporary evidence and state of knowledge around three key bodies of knowledge: child sexual abuse; complex and continuous trauma; and domestic abuse.²⁶ The definitions which shaped our research are as follows. Child sexual abuse is *any act that exposes a person aged under 18 to, or involves them in, sexual activities that: they do not understand: they do not or cannot consent to; are not accepted by the community; are unlawful* (Commonwealth of Australia National Office for Child Safety 2021). Complex trauma occurs as a result of repeated traumatic experiences; most commonly abuse in childhood. (Blue Knot Foundation). Continuous trauma, a significantly less well-known concept, is trauma occurring from traumatic events which are not confined to the past but continue into the present (Kaminer et al. 2013). We use the term domestic abuse, rather than domestic violence, to signal our understanding that abuse is commonly both physical and non-physical. Domestic abuse is any behaviour in a domestic setting which is *violent, threatening, controlling or intended to make you feel scared and unsafe*; it includes physical, sexual, verbal, psychological, emotional, financial or spiritual abuse, coercive control, social isolation and neglect (www.healthdirect.gov.au).

In our view, fully evidence-informed decisions about custody and contact where there are allegations of child sexual abuse requires knowledge of this evidence.

Child Sexual Abuse

Prevalence

The Australian Bureau of Statistics estimates that 7.5% of adults experience sexual abuse in childhood (Australian Bureau of Statistics 2021-22).²⁷ The ABS asked participants about their first experience of child sexual abuse, and the key findings are set out in Table 9 below.

Table 9: First experiences of child sexual abuse

First Experience: Women	First Experience: Men
• 49% were aged 5 to 9 • 88% knew the perpetrator • 47% of perpetrators were family members • 84% did not report to police	• 51% were aged 10 to 14 • 82% knew the perpetrator • 32% of perpetrators were family members • 99% did not report to police

(Australian Bureau of Statistics 2021-22)

By contrast, the Australian Child Maltreatment Study (ACMS) reported that 28.5% of Australians had experienced sexual abuse in childhood, more than 1 in 3 girls, and more than 1 in 5 boys (Mathews et al. 2023). The ACMS found that child sexual abuse is almost always a repeated experience, with 78% of victims and survivors experiencing abuse more than once, 42% more than six times, and 11% more than 50 times. The study describes a massive gender disparity, with girls experiencing sexual abuse at double the rate of boys, and young women experiencing sexual abuse at 2.4 times the rate

²⁶ The evidence on children's agency has been summarised above and is also included in the summary of domestic abuse evidence.

²⁷ [Prevalence of child sexual abuse | Bravehearts](#) summarises the global evidence on prevalence. [I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts](#)

of young men.²⁸ These data suggest that the prevalence of sexual abuse by parents and parent-like adult caregivers in the home has declined, and the prevalence of sexual abuse by adolescents has increased.²⁹

Key Finding: Child sexual abuse in Australia is widespread and enduring.

Source: Mathews et al. 2023

Prevalence

As noted above, most victims know the perpetrator, a significant proportion of perpetrators are family members, and the proportion of perpetrators who are adolescents is increasing. The National Office for Child Safety argues that while perpetrators do not fit neatly into discrete categories, research demonstrates three broad categories of offender. These are set out in Table 10 below.

Table 10: Broad categories of child sexual abuse offenders

Fixed, Persistent Perpetrators	Opportunistic Perpetrators	Situational Perpetrators
• long-term sexual attraction to children/young people • repeat and life-long offenders • more likely to have a paedophilic interest in children/young people • less likely to have age-appropriate sexual relationships • most perpetrators do not fall in this category	• less fixated on child sexual abuse • may be involved in other crimes • sexually attracted to adults • use children/young people for sexual gratification • less likely to deliberately create situations where they can abuse, instead doing so when they see an opportunity • less likely to use grooming strategies	• do not have a sexual preference for children/young people • perpetrate in response to events in their own lives: social isolation; lack of positive adult relationships; low self-esteem • the decision to sexually abuse is impacted by adverse experiences, relationship issues, and distorted beliefs • trigger factors include severe stress, substance abuse, mental health issues

(National Office for Child Safety 2025)

Earlier research by Laning for the National Centre for Missing and Exploited Children suggests that typologies should not be viewed as mutually exclusive, but as existing on a continuum (Laning 2010). Carol Ronken, one of our Expert Advisory Panel members, told us that from either perspective, acknowledging motivational differences plays a critical role in understanding risk.

While there are differences, there is also one key common characteristic across perpetrator types. Critically, men are significantly more likely than women to commit sexual abuse, e.g., the Royal Commission into Institutional Child Sexual Abuse found that 93.9% of institutional child sexual abuse was perpetrated by an adult man (Royal Commission into Institutional Responses to Child Sexual Abuse 2017. The Australian Institute of Criminology reports that 93% of sex offenders are male ([Sexual offending in Australia 2021–22](#); accessed March 2025).

²⁸ Sexual abuse here includes either contact sexual abuse, non-contact sexual abuse or and forced sex.

²⁹ Matthews et al argue that lower reports of physical and sexual abuse by respondents aged 16-24 than respondents aged 25-34 suggest declines in prevalence.

The University of New South Wales (UNSW) explored child sexual offending behaviours and sexual feelings towards children in a random sample of Australian men, finding:

- 80.4% reported no sexual feelings and no offending
- 10.2% reported sexual feelings but no offending
- 4.5% reported no sexual feelings but sexual offending
- 4.9% reported both sexual feelings and sexual offending (Salter et al. 2023).

Key Finding: Most perpetrators of child sexual abuse are male family members. Nearly 1 in 10 Australian men self-report child sexual offending.

Sources: Australian Institute of Criminology 2021-2022; Salter et al. 2023

Reporting

All Australian States and Territories have Mandatory Reporting laws which require reporting of known or suspected child abuse to government authorities by specific groups of adults, usually those that work with children. Adults who are not mandatory reporters can make a voluntary report. Criminal law in the ACT, NSW, Queensland, Tasmania and Victoria requires all adults to report child sexual abuse to Police ([Mandatory reporting of child abuse and neglect | Australian Institute of Family Studies](#); accessed March 2025).

The Australian Institute of Health and Welfare reports that in 2021-2022 police in NSW, Victoria, Queensland, Western Australia, the ACT and the Northern Territory took action against 8,326 adults for alleged sexual offences, 51% for alleged child sexual offences ([Sexual offending in Australia 2021-22](#); accessed March 2025)

In 2022 501,196 notifications of child abuse were made to statutory child protection authorities in Australia. Data on the proportion of notifications for sexual abuse is not available (<https://www.aihw.gov.au/reports/child-protection-australia/data>; accessed March 2025).

As noted above, the ABS found that only 1% of male and 14% of female victim survivors reported their experience of child sexual abuse to police (Australian Bureau of Statistics 2021-22).

Key Finding: Most child sexual abuse is not reported to authorities.

Source: Australian Bureau of Statistics 2021-22

Multi-Type Abuse

One of the key findings of the 2023 Australian Child Maltreatment Study is that most child abuse is multi-type:

Our findings suggest that not only is the true prevalence of maltreatment far higher than the proportion of cases coming to the attention of government agencies, but that for the many Australians experiencing any form of child maltreatment (62.2%), the typical experience is of multi-type maltreatment (Haslam et al. 2023).

The authors argue that understanding the reality that multi-type maltreatment is the norm is critical for prevention and intervention, particularly considering that multi-type maltreatment is associated with poorer outcomes. Where there is parental separation, mental illness, substance misuse and/or poverty, the risk of multi-type maltreatment doubles. Exposure to domestic violence is the most common type of maltreatment in Australia, and is also the most common maltreatment type present in multi-type combinations:

In families where children are exposed to domestic violence there is a much higher chance of the child experiencing other forms of maltreatment (Haslam et al. 2023).

The ACMS is the first research globally to examine combined exposure to all five domains of child maltreatment in a representative sample. Salter et al. have been commissioned by the National Centre for Action Against Child Sexual Abuse to explore the co-occurrence of domestic abuse and child sexual abuse specifically in greater depth (Salter et al., 2025). The scoping review for the study notes that co-occurrence is understudied, and that research to date focuses on three distinct cohorts and unsurprisingly reports widely varying rates of co-occurrence. The second cohort is made up of studies with people who have been subjected to domestic violence who reported that they had also been subjected

to child sexual abuse, the cohort most relevant to our research. For this cohort, the lowest prevalence of co-occurrence reported is 1%, and the highest 36.4%, with a mean of 9.8% (Olejnikova et al. 2025).³⁰

Links between domestic violence and child sexual abuse have been researched from the early 2000s in smaller scale studies (Hume 2003); Australian Institute of Family Studies 2015). Three findings from that earlier work are particularly relevant to our current research.

Hume noted in 2003:

There are legitimate and well-founded concerns about these forms of abuse occurring within the separating family ... (and) ... the current assumptions in most Australian family courts are that the children's interests are best met by maintaining ongoing relationships with both parents following a divorce. This principle perpetuates and reinforces denial of child sexual abuse and domestic violence, despite research findings that both forms of abuse coexist in the separating family and are a core component in families that come before the family court (Hume 2003).

The Australian Institute of Family Studies found in 2015:

Domestic and family violence often co-occurs with child abuse including child sexual abuse. This co-occurrence needs particular attention in policy and practice ... policy responses to children exposed to domestic and family violence are complicated by the intersecting policy jurisdictions of child protection, family law and domestic violence (Australian Institute of Family Studies 2015).

Key Finding: Child sexual abuse can co-occur with domestic abuse.

Sources: Hume (2003) Australian Institute of Family Studies (2015) Olejnikova et al. (2025)

On Different Planets

Research on the cooccurrence of child sexual abuse and domestic abuse includes commentary on why this has been an under-researched area:

- these two types of violence are typically studied and addressed separately in policy and service delivery (Salter et al. 2024)
- the review of these two types of violence has evolved in distinct research fields and their cooccurrence has rarely been examined (Bidara, Lessard & Dumont 2016)
- responses to children exposed to domestic and family violence are complicated by intersecting policy jurisdictions (Hume 2015).

Marianne Hester's Three Planet Model argues that the responses to domestic abuse by police, child protection and family violence NGOs are so distinct that they are experienced by victims as different planets (Hester 2011). Hester argues that challenges in keeping women and children who had experienced domestic violence and child abuse safe thus have systemic roots:

tensions and contradictions ... are evident in professional discourses and practices across work with victims and perpetrators of domestic violence; child protection and safeguarding; and child contact. These three areas of work are especially difficult to bring together into a cohesive and coordinated approach because they are effectively on separate 'planets' - with their own separate histories, culture, laws, and populations (sets of professionals) ... particular structures, orientations and approaches in the work of a professional group may create divides between their own everyday and common place professional assumptions and practices and those of other professional groups (University of Bristol 2009).

On the domestic violence planet, domestic violence is a criminal offence, with a focus on containment and control of the perpetrator and protection and refuge for the victim. On the child protection planet, the focus is on the welfare of the child, with the expectation that either the victim leaves the violent relationship or that the children are removed

³⁰ Overall prevalence rates range from 0.9% (Herbert et al., 2023) to 91% (Bell, 2002). The three cohorts studies included the general population, domestic abuse survivors who had also been subjected to child sexual abuse, and child sexual abuse survivors who had also been subjected to child sexual abuse. In the second cohort, Chen et al. (2023) report the lowest rate of co-occurrence (1%) and Dong (2004) reports the highest (36.4%). (Olejnikova et al. 2025)

because of her 'failure to protect'. On the child contact planet, the focus is on the best interests of the child, most often understood as requiring an ongoing relationship with both parents. Hester argues:

the mother who has tried to protect the child from his violent behaviour by calling in the police and supporting his prosecution on the domestic violence planet, and by leaving him as instructed on the child protection planet, is now ordered to allow contact between her violent partner and children, leaving her confused and fearing yet again for the safety of her children (Hester 2011).

The National Centre for Action on Child Sexual Abuse held a webinar on the interconnections between child sexual abuse and domestic abuse in November 2023 and invited Morag MacSween to join the panel and to write a blog reflecting on what the interconnections mean for practice.³¹ The blog noted three key reasons why awareness of the commonality of child sexual abuse co-occurring with domestic violence has been low:

Starting with second wave feminism, advocacy, service provision and research on domestic violence and sexual violence have developed separately and been separately funded, functioning, to borrow Marianne Hester's concept, as separate planets.

The research-practice gap is well known; in medicine it takes around 17 years for new findings to impact practice; the sheer volume of research on domestic violence, sexual violence and child development combined with the overwhelm of practice means that key findings can too easily get lost.

Our culture is deeply conflicted about child sexual abuse, with rhetoric about its horrors co-existing with systemic lack of action; the default position for far too many of us is to turn away (MacSween 2025).

In a highly promising step, Minimum Practice Standards for Specialist and Community Support Services Responding to Child Sexual Abuse released in 2023 comments on what recognition of the interconnections between child sexual abuse and other forms of maltreatment requires of professional education:

Victims and survivors of child sexual abuse need a skilled, knowledgeable and experienced workforce to support them in their journey following abuse. Working in this field is extremely complex, given the ingrained and pervasive impacts of child sexual abuse and prevalence of trauma in our community. The way this abuse intersects with health, social and adverse experiences including other forms of sexual and family violence makes working in the sector challenging. Trauma related to child sexual abuse can co-exist with other abuse-related trauma such as childhood neglect, experiences of family violence, and intergenerational trauma (Office for Child Safety 2023).

Key Finding: Child sexual abuse is an area of specialism in research, policy and practice. Addressing the co-occurrence of child sexual abuse and domestic abuse is at its earliest stages.

Sources: Hester (2009) (2011) Australian Institute of Family Studies (2015) MacSween (2025)

³¹ In Conversation webinar, 'Exploring the interchapter of family violence and child sexual abuse; Practicing at the intersection of child sexual abuse and domestic violence - The National Centre for Action on Child Sexual Abuse I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts

Impacts

The significant immediate and long-term negative impacts of child sexual abuse are well-established in the literature. The National Child Traumatic Stress Network describes the differing impacts for infants, children, young people and adults:

- Very young children might engage in traumatic play in which the child re-enacts some aspect of the experience. For example, a child may act out running away from a “bad man” over and over again. The play may or may not be specific to the sexual abuse. You might see other signs of stress, an increase in oppositional or withdrawn behavior, tantrums, or nightmares. The child might engage in age-inappropriate sexual behavior such as trying to engage another child in oral-genital contact or simulated intercourse. The child might talk about her body as being “hurt” or “dirty.”
- Older children may display a range of emotional and behavioral reactions, many of which are characteristic of children who have experienced other types of trauma. These reactions include: an increase in nightmares and/or other sleeping difficulties; withdrawn behaviour; angry outbursts; anxiety; depression; not wanting to be left alone with a particular individual(s); sexual knowledge, language, and/or behaviours that are inappropriate for the child’s age.
- As children grow into adolescence and develop more autonomy, the difficulties they can get into may be more serious. Teenagers might be more likely to abuse substances or engage in high-risk behaviours, including indiscriminate sexual behavior. A teenager avoiding traumatic reminders may withdraw socially. Self-cutting and suicidal behaviors are also more common among adolescents.
- Depending on the severity of and number of traumas experienced, child sexual abuse can have wide-reaching and long-lasting effects ... on physical and mental health, as well as later sexual adjustment. Those who have suffered multiple traumas and received little parental support may develop post-traumatic stress disorder, depression, and anxiety. Their ability to trust adults to take care of them may also be jeopardized (<https://www.nctsn.org/sexual-abuse/effects>; accessed January 2025).

The Bravehearts Foundation similarly distinguishes between immediate and long-term impacts:

Short-term impacts include increased illness, body aches or other physical complaints, poor attendance or performance at school, difficulty concentrating or memory loss, mood changes, regressive behaviours, sleeping and eating disorders, lack of self-esteem, nightmares, self-harm or suicidal thoughts, self-hatred or reduced self-esteem, disinhibited behaviour, zoning out or not listening.

Long-term impacts include suicidal ideation, post-traumatic stress, sexual difficulties, inability to form lasting relationships, identity difficulties, relationship problems, parenting difficulties, alcohol and substance misuse, the development of violent behaviour, the development of criminal behaviour.

Critically, child sexual abuse can change the way a child understands their world, the people in it and where they belong. Their understanding of themselves and the world around them can become distorted, and create feelings of mistrust, fear, and betrayal. Depending on the relationship and duration of the sexual abuse, subsequent relational trauma could affect their ability to connect with others and themselves. Their personality and behaviour might change markedly from what they were prior to the abuse. The manipulative nature of grooming that many sexual offenders use to get close to their victims can cause ongoing thought distortions, self-identity issues, relational harm and isolation of the child.

<https://bravehearts.org.au/what-are-the-effects-of-child-sexual-abuse/>; accessed January 2025)

The National Centre for Action on Child Sexual Abuse commissioned the UNSW Gendered Violence Research Network and the Blue Knot Foundation to conduct a rapid review of the evidence on interventions for adult survivors of child sexual abuse experiencing complex trauma (Breckenridge et al. 2022). In relation to the impacts of child sexual abuse, the review found:

- Child sexual abuse led to poor mental health outcomes in adulthood for victims and survivors, including depression, anxiety, self-harm, dissociation, and difficulty with emotional regulation.
- Victims and survivors of child sexual abuse who have experienced complex trauma or complex PTSD are at an increased risk of ongoing physical health issues in adulthood.
- Interpersonal impacts of child sexual abuse and complex trauma or complex PTSD included social isolation and difficulties in developing relationships. Studies also highlighted the protective value of supportive relationships and circumstances supporting disclosure in enhancing the wellbeing of victims and survivors.

- Studies identified a strong link between child sexual abuse and complex PTSD symptoms in adulthood. An increased risk of complex PTSD was associated with experiences of child sexual abuse within an institutional context or involving high degrees of betrayal.

Key Finding: Child sexual abuse has both immediate and life-long impacts.

Sources: National Child Traumatic Stress Network; Bravehearts Foundation: Breckenridge et al. (2022)

Disclosure

Disclosure is perhaps the most contentious aspect of matters before the Family Court which include allegations of child sexual abuse. In this section we summarise contemporary evidence on disclosure, present a case study of disclosure in the criminal context and explore what the evidence tells us about key issues in the Family Court: disclosure to mothers and false disclosure.

An extensive body of research has significantly advanced our understanding of disclosure of child sexual abuse. We now understand that:

- direct verbal disclosure in adulthood is more common than disclosing as a child, and some victims and survivors never tell anyone that they have been abused
- barriers to disclosure continue to outweigh facilitators, particularly where the perpetrator is someone the child loves
- whether, when, how and to whom a victim and survivor discloses is influenced by various factors, including age, developmental stage, disability status, gender and cultural or linguistic background
- most children and young people who disclose do so indirectly rather than by telling someone that they have been sexually abused; disclosure can be verbal or non-verbal, accidental or intentional, partial or complete
- children say they are trying to disclose their abuse when they show signs, drop hints or act in ways that they hope adults will notice and react to; this may be because they do not know how to articulate what has happened, or to test adult responses
- children's disclosures are not always heard or acted upon by adults
- children are more likely to directly disclose within the developmental period during which they were abused than within any other period
- where children do disclose verbally, up to the age of 14 they are most likely to tell their mother; after 14 they are most likely to tell a friend
- disclosure should be understood as a gradual and ongoing process rather than a single event; the response children and young people receive will either encourage or discourage them from continuing the process
- responses to disclosure can be helpful, but they can also be harmful
- where there is a positive response, disclosure prevents abuse continuing, holds perpetrators to account, and connects victims and survivors to support; critically, a positive response disrupts shame and self-blame and supports recovery
- most victims and survivors do not access support services; for those who do, there is usually a long delay.

Against this background, there are four key tasks for adults:

- to be attuned to the indirect ways in which children may communicate
- to directly ask children where there are reasons to be concerned
- to believe children when they disclose, offering active listening and support
- to understand that their role is to be a supportive listener, not to investigate or counsel.

(Truong, M. 2025; <https://bravehearts.org.au/disclosure-of-child-sexual-abuse/>; accessed March 2025; The National Centre for Action on Child Sexual Abuse (2024); National Office for Child Safety <https://www.childsafety.gov.au/about-child-sexual-abuse/disclosure>; accessed March 2025; Hakansson, Tucci & Mitchell 2024; Latiff et al. 2024)

The National Centre for Action on Child Sexual Abuse conducted a survey of the attitudes, knowledge and responses of Australian adults to disclosure of child sexual abuse in 2023. They found:

- it is likely that many adults miss the signs and most lack confidence to tell if a child is being sexually abused; only 1 in 5 (20%) had high confidence they could recognise the signs or behaviours when a child has been sexually abused
- if a child does tell an adult about being sexually abused, they may be met with disbelief, doubt, or be blamed; 7% think a child's word cannot be trusted over an adult's, and 18% are unsure; overall, 1 in 3 adults may disbelief disclosures
- if an adult does believe the child, many don't know how to respond - leaving the child unsupported or unprotected; only 20% had high confidence to start a conversation with a child suspected of being sexually abused, and 28% were 'not at all confident'

(National Centre for Action on Child Sexual Abuse 2023)

Key Finding: Direct verbal disclosure of child sexual abuse in childhood is not usual. Where early disclosure receives a positive response, the impact is significant in terms of immediate safety and long-term psychological and physical health.

Sources: Australian Institute of Family Studies (2025); Bravehearts Foundation; National Office for Child Safety; National Centre for Action on Child Sexual Abuse (2024)

Anthony Baker is a child psychiatrist and registered Child Expert in the UK Criminal Court. The role of the child expert is to assist police, child protection and the court on the competence of a child to give evidence, the reliability of their evidence, and the potential impact of giving evidence on them. Child experts observe video recorded evidence, interview carers and have a pre-trial discussion with the child, using structured assessment criteria. The veracity of the child's evidence is a matter for the jury; the child expert advises on factors which may influence reliability but does not give an opinion on veracity (Baker 2022).

To illustrate the complexities around disclosure of child sexual abuse, Baker shares the following anonymised case study:

A young child, known as X, gave evidence at various stages in the criminal investigation of sexual assault, including anal rape of herself by her stepfather B, which he was found (in a contested trial) to have committed when she was under 3 years of age. X disclosed the abuse to her foster carer, but in a subsequent child protection investigation said that B had not hurt her. She subsequently disclosed the abuse again in two separate paediatric appointments and was interviewed by police. During that interview, X reiterated her account of sexual molestation and clearly indicated that, among other things, B had penetrated her anus with his 'willy' and that her mother told him to stop 'but he didn't stop.' K asked her, 'What did he do?' X replied, 'Put it back.' K suggested, 'In his trousers?' X said, 'No, back in here ... gesturing with her hand to point to her bottom. My evidence ... (was) ... that X had the capacity 'to give cogent evidence of her own remembered experience'. In cross examination, X repeatedly denied that her older sister had told her to lie but was silent when asked what B had done to her.

At the Court of Appeal hearing, the judges had the opportunity to review all the evidence. In an important observation the appellate judges found that, 'Despite justified concerns about some aspects of the way in which it was conducted, the ... interview shows an utterly guileless child, too naïve and innocent for any deficiencies in her evidence to remain undiscovered, speaking in matter-of-fact terms. She was indeed a competent and compelling witness.

- Key Finding: Young children can be reliable witnesses to their own experience of sexual abuse.
- Source: Baker (2022)

Learning that your child has been sexually abused is devastating for parents. One study with ten mothers and four fathers found that parents' perception of their world had been forever altered (McElvaney & Nixon 2020). There were three key impacts:

- making meaning: why had the child not disclosed earlier, and why had they misinterpreted signals from the child
- parental identity: perceived failure to protect leading to hypervigilance and overprotectiveness
- navigating child protection and police systems and feeling *isolated and alone*.

Caregiver support after disclosure is more usually understood and measured as support from mothers. A common finding in research is that warm, *emotional support* from mothers is associated with child well-being (Elliott & Carnes 2001). This is particularly so for girls who are subjected to sexual abuse within their family. Here their mother's support can stop the ongoing abuse, eliminate its immediate effects and decrease its likely negative long-term outcome (Rakovec-Felser & Vidovič 2016).

The research paints a mixed picture of the responses children receive when they disclose sexual abuse to a parent or caregiver, with some studies finding a negative response significantly more likely. Bravehearts cites the following research:

- In a sample of callers to a US national hotline, 73% reported receiving a negative reaction to their disclosure, more commonly from non-offending family members than from friends and partners; this included distracting or distressing the victim (33%), not believing the victim (29%), and retaliating or responding violently following the disclosure (10%) (Elliott et al. 2022).
- Negative responses from non-offending caregivers have been found to be significantly less supportive when the abuser is a partner or family member (Wallis & Woodworth 2021).
- Where the non-offending parent is the mother, children are less likely to be supported where the allegations are against their partner, someone they depend on, or someone with whom they have an intimate relationship (Reitsema & Grietens 2015).

A study of young people's experiences of disclosure conducted for the UK's National Society for the Prevention of Cruelty to Children identified similar issues, and identified less supportive and more ambivalent responses where the mother and child were experiencing domestic abuse:

Given that for many of these young people, mothers were part of the problem, this outcome is unsurprising. Young people described complex and chaotic home environments in which mothers were either aware at some level that abuse was going on or they were also perpetrating some form of abuse themselves (Allnock & Miller 2013).

Analysis of the interviews categorised reactions as either positive/helpful or unsupportive. Reactions are set out in Table 11 overleaf.

Table 11: Positive and unsupportive reactions to disclosure

Positive/Helpful	Unsupportive
• immediate faith in the disclosure • taking formal protective action by reporting to the police or supporting a previously made disclosure to the police • provision of emotional and moral support through talking • accompanying the young person to counselling and/or video testimony • respecting the young person's wishes by having asked and listened to what was wanted.	• not believing the disclosures • accusations of lying or "attention seeking" • simply not talking to the participant about it and pretending it had not happened.

Key Finding: Children up to the age of 14 are most likely to disclose to their mother. Children report mixed responses from their mothers. Positive responses include taking immediate action to stop the abuse. The impact of disclosure is often devastating for the family.

Sources: Australian Institute of Family Studies (2025); Allnock & Miller (2013); Elliott et al. (2022); McElvaney & Nixon (2020)

ΔΔΔ

The prevalence of false or coached disclosure is one of the most contentious debates in family law. The term is used in a variety of ways, to include children making an allegation which they know to be untrue, parents or guardians making an allegation on the basis of suspicions which prove to be unfounded, and investigations for which sufficient evidence was not found to substantiate abuse (O'Donohue, Callaghan and Willis 2018). This is clearly unhelpful, and we use the term false allegations to describe allegations made by children which have been intentionally fabricated, either by the child or by a parent.

Despite recognition by the Family Court that Parental Alienation Syndrome (PAS) has been widely discredited in a clinical sense, there continues to be a reliance on concepts from PAS and/or parental alienation (PA) - primarily ideas of coaching children to make allegations of abuse in order to manipulate court outcomes. The application of PAS continues to be gendered with mothers primarily being constructed as manipulative, mentally unwell, suffering from delusions, and ultimately harming their children with the intent of punishing the other parent (Death, Ferguson, & Burgess 2019).

Against this background, what does the evidence tell us about false and coached disclosure? Bravehearts cite the following research:

- of 3,940,920 cases of child abuse/neglect investigated by Child Protective Services in the United States in 2014, 2,242 (0.06%) were found to be intentionally false (Administration for Children and Families 2014).
- a review of all child sexual abuse reports to the Denver Department of Social Services over twelve months showed that of 551 cases, 2.5% were found to be erroneous, of which 1.5% involved false allegations (Oates et al. 2000).
- a meta-analysis of studies found that rates of false allegations of child sexual abuse usually fall in the range of 2-5% (O'Donohue et al. 2018).

Faller's review of the literature confirms that coached statements in relation to child sexual abuse are equally uncommon (Faller 2007). Research suggests that false allegations of child sexual abuse, while remaining uncommon, are more frequent in the context of separation. Faller et al. found 14.4% of 215 allegations had the *appearance of falsehood*, with a further 6.5% possibly false (Faller et al. 1995). More recently, Trocmé and Bala found that false allegations in separated families range from 4.7% to 15% (Trocmé & Bala 2005). In an earlier study Trocmé found that rates of intentionally false allegations by fathers after separation (21%) were significantly higher than those made by mothers (1%) (Trocmé et al. 1994). In a later study, fathers were found to be 16 times more likely to make false reports than mothers (Bala & Schuman, 2000). False allegations are overwhelmingly made by adults, not by children, and Trocmé and Bala argue that the construct of false allegations should include the more common phenomenon of false denials - children who deny or minimise sexual abuse (Trocmé & Bala 2005).

Ramaswamy and Seshadri argue that clinical analysis of when and why children lie supports these findings. They argue that children lie to hide things they have done which adults will consider to be wrong, or because they are afraid to tell the truth about a powerful or loved adult, or to an adult who may not believe them:

In the context of child sexual abuse ... children hide the abuse and do not report it because they are afraid they will be disbelieved and/or punished for it ... (and) ... because they have a sense that sexual behaviors ... (by anyone) ... are not socially appropriate or acceptable ... (children) start to retract their original statement because of pressure from disbelieving adults, which results in fear and anxiety in the child ... ironically, children are more likely to lie that they have NOT been abused when they have been abused! Indeed, many children simply deny that they have been abused even when there is evidence to the contrary. Consequently, given the nature of what children lie about, and their reluctance to tell the truth when they have been abused, if they do disclose sexual abuse experiences, they are unlikely to be lies (Ramaswamy & Seshadri 2017).

Research into child protection practitioners' attitudes to false allegations found that experienced practitioners were less sceptical about children's disclosures and more concerned about false denials than novice practitioners. A Canadian study of judges, police, mental health and child protection practitioners found that:

- judges and police were significantly more skeptical of children's reports than mental health and child protection practitioners; and
- across all professions, those who were involved with a greater number of child sexual abuse cases were significantly more likely to believe the reports of children than those who were involved with fewer cases (Everson et al. 1996).

Research into child abuse practitioners' attitudes to coaching found that they do not reflect the evidence, with coaching believed to be much more common than it is. Mothers were thought to be the most likely to coach, and to do so during custody disputes. As we have seen, these beliefs are not born out by the evidence (Faller 2007). In a national survey of child forensic interviews in the US, forensic interviewers were much more concerned about false denials (88%) than false allegations (12%) (Fessinger & McAuliff 2020). The authors conclude that interviewers' overwhelming concern about false denials compared to false allegations appears to be consistent with the available statistics on the prevalence of false reports in real world situations.

Key Finding: False allegations of child sexual abuse are rare. Where they do occur, they are more likely to be made by fathers than mothers. Experienced practitioners are more concerned about false denials than false allegations.

Sources: O'Donohue et al. (2018); Trocmé et al. (1994) & Bala & Schuman (2000); Fessinger & McAuliff (2020)

Denial and Disbelief

Judith Herman reintroduced the concept of complex trauma to public discourse in 1992, describing its history of episodic amnesia - coming to public attention and subsequently disappearing, particularly where the trauma arises from child sexual abuse. Herman argues that a range of minimising and distancing strategies exist alongside amnesia: it never happened; the victim lies; the victim exaggerates; the victim brought it on herself; and in any case it is time to forget the past and move on. A range of bystander reactions coexist with perpetrator minimising and distancing strategies, most powerfully the wish to turn away from abuse (Herman 1992). Denial and disbelief in child sexual abuse manifest in different forms: disbelief in children's disclosures; disbelief in allegations made by those close to children; belief in the commonality of child sexual abuse but disbelief in a specific allegation; and a broad culture of disbelief.

Ramaswamy and Seshadri argue that despite legislation, training, and services, when an individual child is abused, the story still plays out as if we live in times of ... no public awareness of CSA. They argue that adults are much more likely to believe the denials of a known adult than the disclosure of a child, largely because to do so would be uncomfortable and inconvenient:

In the context of CSA, adults must suspend the adult-centric, critical faculties that decide that children would lie about or make up stuff about sexual abuse and that an alleged perpetrator is "incapable" of abusing a child; only then will adults be able to enter the world of children, perceive, and understand their experiences and appreciate and believe what adults otherwise find unbelievable or implausible (Ramaswamy & Seshadri 2017).

Denial and disbelief at the cultural level were central areas of discussion in both the Australian Royal Commission into Institutional Responses to Child Sexual Abuse, and the UK Independent Inquiry into Child Sexual Abuse. (Royal

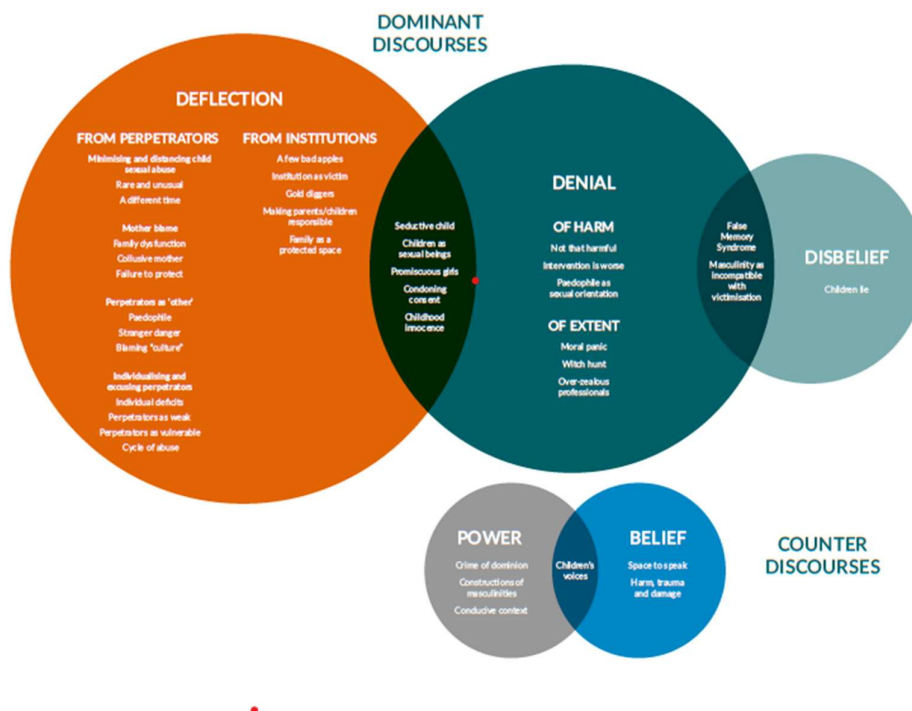
put the crime of child sexual abuse, a crime most commonly hidden, secret and largely denied, under a national spotlight ... as a nation, as governments, as institutions, and as individuals we must fight against the culture of disbelief and denial ... (which has) ... repeatedly dismissed, ostracised and punished those who attempted to shine a light on the dark underbelly of abusive reality (Kezelman 2017).

Lovett, Coy and Kelly were commissioned by the UK Independent Inquiry to conduct a rapid evidence assessment of social and political discourses around child sexual abuse, and found deflection, denial and disbelief to be the dominant categories of discourse (Lovett, Coy & Kelly 2018). Building on Herman's insights, they argue that:

Discourses about child sexual abuse have been shown to be in a continuous state of change and evolution. In some interpretations, they have been described as moving from societal denial of the existence of abuse to recognition and acceptance that child sexual abuse manifests in various forms (Kempe 1978). Others have defined this as 'cycles of discovery and suppression' in which new findings about child sexual abuse are met with significant resistance (Olafson, Corwin and Summit, 1993). Child sexual abuse has also been described as 'strikingly unusual for being repeatedly "discovered", discredited, re-established and discredited over time' (Nelson 2016).

The evidence assessment found three dominant and two counter discourses about child sexual abuse in England and Wales, with the former dominating thinking about child sexual abuse and usually accepted as truth. Discourses of deflection deflect responsibility from perpetrators by minimising their actions, blaming mothers or 'othering' perpetrators; they deflect responsibility from institutions by minimising either the abuse or the institution's capacity to intervene. Discourses of denial deny either the extent of abuse or the extent of harm caused, and support arguments that abuse has been exaggerated or fabricated. Discourses of disbelief are direct denials that child sexual abuse has occurred. Counter discourses are expressed by those at the margins of social and political power and challenge dominant views. The counter discourse of power argues that child sexual abuse is driven by inequality, between women and men, and between children and adults. The counter discourse of belief accepts both the existence and extent of child sexual abuse, and the harm it causes. Parental alienation is noted as a discourse of denial and disbelief used in the family law. The relative sizes of the discourses and their overlaps are shown in Figure 2 below.

Figure 2: A conceptual model of discourses about child sexual abuse in England and Wales



In Australia, researchers argue that the scale of child sexual abuse is systematically minimised by the Family Court, with arguments of parental alienation preferred, and only a minority of allegations accepted as true (Webb et al. 2021). In her recent webinar for the Family Law Pathways Network, Rathus commented:

I want to add my voice to a growing level of concern about the fact that we do not seem to be very good at dealing with child sexual abuse cases in Family Law in Australia ... it is extremely difficult to be believed. That doesn't mean that everyone who is saying it is correct ... but we have extraordinary levels of disbelief (Rathus 2025).

As Expert Advisory Group member Kerri Collins commented on disbelief and denial of child sexual abuse: *herein lies the problem.*

Complex and Continuous Trauma

Complex Trauma

The distinction between single-event and complex trauma is well established in the literature, with complex trauma and complex post-traumatic stress disorder (PTSD) understood as arising from repeated experiences of trauma, usually in childhood. The Blue Knot Foundation is Australia's National Centre of Excellence for Complex Trauma. Blue Knot notes that the abuse which leads to complex trauma *is often planned, extreme, ongoing and/or repeated and often has impacts which can last a long time*. Child sexual abuse is rarely a single event, and as such is a paradigmatic example of complex trauma (Blue Knot Foundation [What is Complex Trauma?](#); accessed February 2025).

Blue Knot Foundation President Cathy Kezelman writes:

The preferred way to describe the ongoing effects of child sexual abuse across the lifespan is "complex trauma". It reflects more accurately how child sexual abuse shapes the ways that victims and survivors feel about themselves, their relationships and the meanings they give to their experiences. Children who are sexually abused are betrayed at a fundamental level, often by those on whom they should be able to depend on and trust. They feel and often are unsafe, unaware of when the next assault will occur - living in danger and driven by their biology to try and survive. All of this is happening as a child is growing, developing and trying to learn about the world. At the same time, their brain is also growing and developing and brain pathways are being laid down. These pathways are informed by the negative experiences of persistent threat rather than positive ones of nurture, safety and protection.
(Kezelman 2024)

Complex trauma in childhood is also described as Developmental Trauma, recognising the significant and specific impacts of traumatic events while the child's brain is developing. Cruz et al. for the National Institutes of Health describe Developmental Trauma as:

the complex and pervasive exposure to life-threatening events that occurs through sensitive periods of infant and child development ... (which) ... disrupts interpersonal attachments, compromises an individual's safety and security operations, alters foundational capacities for cognitive, behavioral, and emotional control, and often contributes to the development of complex PTSD in adulthood ... (developmental trauma) ... emerges from prolonged and cumulative interpersonal trauma that disrupts the development of secure attachments to caregivers and dramatically alters core assumptions and beliefs about one's vulnerability to danger in the world (Cruz et al. 2022).

Continuous Traumatic Stress

The distinction between post-traumatic stress and continuous traumatic stress is less well-known. The concept of continuous traumatic stress was developed by a group of anti-apartheid mental health activists in South Africa in the 1980s and was first written about by Straker and colleagues in 1987 (Straker 1987). The concept of continuous traumatic stress recognises the different experience of victims and survivors when traumatic events continue, i.e., the experience and impact of living in contexts of realistic current and ongoing danger. Core features of continuous traumatic stress are the absence of external protective systems and an absence of safe spaces to escape from danger or threat (Eagle & Kaminer 2013).

Research on continuous traumatic stress has considered how clinical and psychosocial interventions should be adapted, building on a growing recognition that existing conceptualizations of traumatic stress ... may have limited utility in conditions of realistic, ongoing threat and danger (Stephens et al. 2013). There has also been debate on the factors which may moderate continuous traumatic stress, and whether habituation leads to increased resilience or more severe traumatisation (Stein et al. 2018). The bulk of the research focusses on continuous traumatic stress arising from political or community violence. Outliers include Cohen, Mannarino and Murray who considered the impact of both political and domestic violence on young people (Cohen, Mannarino & Murray 2011) and Hulley et al. who applied the concept of continuous traumatic stress to adult women experiencing post-separation domestic abuse (Hulley et al. 2022).

Key Finding: Child sexual abuse is rarely a single experience and can lead to complex/developmental trauma. In our view, where sexual abuse continues post-separation, it is better understood as continuous traumatic stress.

Source: Kezelman (2024); Eagle & Kaminer (2013)

Recovery

Herman developed her three-phase model of recovery from complex trauma in 1997, and it remains the dominant contemporary approach (Herman 1997).³² The three phases are establishing safety, processing the impact of the trauma, and reconnecting to everyday life. Of the first phase, Herman writes:

The first task of recovery is to establish the survivor's safety. This task takes precedence over all others, for no other therapeutic work can possibly succeed if safety has not been adequately secured. No other therapeutic work should even be attempted until a reasonable degree of safety has been achieved. This initial stage may last days to weeks with acutely traumatized people or months to years with survivors of chronic abuse. The work of the first stage of recovery becomes increasingly complicated in proportion to the severity, duration, and early onset of abuse (Herman 1998).

In the context of complex trauma, safety is multi-dimensional, and this phase can be both lengthy and challenging. Establishing physical safety addresses the victim and survivor's sense of safety in their body, control over their emotions and thinking, and their fundamental health needs. This is complicated by the disruption of the capacity to self-care and the development of harmful coping strategies that are inherent to the experience of complex trauma. Establishing environmental safety includes a safe and financially secure living situation and *a plan for self-protection* which recognises current threats and vulnerabilities. Herman argues:

The social obstacles to recovery are not generally recognized, but they must be identified and adequately addressed in order for recovery to proceed. Many patients are unable to move forward in their recovery because of their present involvement in unsafe or oppressive relationships. In order to gain their autonomy and their peace of mind, survivors may have to make difficult and painful life choices (Herman 1998).

Complex trauma survivor, researcher and trainer Carolyn Spring argues that progress through the phases is dynamic rather than linear, and a return to phase one is frequently needed as the traumatic narrative unfolds. She adds stabilisation to safety, and argues that the first phase should include:

- establishing a *secure base* in therapy
- developing a safety plan
- decreasing and stabilising the impact of traumatic symptoms
- building knowledge about complex trauma
- developing emotional regulation and coping skills (Spring 2010-2024).

While recognising the three-phased approach as the gold standard for practice, a report commissioned by the National Centre concluded that lack of a shared language around complex trauma, and the neglect of lived experience means that there is a need for significant further research (National Centre for Action on Child Sexual Abuse 2024). The National Centre insight from that work is set out in Figure 4 below.

Figure 4: National Centre Insight on best therapeutic practice

National Centre Insight

There is much that remains unclear about the evidence informing best practice with victims and survivors of child sexual abuse. We need more investment in research that is informed at its core by the unique experiences and insights of people with lived and living experience of child sexual abuse. Co-designed and participatory approaches to research and practice development are crucial methods that can enhance and support the dignity and self-determination of children, young people and adults who have experienced child sexual abuse.

³² Differences of view centre on the required length of the safety and stabilisation phase (MacSween 2023).
I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts

Focussing on child sexual abuse as developmental trauma, Cruz et al. argue that both disclosure and therapeutic support are critical:

Sadly, when children do not disclose sexual abuse and/or do not receive effective counseling, they can suffer difficulties long into the future. As one child expressed it, "Abuse is like a boomerang. If you don't deal with it, it can come back to hurt you." On the other hand, children who have the support of an understanding caregiver and effective treatment can recover without long-term effects (Cruz et al. 2022).

The Bravehearts Foundation reinforces and expands on this argument:

Believing children and getting them the right support can help reduce long-term trauma symptoms. How the adults around the child initially respond to the abuse can greatly affect the long-term outcome for the child and impact their ability to recover from associated trauma symptoms. If a child is not believed and supported appropriately after a disclosure it can lead to a higher level of trauma for the child, resulting in significantly more negative long-term physical and mental health outcomes for the child. Conversely, if the adults around the child act protectively, the child is believed and the right support is provided, the child has the best possible chance of recovering from the trauma (What are the Effects of Child Sexual Abuse? | Bravehearts; accessed February 2025).

Where child sexual abuse continues alongside intervention, there needs to be greater focus on encouraging daily routines, building resilience, increasing parents' understanding of the ongoing trauma their child is experiencing, and helping children distinguish between current danger and hypervigilance (Cohen, Mannarino & Murray 2011; Zaghrou-Hodali, Ferdoos & Dodgson 2008; Pat-Horenczyk et al. 2006).

Key Finding: Recovery from complex trauma following child sexual abuse is possible. Immediate belief and support - parental and therapeutic - are critical for children who disclose. Recovery requires safety.

Sources: Herman (1998); Cruz et al. (2022); The Bravehearts Foundation

Domestic Abuse

Our understanding of domestic abuse has changed significantly in the years since second-wave feminism raised awareness of its prevalence and impacts (Hunter 2006). We now understand domestic abuse as including much more than physical violence. Our expanded understanding includes intimate partner sexual violence, economic abuse, post-separation abuse and an attack on parenting. Critically, we now understand that many actions combine to create a regime of coercive control which limits the freedom of victims and survivors across all aspects of their lives (Australian Institute of Health and Welfare 2025). As we are focussing on abuse between intimate partners, we use the term domestic abuse, rather than the broader concept of family violence.

In this chapter we summarise four bodies of knowledge from the domestic abuse literature which are relevant to the experience of child victims and survivors of sexual abuse involved with the Family Court:

- children and young people as agentic subjects, rather than passive victims
- an attack on the mother-child relationship as a key abuse tactic
- post-separation abuse
- understanding perpetrator strategies

Children's Agency

Children are now recognised as victims and survivors of domestic abuse in their own right, with children's involvement in domestic abuse understood as intimate and central rather than peripheral (Stanley 2011). Exposure to domestic violence is considered to be a form of child abuse in several Australian jurisdictions and in the National Framework for Protecting Australia's Children. This shift in perception includes recognition of children's agency, undermining the perception of them as passive 'witnesses' or 'collateral damage' in adult abusive encounters (Callaghan et al. 2015). Children are no longer seen as tangential ... disconnected ... silent witnesses but as dynamic in their efforts to make sense of their experiences, while navigating their way around the complexity and terror intrinsic to domestic violence (Buckley, Holt & Whelan 2007).

In her groundbreaking research with mother and child victims and survivors of domestic abuse, Katz notes a range of ways in which children exercise agency, arguing that if we understand children as agentic subjects, we can see more clearly their different possible responses. Children can be manipulated into adopting the perpetrator's narrative but may also be able to resist and construct their own narrative. Children may be parentified but may also make active choices to partner with their mother to resist violence; by defying perpetrators'/fathers' rules, children and mothers may have strengthened their sense of agency and prevented perpetrators/fathers from gaining total control over them (Katz 2014). Critically, understanding children as agentic subjects rather than passive recipients of adult meaning-making determines how we evaluate their choice not to have contact with their father (Katz 2015).

In her research with adults who as children were involved in the Family Court and were victims and survivors of domestic abuse and child sexual abuse, Nelson found that as children, they used whatever agency they have to negotiate a hostile legal terrain, with mixed impacts:

Sometimes the child's resort to agency can improve their situation. At other times, the child's resort to agency for the purpose of self-protection can lead to adverse outcomes because adult actors do not respond in the way the child anticipated (Nelson 2022).

Children's agency includes both resistance, and protectiveness.

The concept of resistance to domestic abuse was crystallised in 2005 by three Canadian academics working with Calgary Women's Emergency Shelter:

Whenever people are abused, they do many things to oppose the abuse and to keep their dignity and their self-respect. This is called resistance. The resistance might include not doing what the perpetrator wants them to do, standing up against, and trying to stop and prevent violence, disrespect and oppression. Imagining a better life may also be a way that victims resist abuse (Calgary Women's Emergency Shelter 2005).

Similar strategies were found in Understanding Agency and Resistance Strategies, a study involving 110 children, 39 parents and 74 professionals, in England, Italy, Greece and Spain (Callaghan & Alexander 2015). Children told the researchers about a range of creative strategies they used in situations of domestic abuse:

- carefully managing what they say, and who they talk to, to control what is known about their family
- redefining who counts as family to exclude abusers and include trusted non-relatives

- creating dens and hideaways to go to with their siblings when violence was active
- thinking of alternative worlds, fantasy spaces and fantasised futures
- making a game of hiding, reclaiming childhood
- physical resistance.

The authors contrast children's own accounts with the understanding of children which they argue has been held by the rescuing professional: children as passive recipients of the abuse experience who are doomed to be damaged.

The disclosure literature identifies as one of the barriers the child's wish to protect the perpetrator, particularly where he is a loved family member. The domestic abuse literature identifies children not talking to their mothers about the impact of the abuse on them: children are uncanny protectors and will often 'err' on this side of protecting their mothers, even at their own emotional expense (Coffey 2009).

Key finding: Contemporary domestic abuse research tells us that child victims and survivors can be manipulated and parentified, but that they can also exercise independent agency.

Source: Katz (2014) (2015) Callaghan & Alexander (2015)

Post-separation Abuse

Post-separation abuse can be defined as the ongoing, willful pattern of abuse of a former intimate partner involving legal abuse, economic abuse, threats and endangerment to children, isolation, discrediting, harassment and stalking ... post-separation abuse is a complex, multi-faceted phenomenon that requires differential social, legal and healthcare systems responses to support the health and wellbeing of survivors and their children (Spearman, Hardesty & Campbell 2022).

Researchers have long identified leaving domestic abuse as a high-risk activity (Domestic Violence Services Network 2022). We are now aware that abuse often, perhaps usually, continues post separation, and there is an extensive literature on post-separation abuse (Zeoli, Rivera, Sullivan & Kubiak 2013; Kelly, Sharp & Klein 2014; Verney 2021).³³ The Family Violence Orders Inquiry noted that the risk of escalation of controlling and violence towards partner and children increases after separation and can increase further during family law proceedings: some perpetrators of Family, Domestic and Sexual Violence seek to abuse the system by submitting a cross notice of risk describing the victim survivor as violent, an alienator, liar or mentally unwell (Standing Committee on Social Policy and Legal Affairs 2025).

This tactic of post-separation abuse is variously referred to as lawfare, legal abuse, vexatious litigation, legal systems abuse and (custody) stalking. Legal systems abuse can also function as economic abuse, where perpetrators use repeat legal processes to drain their former partner's financial resources. In the family law setting:

Domestic abusers act the role of a loving and caring parent who wants to have half-time or more with their children when their true goal is to maintain a continuous route for harassing their ex-partners (Aronson Fontes 2022).

Verney and Douglas argue that the use of legal systems abuse as a coercive control strategy is not well understood in family law. Verney argues that legal systems abuse can include false allegations about parenting and parental alienation. Low awareness can lead to court orders unwittingly permitting or facilitating ongoing abuse and control, particularly through child contact arrangements (Verney 2024). Douglas argues that where awareness is low, legal processes provide an opportunity for perpetrators to continue and even expand their repertoire of coercive and controlling behaviours post-separation (Douglas 2018).

³³ The UK's Serious Crime Act was amended in 2023 to include post-separation abuse as a separate offence, and Post-Separation Abuse Awareness Week occurs annually there in September (Verney 2024).

The recent Parliamentary Inquiry into Family Violence Orders heard:

Systems abuse is a form of Family Domestic and Sexual Violence perpetrated during family law, Family Violence Order and other proceedings, where legal and administrative systems are manipulated to control, threaten or harass a current or former partner. Systems abuse is a common form of coercive control and undermines a victim and survivors' ability to secure protection through Family Violence Orders and establish safe parenting arrangements. As a consequence of systems abuse, the length and cost of proceedings is extended, and parenting orders are made that do not reflect the safety needs of victims and survivors and children. CALD, First Nations and people with disability are more vulnerable to systems abuse. It is entrenched and endemic.

Changes to the Act that took effect in May 2024 enabled the family law courts to make harmful proceedings orders, which complement existing provisions that allow for vexatious proceedings orders to be made. The aim of harmful proceedings orders is to restrict the filing and serving of new applications without obtaining prior leave of the court where there has been repeated filing of unmeritorious applications to harass or intimidate another party. While there was support for this reform, the Committee heard it is too early to assess its effectiveness (Standing Committee on Social Policy and Legal Affairs 2025).

As noted above, the Office for Women is undertaking a program of audits of government systems, including the family law system, by domestic abuse perpetrators. The Expert Panel on Prevention, convened to advise the Australian Government, noted:

A well-recognised source of systems abuse includes the family law system, in which perpetrators attempt to drain the resources of victims and survivors through protracted and incessant legal proceedings; insisting on care arrangements which are unsafe and do not reflect the wishes of a child and, as research indicates, undermining the mother-child bond by coaching children to view their mother in a negative light (Rapid Review Expert Panel 2023).

The Expert Panel's conclusion aligns with ANROWS review of domestic abuse and parenting which found that children continue to be at risk from the effects of violence during and after parents' separation; children experience significant risks in shared parenting arrangements when the arrangement involves substantial shared time with the violent parent. Children's continued relationships post separation with their fathers are likely to be harmful unless the violence and abuse have ceased (Kaspiew et al. 2017).

Taylor argues that post-separation abuse via Family Law should be seen as a form of stalking, and as a particularly egregious form of stalking, in which victims experience unique and prolonged risks and more complex and severe behaviours. Stalking via Family Law can persist until children turn eighteen and result in children becoming secondary victims. Perpetrators are enabled by the Court's inability to see stalking, instead viewing it as parental dispute. The standard advice to people when they are being stalked is to report all instances to Police; in the family law setting this can result in cross-allegations of parental alienation. Allegations of stalking do not pause or cease child contact. Taylor argues that the Family Court (in the UK) is insufficiently trained to allow it to distinguish between child contact disputes and post-separation coercive control and stalking. She argues for a specific stalking risk assessment tool (Taylor 2025).

In training delivered to the Family Violence Council in 2024 (familylawsection.org.au/david-mandel-domestic-and-family-violence-training; accessed February 2025), Mandel noted ways in which domestic violence perpetrators exploit the family law system:

- 'conflicting out'
- firing lawyers so they can cross examine the survivor/continue abuse in the courtroom
- aggressive or obstructionist behaviour during ADR (Alternative Dispute Resolution)
- repeated filings
- avoiding services/meetings.

At the same meeting, Deputy Chief Justice and Deputy Chief Judge of the Courts Robert McClelland spoke to the Court's focus on family violence as usually involving coercive control, expressed through cumulative patterns of behaviour which viewed individually could be misunderstood as insignificant.

He noted UK legislation as analogous to the revised understanding that it is in the best interests of the child to have contact with both parents only where it is safe to do so:

- a. that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact; and
- b. that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent (emphasis in original).

McClelland referenced three matters which illustrate a change in jurisprudential culture around the understanding of harm, the assessment of future harm, and the need to prevent systems abuse:

Professionals would now, rightly, regard as 'old fashioned' the approach [of previous Family Violence legislation] where protective measures were only triggered in the event of 'violence' or 'actual bodily harm'. In like manner, the approach of regarding coercive or controlling incidents that occurred between the adults when they were together in a close relationship as being 'in the past', and therefore of little or no relevance in terms of establishing a risk of future harm, should, we believe, also be considered to be 'old fashioned' and no longer acceptable. The fact that there may in the future be no longer any risk of assault, because an injunction has been granted, or that the opportunity for inter-marital or inter-partnership rape may no longer arise, does not mean that a pattern of coercive or controlling behaviour of that nature, adopted by one partner towards another, where this is proved, will not manifest itself in some other, albeit more subtle, manner so as to cause further harm or otherwise suborn the independence of the victim in the future and impact upon the welfare of the children of the family (emphasis in original)(H-N & Ors, UK Court of Appeal).

*Harm which the child has suffered as a consequence of violence that has been established and harm that the child is at risk of suffering in the future must be considered, and the court must only make an order for contact if it can be satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact. Also in every case, the court has to consider the conduct of both parents towards each other and towards the child, and in particular the effect of the domestic violence on the parent and child, the motivation of the parent seeking contact, **the likely behaviour of that parent during contact** and the effect on the child, his capacity to appreciate the effect of past violence and the potential for future violence on the other parent and child, and his attitude to his past violent conduct and capacity to change and behave appropriately (emphasis in original) (Re W (Children), [2012] EWCA Civ 528).*

The paramount responsibility which a judicial officer presiding over a criminal trial owes to the community is ensuring that the accused person receives a fair trial. However, the judicial officer also owes other concurrent responsibilities to the community. In a case such as the present they include a responsibility to see that the accused does not utilise the proceedings as a vehicle for harassment of the alleged victim. The exercise of that responsibility will require vigilance in confining an accused person to asking questions which are relevant to the issues raised for the court's determination. In the present case the appellant, appearing without a lawyer, was entitled to ask questions of the complainant which were relevant to the matters in issue at the trial. The magistrate had a responsibility to ensure that the appellant did not abuse that right by the manner and length of his cross examination of the complainant. The magistrate cannot be criticised for intervening when the appellant asked the complainant irrelevant questions of a personal nature during the course of cross examination (Conomy v Maden [2016] WASCA 30) (familylawsection.org.au/david-mandel-domestic-and-family-violence-training; accessed February 2025)

Key Finding: Post-separation abuse is common, and includes manipulation of systems, including the family law system. Low awareness of this evidence can lead to continuing harm to children.

Sources: Zeoli, Rivera, Sullivan & Kubiak (2013; Kelly, Sharp & Klein (2014; Verney (2021)(2024) Douglas (2018); Kaspiw et al. (2017)

Perpetrator Strategies

Mandel and Wright argue that an accurate understanding of the impact of domestic violence on children requires a shift from the usual focus on mothers' failure to protect to fathers' patterns of violence and control and mothers' protective behaviours. They argue that:

- the parenting of perpetrators has been largely invisible, and *they are rarely held accountable as parents*; the focus on victims' parenting has been both disproportionate and unbalanced
 - the choice to use domestic violence should be understood as *a significant failure of parenting*
 - perpetrators' behaviors as parents *undermine the other parents' parenting, the normal healthy development of the children, and the day-to-day functioning of families*
- (Mandel & Wright 2017) ³⁴

They argue that this shift *has the potential to change the conversations in family court and other settings where perpetrators have often avoided consequences and gained advantages from the old paradigm* (Mandel & Wright 2017). To assist in this process, the Safe & Together Institute³⁵ has developed the Perpetrator Pattern-Mapping Tool:

The Perpetrator Pattern Mapping Tool helps to identify the primary perpetrator and their pattern of coercive control, assess the harm to children, and document protective parenting efforts. Our behavioral- and fact-based tool helps to avoid gender bias and supports impartiality. It specifically addresses key issues like intersections, intersectionalities, lateral violence, and patterns beyond the family itself - including the perpetrator's manipulation of systems - and can help contextualize and evaluate concerns about contact resistance and refusal ([Virtual Mapping Tool | Practice Toolkits | Safe & Together Institute](#); accessed February 2025).

At the Family Violence Council training mentioned above, participants engaged in an exercise in which they were guided to consider perpetrators as parents. Participants were also provided with research on systems abuse, including the Family Court as a primary target (Mandel 2024 a; Mandel, Mitchell & Stearns Mandel 2022).

D.A.R.V.O.

The acronym D.A.R.V.O. stands for Deny, Attack, Reverse Victim and Offender. The concept was first defined by psychologist Jennifer Freyd:

I have observed that actual abusers threaten, bully and make a nightmare for anyone who holds them accountable or asks them to change their abusive behavior. This attack, intended to chill and terrify, typically includes threats of lawsuits, overt and covert attacks on the whistle-blower's credibility, and so on. The attack will often take the form of focusing on ridiculing the person who attempts to hold the offender accountable ... (T)he offender rapidly creates the impression that the abuser is the wronged one, while the victim or concerned observer is the offender. Figure and ground are completely reversed ... The offender is on the offense and the person attempting to hold the offender accountable is put on the defense (Freyd 1997).

D.A.R.V.O. is now understood as a commonly used deflection and denial tactic by perpetrators of different types of abuse and harm and is particularly prominent in the narratives of perpetrator of sexual violence (Harsey & Freyd 2020; Harsey, Adams-Clark & Freyd 2024).

Amber argues that:

DARVO is perhaps the most effective and often used strategy of coercive controllers. And of the possible uses of DARVO, Parental Alienation Syndrome (PAS) or Parental Alienation (PA) is arguably the most commonly used DARVO strategy of coercive controllers in family court ... attorneys worldwide have learned that the most effective legal strategy to hide the fact that their client is a coercive controller is to DARVO the court (Amber 2023).

³⁴ Mandel expands on this argument in his 2024 book *Stop Blaming Mothers and Ignoring Fathers: How to Transform the Way We Keep Children Safe from Domestic Violence*.

³⁵ The Safe & Together Institute is co-owned by David Mandel and Ruth Stearns Mandel and promotes a child-centred and survivor-strengths understanding of domestic abuse. [Safe & Together Institute | Strengthen Your Practice & Improve Family Outcomes](#)

Amber has developed an example scenario of D.A.R.V.O. in the Court setting:

DENY: Your honor, my client would never abuse his ex-wife or children. My client is a loving father who just wishes to maintain contact with the children that he desperately loves. He works hard every day to provide for them, and he is insulted by these baseless accusations against him.

ATTACK: It is sad to say, but Ms. _____, has mental health issues. She is an addict and regularly neglects and abuses the children. Because she was abused as a child, she thinks everyone is abusive. That is why she has falsely accused my client of abuse.

REVERSE VICTIM & OFFENDER: Ms. _____ has alienated my client's children from him and has made him out to be a monster. She withholds the children from him, because she is vindictive, and she only wants full custody so that she can bleed my client dry through child support.

Key Finding: Contemporary analysis of domestic abuse reverses the previous invisibility of the perpetrator and hyper-visibility of the victim. This perspective allows us to see the D.A.R.V.O. tactic when it is used in the Family Court.

Sources: Mandel & Wright (2017); (Freyd 1997); Amber (2023)

Chapter 4 Case Studies

In this chapter we set out rich narratives of our participants' experiences as victims and survivors of child sexual abuse involved with the Family Court. Each case study starts with key background issues, before presenting our participants' experience as children, and their insights and views as adults, looking back with the benefit of hindsight.

Isabella

Isabella is now nineteen.³⁶ For ten years, between the ages of three and thirteen, she was involved in Family Court proceedings initiated by her father who was seeking custody of Isabella and her sister.

Isabella describes her family as a *patriarchal* household, with her mother expected to manage the house and the childcare alongside her work. Her mother left her father after ten years of abuse, at the point where she feared that he would kill her. Isabella was nearly three and her sister was just under one. From this point, family for Isabella meant her mother, the one adult that she trusted, and her sister:

Well, my family for me, is just my mom and my sister. And my family for me is lots of fun and play and cooking and good things. But during my childhood, it was kind of like this constant fear that it would all go away at any minute and not just go away but be replaced with something bad.

Isabella is a victim and survivor of childhood sexual abuse and physical abuse by her father. She disclosed the sexual abuse to her mother three months after her mother separated from her father, and her mother's response was immediately protective:

I've never seen him again from that day, I've never made eye contact with him again. Like any attempt from the court or from his lawyers, or any systems and processes to come to some kind of compromise was not good enough for my mom - once a month, a weekend or something like that. Like, if they say that you have to go to him, then we are leaving the country.

Isabella made repeated disclosures: twice to Police; to a counsellor; and to the court appointed expert witness. Her disclosures did not result in protection from abuse:

I disclosed to a counsellor who was later compelled by the court to share what I had told to her. I also disclosed to the court appointed expert witness, who was the prominent figurehead of "playing the game" for me. It was clear to me that honesty was not what he valued, he cared about my nice-ness more than anything else. I also disclosed to the police on two occasions when a detective came to our house.

It had a significant impact on me to disclose the abuse and then still have to prove that I was worthy of protection from it. It seems instinctual that once something of that gravity is revealed it should be the end of the matter. I am still appalled that it wasn't. It was so impactful, I didn't even know I had disclosed anything until recently reading some documents.

I feel I always carried some guilt. Like, maybe if I had been clearer, more forthcoming, more cooperative, it would have been simple. It is both a relief and a new source of pain to know that I did everything right. The issue was never my lack of disclosure, it was their lack of understanding. An unacceptable lack of understanding.

Isabella lost access to her memory of sexual abuse until she was fifteen:

But at some point, I shut it down. I couldn't access that memory and I didn't have any real recollection of what had happened until I was 15. It was just this invisible event that would overcome me. A head rush that would make my head spin, and I'd have to sit down, and it would feel like this crushing weight on my ribcage that threatened to suffocate me. I often felt as if my womb would fall out. I still feel this way sometimes,

³⁶ Isabella asked us to use her first name in the research.

but now that I have words, it happens less frequently. Back then, I couldn't understand why I felt so terrified, and out of control of my own body. Why I hurt so bad.

And so, every person I ever talked about that both in court and doctors afterward dismissed me with, "Oh yeah, you're just anxious, try breathing deeper." But it was memories that didn't have words.

Reflecting, I understand that my "shut down" memories was probably connected to this ... (lack of a protective response). And, of course, it was an essential coping mechanism to escape the traumatic memories that haunt me now. But if the information I had was not valuable to them, I understand why I "forgot" it for quite some time. Why would I remember something that didn't serve me and hurt so much? I'm disappointed that I spent so many years unaware of what was wrong within me, why I was so afraid of men, of police, of loud voices, of tools, of eating, of not eating, of sex, of failing - I wish I could've re-accessed the memory of what I disclosed. I am saddened that my disclosure was not valued by the court. What more could I possibly have done for them?

Isabella's experience of the Family Court

Isabella experienced the Family Court as solely focussed on immediate and serious risk, and unaware of, or unconcerned about, the broader impacts of child sexual abuse. Being involved with the Family Court meant repeated conversations with adults who had the power to make significant decisions about her life, and who had a strong existing agenda that children need a father. They believed that Isabella should, or really did, want a father, and this perspective led to her views being significantly distorted.

I think in a lot of family court outcomes, the goal is to have both parents be able to see their children and the children be safe in that situation. So, I think they wanted that for me. But it was the most terrifying and awful thing in my life, that they couldn't keep in mind the context of my experience. But there it was, like, yeah, it was a constant fight to prove that I did not need him, and I did not want him.

They would ask me things like, does your mum teach you how to throw a ball? They asked me all the time if I needed, if I wanted a daddy, like all the other kids, what the other kids thought about the fact that I didn't have a daddy, and if I had a daddy, what would he do? What would his job be? How would he look after me? And I just thought, well, Dad's the fucking worst, so he would do nothing, and that would be the best-case scenario is that he did nothing. I didn't really have any good role models of men outside of my family, so I really thought, like the best thing the man can do was not hurt you and just do nothing. It was a question that was asked of me all the time.

I had to write a letter to him. I said in the letter, I hope the next time I see you you're in the ground and I remember the lady came across to me, and she was like, "You don't mean that you would have killed him. You don't mean that." Okay, I guess I don't mean that. I meant that.

But she was like, "No, you don't mean that you want to kill him. We're going to take this out. We'll just edit it and make it say, 'I hope I don't see you for a long time', because you just mean that you want him to die of old age. And that's what got into the letter. My letter got changed.

The Court was a distant adult entity with enormous power, and which had enormous expectations:

Just the thought of those adult people sitting together and deciding whether or not I should have to spend time with the man who raped me was unbelievable. It was awful to have to prove to them, to every new therapist and psychologist that I spoke to, that it happened. And that I was nice enough to protect. I felt like I was manipulating them, I had to be subtle enough that they wouldn't know that I was trying to tell them that I didn't want to be with him but also be direct that I didn't want to be with him. And you know, it just felt like the parts of me that were angry and loud and had boundaries and said "no", were the parts of me that made me terrible. I was never allowed to hate him. But I hated that man so much, I still do, and prior to court, those unacceptable parts of myself were the only things that kept me alive.

Isabella's experience of the Family Court changed significantly at age ten, when her mother remarried. Isabella describes her mother's second marriage as a marriage of convenience. Her stepfather needed a visa, her mother needed a husband so that she fit Court expectations of women, and the Court thought that *Isabella needed a father*:

I felt like that had a big influence, because I would go to the interviews and whatever, and I would say "I love my dad" (i.e. my stepdad). I've got a good dad. Don't need the other one. Hate him. Don't want him." Actually, I never said that I hated him, that was not allowed. But, yeah, "I love my dad, he looks after me, and he teaches me things" - and actually he never did do any of that - but I think that made a difference to the court. I really didn't like him. But it all ended, so I suppose he did his job.

Somewhere along the line we had a period where we didn't have to go to court for 3 years. I don't know what actually happened legally. But for me, it was just like, oh yeah, we get a break from it for three years, like a test trial of what life would be like without court. And then I went to the interviews, and I was like, "that was the best three years of my life. I want that forever." I was sure it wasn't possible, I really thought they would hold onto me forever.

Isabella's engagement with the Family Court

Isabella describes a strategic approach to engaging with adults connected to the Court. As a small child, and over ten years, Isabella worked out how to speak the language of the Court, to deliver her message in a way that they could understand and would listen to. And she had to do that repeatedly:

It was a constant fight to prove that I did need not him and I did not want him. Without being rude, to very nicely be very clear. Over time, I just got better at it. You know the bear cards? ³⁷ When they asked, "how do you feel about your dad?" I'd pick the disgusted one or the angry one, whatever. I don't think those were ever me feeling that way. The way I feel about my dad is indescribable with bear cards. That was me knowing what had to be said. I do feel disgusted, and angered by him, but I wasn't checking with myself. I was just trying to be as clear as I can be about never ever wanting to see him or interact with him again or write another fucking letter to him.

I spent that whole ten years just playing the game, not saying anything honest ever, especially when I wasn't supposed to say that I hated him, so that was probably the only honest thing that I ever would have said. It felt like I was playing the game, and it was a game that I would either survive, or I would not.

I think now that if I'd had to go to him, I wouldn't have survived, that either he would have killed me, or I would have killed myself. There was no way I would have made it through that. If I had said something like that to them, I just don't think that that would have actually made a difference. I think to them that would have meant that I was crazy, and in need of a father all the more.

The multiple impacts of the Court process

The Court process had multiple impacts on Isabella's childhood.

Practically, her mother had to work two jobs to pay for Court. Isabella remembers her mother falling asleep while reading her bedtime story because she was so tired and *constantly preparing to go to Court*. The family had to remain in the same town as Isabella's father, although they would have preferred to move away.

On an emotional level, the Court process was a pervasive threat hanging over her life:

I know it was good in lots of ways, I have a really wonderful mum, but my whole life, I think until I turned 18, I had this constant feeling of holding on to it, because it could just be taken from me, or I could be taken from it. So, at the moment, even when I think about, you know, the picnics that we would have in the backyard, I know now that the reason we had picnics was that we didn't have enough money to go out, because all of the money was funneled into fighting all the time.

I think that if they had really paid any sort of attention, they would have seen how important my mum was.

Isabella experienced the Court as taking her mum away from her:

There were so many consequences of taking my mum away from me so often. All the pressure being on my mum to protect me from my dad, and from a massive powerful government system - it was too much pressure. She was strong and brave and capable, and I knew that there was no way that she was going to give up. It felt like, what if it was just too much and she just died? Or stopped or went crazy, like grandmother, or it was just - too much. It was really scary having just one person to protect me from everything and whenever she got ill, I was terrified.

³⁷ For example:

<https://www.socialworkerstoolbox.com/the-bear-cards-feelings-emotion-recognition-and-communication-tool-for-children/>

The Court process confused and distorted Isabella's recovery from trauma, impeding safety and stabilisation, disrupting her coping strategies, and continually retraumatizing her. Isabella was not able to direct energy into recovering from her father's sexual abuse of her.

My head is just constantly filled with terror. And you know, words - like pedophile and incest and rape.

I never felt like it was their job to help me heal the wound. Maybe back at 10 years old I was more hopeful, but if I didn't have to fight for just basic safety, maybe I would've had the capacity to heal on my own. If my mother wasn't tirelessly fighting for my safety maybe she could have helped me heal.

I know that the court is not the cause of my primary wounding, they're just the continuation of it. I experienced this significant, awful, awful event, then instead of recovering, I spent my life proving that it happened and proving that I was worthy of protection. Now I am finally out of the reach of the family court, and I am finally beginning to heal - not from the rape, but from the court.

My father raped me, but so did the system, over and over, for years. I spent years of my life in a state of terror. I've barely escaped it even now. It is difficult to unlearn.

Now I will have to recover from the wounds family court inflicted upon me, before I can address the ones that led me to them to begin with. I think of it like I have this deep, life-threatening wound, and the court has spent 10 years - but actually 15, because there was always the fear of going back - poking it, and now it's infected. So, I am finally at a place in my development where I can take off the bandage and address the injury, but I'm going to have to treat the infection before I can stitch myself up. So, I continue to bleed.

They failed me terribly; they failed to provide me with basic safety.

The impact on Isabella of her interactions with Court continues to this day:

I wish that they would consider the lifelong consequences... It wasn't really about my safety in that moment, but it was about the feeling of unsafety that is with me now. I am an adult, and yet, I am constantly afraid that if I slip up and I am rude or wrong that my whole life will crash and burn. It's had massive consequences. I'm terrified of feeling angry, and if anyone's angry with me it feels like the world is ending, and that's not normal - to be so afraid of anyone's anger. I don't stand up for myself because I'm worried that I'll be perceived as aggressive.

Isabella's understanding of the Court process

Isabella's understanding of the Family Court process has changed over time. As a child, she knew that her father was seeking custody but found this hard to understand as she had not felt wanted by him. As an adult, she realised that her father was seeking custody was not about him wanting his children, but was a way of him continuing to abuse her mother:

It took me a long time to realize that court and his want of me was really just a decade of violence against my mother. It was a way for him to be violent for an additional ten years after she left. Twenty years of her life that he was doing that.

Court was being used as a weapon against her - by her abuser. It was him wanting to continue hurting her, and I was the best way to do that. His abuse was replaced with court. No one from the court ever threw a hammer at me like he did, but they made me think about him all the time and talk about him all the time, and I had this constant pressure to be good and smart and perfect. I had to remember him all the time. I even had to keep his name. I changed my name the day I turned 18.

While her father's strategy is now clear, Isabella continues to struggle to make sense of the Court's views on her safety. Was it that the Court did not believe that her father was a danger to her, was it that they considered the value to her of having a father was more important than her safety, or did the Court believe that it was her father's right to see his children?

I don't think that knowing how to throw and catch would have been worth all the torment - I don't know, maybe they didn't believe me, or maybe they thought it was a worthwhile exchange.

What did they think my experiences of home would be? He would just find a new house, and if I went to his new house, he would be a nice Dad? Did they think that he was gonna teach me how to throw catch and balls like he threw hammers. He was bad, only bad. I only see detriment. They were wanting to send me there in spite of the danger.

And it wasn't like there wasn't an abundance of proof. They had all the diaries and documents about him wanting to kill my mum. It can't have been because they didn't believe that I was in danger. It was just that his sperm contributed to making me and therefore he has rights to me. That was the whole ten-year fight was to prove that that was not the case.

Isabella's wishes as a child

While Isabella's understanding of the Court process and her father's motivations changed over time, she did not change her views about contact with him:

I have never and will never want to see him ... If I had my way, he would be in jail ... And it terrifies me, that he's out and about, potentially with other children, and if he has more children ... there's never been a single moment, no matter how much coercion, that I have wanted to know him. And nearly everyone, in court, in my personal life, even in my extended family, has tried to convince me otherwise. Fuck that. There were so many opinions that I had to fight against to make it clear - I never wanted to see him.

Isabella did not expect support to recover from the Family Court, but she would have liked the basic safety which she needed to begin to recover, based on belief in her experience, and without unrealistic behavioural expectations:

I felt unsafe because safety felt conditional. Safety would have been not having to constantly prove that I deserved it. I'm nineteen now. If I was looking after that child, they would be safe, if someone tried to hurt them, I would just protect them without them needing to be good and nice and kind and polite. And if they screamed and were angry and sad and scared and terrified that would not change the fact that I would look after them.

Isabella wrote in her diary:

I wish they knew what they'd stolen from me. My youth, my joy ... I keep having to prove that it happened, that it was bad, bad enough to be taken seriously.

What needs to change

Isabella is not optimistic about change in the Family Court:

I don't know that part. I was thinking about yesterday, and that was a hard one. I don't really have any faith in the court system. I think it's misogynistic and colonial and capitalistic. So, I find it hard to be optimistic about the future or editing it to make it better.

She recommends that the Court look beyond immediate risk and see context. In her case:

I think if they had, it would have been a much shorter court process. It took ten years. I think that if they had really paid any sort of attention, they would have seen how important my mum was. And the relationship with the primary caregiver - that should be more important and protected. When I spent time with my grandmother - time away from my primary caregiver - this was time that I was not safe - so constantly taking me away from my mother was hurting me, even though it wasn't direct. So that should be much more of a priority, making sure that she wasn't constantly in danger of him showing up ... There should be much more focus on keeping the protective parent/primary caregiver safe.

Her views on the recent changes to the Family Law Act are complex:

If legislation is changed, to solely prioritise safety over contact, then some people would be taken from their parents when they shouldn't have been ... So, I know it's complicated, but for me, I don't understand how anyone could have thought that I would be safe with him. So, it must have been because they wanted us to have a relationship, because otherwise I cannot fathom what drove the decision making.

But where there are allegations of child sexual abuse and the Family Court is weighing up whether the mother is lying, or whether the father is an abuser, this dilemma has a simple solution:

I say it all the time, I would much rather believe a potential liar than a potential rapist.

Annie

Annie is now nineteen.³⁸ She was involved in Family Court proceedings for twelve years, between the ages of five and sixteen. The first four years of the process was about both property and parenting and orders were made on the division of property when Annie and her brother were nine. From that point, the sole focus was custody. Annie explains:

I only have memories from the final trial when we were nine and upwards. I don't really remember anything before that. So, after we were nine, the Court Orders that were given out was my brother and I got split up to some degree, who knows for what reason, and that was not a very good decision. I started refusing, at one point to go with my father, so then we had to wait and go back to Court, and so did my brother.

Annie lived primarily with her mother, with weekend contact every second weekend with her father, and *random days through the week - it was odd*. Contact with her father ceased when Annie was eleven. Her brother lived primarily with her father until he was fifteen.

Annie describes her family as very small, including just her parents, herself, and her twin brother.

Annie is a victim and survivor of sexual, physical and verbal abuse by her father. By age nine, her mother and other adults around her were aware of the abuse. Her initial disclosures of sexual abuse were indirect but significantly concerning:

I did not say it right out, because I did not understand exactly what was happening, I'm a child not realising what I'm saying, but I definitely said things that were red flags. Anyone really would have heard those things and be like, oh, stuff is happening here. It was common knowledge that he was sleeping with us. It was common knowledge that he was forcing us to bathe with him ... a lot of things that were known were red flags.

Her father also physically and verbally abused Annie and her brother. This abuse left visible injuries, and was witnessed by other adults:

It wasn't just the sexual abuse it was ... (he was) ... physically abusive and badly abusive towards us. So, we did constantly get questions about injuries, bruises and things like that. And there have been many witnesses to him being verbally inappropriate towards us as well, like teachers, sporting coaches. Wherever we were. It was everywhere. So, there were other red flags popping up as well.

Annie's recollection is that instances of abuse were raised with her mother, but beyond that no response was made by the professionals who witnessed it. Child protection was notified when Annie was eleven and was refusing to attend contact with her father. She was not interviewed, and *nothing came of it*.

Annie did not discuss the sexual abuse directly with anyone involved with the Family Court. She believes that they were made aware of the abuse via her mother's affidavit and Family Reports:

I was completely excluded from anything to do with that. Nothing. Nothing. There was no one to tell.

Her father's abuse escalated over time, and her knowledge increased:

It was getting worse and worse. I was scared he was going to kill me. I was also starting to understand a bit more about what was going on. I started to understand that things were not okay.

Annie's experience of the Family Court

Annie experienced the Family Court as *quite terrifying*:

Very much removed from everything. We're waiting constantly for people to make decisions. Your life is being dictated by people that you have never met. How distressing that is; it's not just your parents; it's the Court process which is creating issues. There are different layers where you don't have any influence or control in your life.

Annie knows that she was interviewed for three Family Reports but was too young to remember the first time. She remembers the process clearly for the second and third reports, when she was respectively aged nine and eleven:

³⁸ Annie asked us to use her first name in the research.

We would just get taken out of school some days, like two young kids, you know, go a bit stir crazy, get brought into a room, asked questions, and then that was kind of it. I remember being taking out of school and being pissed about that, not liking that bit.

When Annie began to resist contact with her father, she describes it as *a bit of a shit show*:

The second time I refused to go, I was at school. My school then forced me to go with him, even though legally they weren't allowed to. The application for an urgent Court date to change the parenting orders got denied for the next six months. I would go to school, twenty per cent of the time my school forced me to go with him. The whole thing was just a massive shit show.

Annie's engagement with the Family Court

Annie describes a strategic approach to engaging with adults connected to the Court:

The one thing about the Court system is that it drummed into us, anything you say or anything you do will end up as evidence. So, from a very young age, we were very hyper aware that we couldn't say anything, we couldn't do anything, because it would come back and bite us in the ass, basically.

I also knew, I was very hyper aware of the fact that anything I did or did not say was getting written down in a report and that would get back to my parents months before any Court date. There were always consequences for not saying exactly what my father would want us to say.

Because of this, Annie said as little as possible in interviews for Family Reports. Critically, she was not sufficiently protected to disclose ongoing abuse from her father.

The multiple impacts of the Court process

The Court process was a dominant influence across Annie's childhood, an influence which was disconnected from the reality of her life. Most significantly, Annie had to have contact with her father, continue to be unsafe, and continue to be abused.

For Annie's twin brother, age eleven was a key turning point:

Once I stopped living with my father, it got a lot worse for my brother, because it was mainly directed at me, and when I left, it got directed at him. Initially he wanted to go to my father to some extent ... (but then) ... he tried leaving, he wanted to stop going to father's for quite a few years before he finally did.

The key current impact for Annie is her determination to speak out:

I'm going to keep speaking, because I can. I'm doing whatever I can to help, to make sure it gets changed.

Annie's wishes as a child

As a child, Annie wanted to be helped, and to be given a voice:

I think probably the main thing was just a way to have my feelings heard through the Court system without it - it's hard to do because it's technically a Court case - but without it ending up as evidence for my parents to get a hold of months before any Court date. I think it was probably very similar for my brother; he would have needed to be able to have a say.

She wanted to live solely with her mother, where she was safe. Her wishes about contact with her father did not change: *I didn't want to see him. Full stop.* She wanted to live with her brother full time and believes that he wanted the same: *us being together the whole time, because it felt safer when we were together.*

Annie's perspective as an adult

Annie describes three key adult insights:

- As a child, it appeared odd and inexplicable that she and her brother were separated, especially because they were twins, attending the same school. With hindsight, she now knows that the reason for this was so that her father could say that he had shared custody.
- Annie now sees children's direct voice as a right:

The more I understood, the older I got, the more I wanted a voice, and the more it infuriated me that I didn't have a voice. It was like, this is ridiculous, especially when I was becoming a teenager. I mean the last time my parents went to Court, I was sixteen. I was like, this is ridiculous. These decisions only affect me ... (but) ... I'm completely excluded.

- As an adult, Annie has a clearer understanding of why her school forced her to continue to see her father: *in hindsight, I think they got manipulated by him.*

She continues to be baffled by the Court's decisions:

I can't understand how anyone could have thought that I would be safe with him.

What needs to change

Annie argues that it is critical that the Family Court understands that their current process prevents children from speaking freely, and speaking safely, including about abuse they are currently experiencing. While the most recent legislative change prioritises safety, in Annie's opinion:

I don't think it's gone far enough. It doesn't do anything to protect the child who wants to disclose abuse.

She recommends avenues for adults who participated in Family Court as children to give feedback and make complaints:

I don't think that you can try and improve the Family Court system without the input of those who've been through it. It just does not make sense. I think you can go to the Attorney General, but that's the first point of call and it's quite extreme.

Professionals involved in the Family Court, particularly Family Report writers, need to understand the realities of disclosure:

Half the time when kids disclose abuse, it's not even on purpose. They're not sitting down and saying, this is happening. It's small comments that you don't even realise as a child what you just said.

Children going through the Court process need resources:

There's no resources for kids in the Family Court system. Like nothing, you can't even find a fact sheet of the rights of children, let alone someone that kids can ask questions about what's going on. It's just, there's nothing.³⁹

Annie is aware that the Human Rights Commission has described the Family Law Act as violating the children's human rights. She agrees, and argues:

We need a Court system that puts children actually first.

³⁹ Southern Cross University's co-designed toolkit is referenced above.

Rachel

Rachel was involved in the Family Court from age five.⁴⁰ She is unsure when the process ended:

I felt like mum was going in and out of court for years, like not on appeals, but it was just a slow process. But that was probably also combined with the divorce, like there would have been other legal matters.

She is uncertain when her parents formally separated. She remembers them sharing a room in the house she lived in as an infant, but them having separate bedrooms and bathrooms in the house they moved to when she was a toddler. This was in the recession of the 1990s, so she thinks that her parents continued to live together out of financial necessity. Rachel's father had lost his job, so her mother went back to work when Rachel was a new-born:

He took on the primary care when she was at work. So functionally, it probably actually worked - the co-habitation, my memory is at a family level, it wasn't shouting or yelling at me and my brother, whatever.

Rachel was sexually abused by her father, and her mother responded immediately:

When I was five, I disclosed to my mother that I was being abused, and then they stopped living together, suffice to say. And then I went and lived with my mum and my brother. The house was sold; we lived together forever after that.

Obviously now I understand how significant that was for me. And I suspect it was easy for my mum to believe, because I'm so young, it's just beyond the realms of something that a kid can make up.

Rachel's aunt had moved in with her family after her marriage broke down, in the week before Rachel's disclosure. Her aunt worked in residential out-of-home-care:

She moved in, and then suddenly we were all moving out. But she worked in child protection, not as a child protection worker, but she worked for one of the agencies that run residential care. And she really beats herself up about it now, about not having seen the signs. She talks about this kids' calendar and apparently, I always put black clouds on the days that I was seeing my dad. She was like, oh, there were just so many things. You know, when a penny drops, it all falls into place.

Rachel's mother reported the abuse to Police immediately, and an investigation began. In the meantime, Police advised Rachel's mother to remove the children from the home:

The advice was to get the kids out of there in the name of a holiday. You don't get custody orders straight away, and so I remember this random trip to Queensland that was unexpected. It was probably extremely financially stressful for my mum, but she would have done anything to ensure our safety, she sold the belongings in the house. She never really understood why women would stay in abusive environments, either for them or their children. She was just adamant that essentially, we would be better off on the street.

Rachel remembers spending time with the investigating detective:

She'd spent quite a lot of time with me. She cooked pancakes with us at our house, and she had taken me for drives as part of the interviewing. And I remember doing the doll, identifying the doll, all of that sort of stuff. And so, I suspect that they had been confident that what I was disclosing was truthful enough. And again, I guess probably the age, you're so young that it's not possible to make up.

Rachel remembers being taken to hospital on the day she disclosed, or very soon after:

My initial memory is, virtually the day of disclosure. I don't know if it was actually the day, but immediately I remember being at the Children's Hospital, and that was back when they physically examined children where there were suspicions of abuse, and so I remember that distinctly, and my auntie came with us for that, and I remember, doing the examination, and I had to leave the room with my auntie when they spoke to my mum.

⁴⁰ Rachel is a pseudonym.

Rachel thinks that orders were put in place to prevent her father from having contact with her. Despite this, he made persistent, ongoing efforts both to contact her and to maintain his control:

There must have been some sort of temporary order put in place that he wasn't to have contact with me, because he was certainly trying to pursue it, but he wasn't allowed to. He would do things like get a taxi to deliver things to our house, controlling and watching, because Mum was moving rentals to try and hide, and I think that was his way of ... (saying) ... look, I still can find you. I remember, like, the taxi would come and there'd be presents, and mum would just have this terrified look on her face. And then the police would come, so obviously, there was some sort of condition that he wasn't to do that.

Rachel's brother continued to have contact with their father:

It wasn't mandated for my brother, but my brother wanted it voluntarily, and then he would go through phases where it stopped. I mean, essentially, my brother was looking for love and never got it. My dad never really had any interest in my brother.

Rachel never missed having a dad:

We're in a generation where dads weren't really that involved. My mum was unusual for working, particularly in a professional line of work, most of it was stay at home moms and dads that worked. So, I didn't ever look at my friends' great relationship with their dad, because their dads were not there. I sometimes wish that my mum had more ... (time). Other people's mums were baking cakes after school or in the school campaign, and my mum wasn't doing any of that. So, I missed that, but I never missed having a dad.

Rachel's memory of her childhood includes experiences of safety, experiences of not being safe, and critically, the experience of being protected by her mother:

My mum made me feel safe. There's moments of feeling unsafe in my childhood, these times when you get the knock at the door, and you realise that you're not safe and people can just appear at your door. And sort of uncertainty. But my mum really went above and beyond. My auntie, who had moved in with us re-partnered, and mum moved out separately because she didn't want a man coming to the house.

And I remember being in Grade Two, and really, I just hated my teacher, and he had the same sort of facial hair as my dad. Mum liaised with the school, and they changed my class. So, there's obviously still things, I really wasn't aware of or naming it.

Rachel's father stalked her in her 20s. This experience, and her experiences as a child have had an impact on her sense of safety:

I guess I've just always grown up aware, to be aware, to be on guard, and it's tricky. Obviously, women have that awareness. It's hard to know if mine's greater because, but I do remember being young and being more aware of my safety than I think probably children need to be.

Rachel's experience of the Family Court

From age five, Rachel describes her childhood as *punctuated* by the court:

The process began, but I remember it going for years. There would be court days and changing custody orders or he'd try and turn up at the house, and then the police would visit, and changing schools and not telling people that we're changing schools. And my brother still saw him, and my dad would ask my brother to draw a floor plan of the current house. My brother was young, so didn't understand what this sort of stuff was.

Virtually all of primary school, it was courts and psychiatrists, and dad was always trying to pursue custody or using my brother as a way to try and get to me.

As a child, Rachel did not always know which adults worked for the court, which worked for the hospital, and which worked for the police. For example, she remembers:

Another time, being at a hospital, but it was actually probably the court. I remember doing the behavioural analysis, where it was supervised, I was in a room and people were behind mirrors watching how I interacted with my father and the court social worker.

I was with her first ... (the social worker). I met her and my brother was there. I remember her talking and explaining, there's going to be toys, but there's going to be a mirror. I knew they were behind the mirror. I remember playing and like trying to see through the mirror.

Rachel knew that the fact that she was being observed by adults behind the one-way mirror meant that her father could not harm her, and she was safe; at five years of age, she was clearly able to distinguish between being safe and being unsafe. Beyond that:

It was also really novel. I was just full of curiosity; I was almost oblivious to the fact that my father was there.

She had no direct relationship with the court, and had to keep her interactions with the court social worker confidential from her mother:

I felt like everything was just funnelled through the social worker. I was told that I wasn't allowed to talk about anything to do with my interactions with the social worker, with my mum, like nobody could be seen to influence things, I guess. That's a really big ask of a five-year-old. I was a very 'these are the rules' type of kid, but it meant I didn't have a dialogue with anyone. I remember wanting to talk to her, I remember going home and wanting to ask a question and being like, I'm not allowed to. I remember being aware that I might mess everything up if I talk to her, but it was like there was no consideration of who I should be talking to then.

She experienced her interactions with the social worker as interviews, and as very different in tone from her conversations with Police:

These interviews with the social worker, they felt very much like interviews. They never felt supportive. I never felt like she was on my side, not that I was looking for sides, but she never felt like an ally, whereas I remember a much better relationship with the police detective.

Rachel's engagement with the Family Court

Rachel's key strategy in engaging with the Court was to try to follow the rules, including the implied rules:

I remember them preparing me to talk, and it was a big deal, like, and I remember ... (thinking) ... should we, shouldn't we? I remember the social worker saying to me, along the lines of, if I testify, I'll be taking away my dad from my brother. I vividly remember that, because they still had contact. And after that, I declined, I changed my mind, because up until then, I'd planned on doing it, and my mum didn't push me one way or the other.

She also didn't know that the social worker had said that. I'm very aware that that was my secret with the social worker. It was said in hushed tones when we were one on one. I remember being very aware that what I said would be powerful, that it might be a decision-making factor, and I just wanted to remove myself from that.

The multiple impacts of the Family Court

Rachel describes her mother trying to insulate us from the gravity of the situation, and her efforts having some success, partly in combination with Rachel's own personality:

I don't remember changing schools being a particularly bad thing, but I suspected, suspect it would have been for my brother, that's just our personalities. Even in high school, I changed schools by choice in my senior years, and I always quite liked it, because oh, I'm going to meet new people. I remember going to a new school, and that was that, made some friends, and we stayed there the whole way through.

I enjoyed school and thrived in my school reports, there were clearly no catastrophic impacts.

I was seeing a child psychiatrist a day a week. And for me as a kid, that was just my life. But obviously, in hindsight, that was remarkably different than all of my friends. I still had friends and was a part of things.

I mean, in a lot of ways, I feel like the whole process, even where I was the victim, impacted everybody else more than me.

She thinks that the impact on her mother and her brother would have been very different:

The impact on the sibling is unseen. I guess it's like if you've got a sibling who's got leukemia, that the victim or the sick kid (gets support) ... there was lots of wraparound supports for me, and I was clearly the victim. I can't fathom what it would be like to go through all of this as the parent. I was looked after, I was believed, I had good experience in school, good counselling.

My brother would have been more averse to changing primary school. I suspect for him, he was a few years older, that change probably wasn't seamless. He was gifted, so he was very young, very smart, and then probably spent a couple of years trying to figure out how to manage that in the first primary school and then doing that in the second.

Rachel thinks that her father's continued contact with her brother must have been extraordinarily difficult for her mother to manage:

He wasn't allowed to come to our house to collect him. Mum had to drop my brother off. I can't even imagine what this was like for my mum and her ability to not bad mouth my brother's decision to do this.

Rachel's mother and brother are now dead. Reflecting on the impact of the process on their sense of safety, she thinks:

The two of them probably felt less safe than I ever did. My brother was so worried about safety, he got to the point where he'd be paranoid. I remember leaving the door unlocked one day when I went out and he was furious; his reaction was just so disproportionate. He and my mom always had sleep problems, and I suspect that was anxiety. After my brother died, I realised that him being so hypervigilant is actually one of the things that made me feel safer. I'd always felt protected by him - like I had this, your own guard of you.

So, I don't think it's a coincidence that I felt safe because he was so paranoid about safety, and he was four years older, so he would have been a lot more aware of an uninvited visitor who knocks at the door. The difference between a six-year-old and a 10-year-old, and at 11 and 15, the pennies would have dropped for him and the impact on my mum. I don't know what safety would have looked like to them, but they certainly never felt safe.

Having to keep her experience of the Court process confidential had a significant impact on Rachel:

I was happy to see ... (the child psychiatrist) ... but that was also weird. I remember avoiding all conversations in sessions with him, you know, just trying to play games. And he did play based therapy. I was very happy to play with the dolls and talk about the dolls' house ... (but) ... building assigned roles ... (I would) ... just throw the dolls out and change the subject. That probably told him plenty anyway.

When you ask everyone to keep all these secrets, it's very shameful, isn't it? You learn unconsciously very early on that this is all some shameful secret. And I remember I didn't tell anyone, any of my friends, until well into late high school. It's like I knew that this was our family's secret. I don't know where I'd gotten ... (that) ... certainly my mother had never said, don't tell. But it was all of these, you know, private conversations. Don't talk to each other. The extension of that is this is something to not be talked about, which you then think is something of a deficit within you ... (from) ... early on. People would ask where my dad was, and I remember vividly being vague. I clearly couldn't tell them the truth.

Rachel's insights and perspectives as an adult

As an adult, Rachel has read documents from the Police investigation and what she assumes to be a criminal trial:

I've read the police interview of when my dad was interviewed, and it was just so clear. They said to him, your daughter's reported this, and she's been examined at the hospital, and they found this. In the interview, the police ... (said to my dad) ... you don't seem surprised or concerned that this has happened.

I am aware that at one point there was a jury which wouldn't be involved in a family court situation, and the jury couldn't make a decision. I remember reading a judgement - I tried to find it to prepare for this, but I couldn't. But I remember reading ... (in the judgment) ... the judge had said, not guilty doesn't mean you're innocent. I've got reasonable views that you're not safe, the children are not safe, but that custody is a family court matter.

Rachel thinks that it was after the criminal case that her supervised contact with her father ceased.

Rachel has also read the social worker's report:

In hindsight, having seen the report from the social worker, she certainly didn't understand what was happening. She didn't believe it was happening. My experience was sent to her which wasn't believed, which was then reframed. I don't think the family court got any insight into me at all - all they got was her take on me. The family court social worker is saying the five-year-old is wrong. I'm sure that there would have been other reports, and they looked at school reports or whatever, but in the absence of me speaking to them, I didn't get a say. And neither did my brother, who was hugely impacted by it all.

Rachel understood that she was safe during observed interactions with her father. The social worker did not appear to be able to distinguish between how a child acts when they are safe, and how a child acts when they are in danger. Rachel is now a mother, and has reflected on children's experience of safety and danger:

I think all children, I think even babies, know raised voices. My two-year-old gets startled and runs ... (to me) ... Thankfully, if something happens, she'll be going, scary, scary and run. They know, it's very instinctive. (In terms of knowing) ... what compromises your safety, certainly for both of my kids, it was years before being five that they could make these distinctions, and the nuance of it. I remember one day, my husband raised his voice. My daughter was like, he's scary. And I said, oh, does mummy get scary? Is mummy scary when she raises her voice, and she just laughed at the idea that I could be scary. The other big difference is I don't have a deep voice; the volume is not the same threat.

Rachel now understands why the court process seemed so long to her as a child:

This actually might have been why it felt like the cases went on for years. I presume the family matter couldn't start until the criminal matter was resolved. I doubt that it would run concurrently.

I think that then explains why the ... (criminal court) ... judge made those comments. When I read it, I thought, that's a bit out of line, isn't it? The jury's gone one way, and in no uncertain words, the judge has actually said that the jury was wrong. But now thinking about it in the timeline, it was that the judge would have known that his finding would be needed for the custody so he must have made temporary orders that then went into the family court because my dad was making the case that he was found not guilty, so he should still get custody.

The Family Court's assessment of Rachel's contact with her father was that she was safe. Their decision that she should have no contact with him appears to have been dependent on what the criminal court judge said, not on what Rachel herself said:

It was very much a time when children were not included in processes about them, particularly young children. You know, there was no nuance - you're either eighteen or you're not. It's probably only the early 2000s where people started to see maturity and competency as a continuum. I suspect in 1990 it was like you're five, stay at home and the adults will sort it out.

Rachel has also realised that the Family Court engages with individual family members, rather than with the family, and this has significant and ongoing impacts:

In terms of the court, I feel that we weren't seen as a family unit. There was never a discussion with me, my mum and my brother together, when the decisions they were making were going to impact the three of us in many, many ways for the rest of our lives. And I think that separating us also laid a foundation that our own needs needed to be individual needs for the rest of our lives. It wasn't, you're a family, how do we meet the family's different needs, let's work through this together. It's like everyone is going to separate rooms and don't talk to each other about your needs.

So, from a very early age, that was how we were taught, and that pattern followed with us forever, like it was always individual counselling. I did counselling, and my brother did but there was never family stuff. Mum never had anything which she probably needed it the most. It was the family court, but they never considered, looked at us as a family.

She has thought deeply about her brother's very different experience, and its impact on him:

I wish that my brother had had no contact, but I don't know that that actually would have helped him. I think he needed to learn that awful lesson himself, because it was really tricky, because I suspect he resented that I destroyed his family. He really did want a relationship with dad, but he was never going to have that anyway. My father never had any interest in him; he used to send Christmas presents to me and not him. I think that if he didn't learn that awful, heartbreaking lesson, he probably would have just in his head believed that I was what had kept him from his dad. I just feel like it was going to be shit no matter what.

Rachel's mother kept all the documentation from the courts. As the children got older, she told them that she had the reports, and that they could read them if they chose to. Initially, Rachel had no interest in reading the reports, but her brother did when he was in his early 20s:

(My brother) ... read it, and mum regretted it almost immediately, because I think she'd overestimated how much he understood about the nuance of what had happened to me, and he read it and got more details about what had happened to me, physically what happened to me, but also the process. He read this slimy police interview. Mum said she couldn't leave the house, couldn't go to work that day, because she was so worried he was going to go and kill our father.

What needs to change?

For Rachel, the mediation of the child's voice through a social worker, and the assessment of safety in a relationship by observing an unnatural interaction is ineffective:

The social worker as the voice of the child is just so problematic. I suspect I had a particularly not great social worker ... (but) ... having one person tasked with representing the child is really complicated, and it's also really tricky, just by the nature of the work they deal with every day. While it gives them some expertise, lots of expertise in fact, it also really shapes their view of normal.

Rachel knew she was safe during observed interactions with her father; that influenced how she acted:

The behavioural analysis was just nuts. I can see what logically they think it's going to achieve, but I vividly remember how weird it was. You're not objectively looking at this interaction. I feel like it's such a contrived scenario, you're looking at behaviour in a very unnatural setting that doesn't replicate what things might be like.

Critically, the Family Court needs to work with families as families:

I think that if they had considered us as a family, that what had happened to me actually happened to the whole family ... (considering) ... how that unfolds in future and protecting that sibling relationship. I feel like it laid the foundation for so many fractures and separations in our unit when all we had was each other, we didn't have any external family support. The lack of family, seeing it as a family, I think, is the biggest thing.

Chapter 5 Themes

Multiple case studies allow researchers to identify shared and unique experiences among a group of participants with a shared experience, and to test conceptual frameworks against lived experience. In the first part of this chapter, we identify what was shared and what was distinct in Isabella's, Annie's and Rachel's experiences, through the lens of the evidence.

In the second and third parts of the chapter, we explore the two strongest themes which emerged from our analysis in greater depth: Safety and Protection; Agency and Voice.⁴¹ These themes are markedly similar to the common experiences of Nelson's participants:

feelings of powerlessness, trauma around the execution of court orders, distress associated with being disbelieved, ignored, or 'kept in the dark', the ongoing social, emotional and financial impacts of Family Law litigation, and the ways in which trauma associated with family court encounters resurfaced in children's adult lives, profoundly affecting their wellbeing (Nelson 2022).

Nelson's interviewees, as did ours, talked about the length of time taken to resolve matters. In several cases, they described the trauma of the court process as worse than the family violence to which they had been subjected; two of our three participants described the Court process as a second trauma. With one exception, the experience of Nelson's participants was of family report writers pursuing their own, preexisting agenda, rather than hearing the unique experience of the child; this was true for each of our participants. What stands out for our participants is the compounding impact of the Court process on the secrecy and shame intrinsic to child sexual abuse and on their potential for recovery.

In the fourth and final part of the chapter, we describe the conceptual frameworks around child sexual abuse which appear to be operating in the Family Court, testing them against the lived experience of our participants and the research evidence.

⁴¹ Themes are separated analytically but overlap experientially.

Shared and Distinct Experiences

Key Finding: Direct verbal disclosure of child sexual abuse in childhood is not usual. Where early disclosure receives a positive response, the impact is significant in terms of immediate safety and long-term psychological and physical health.

Sources: Australian Institute of Family Studies (2025); Bravehearts Foundation; National Office for Child Safety; National Centre for Action on Child Sexual Abuse (2024)

Key Finding: Children up to the age of 14 are most likely to disclose to their mother. Children report mixed responses from their mothers. Positive responses include taking immediate action to stop the abuse. The impact of disclosure is often devastating for the family.

Sources: Australian Institute of Family Studies (2025); Allnock & Miller (2013); Elliott et al. (2022); McElvaney & Nixon (2020)

Our participants all disclosed abuse as children to their mother. Their mothers immediately believed them and took steps to protect them. The circumstances of two of our three participants allowed their mothers to stop the abuse. Each of our participants talked about how important their mother's belief and protection was for them.

Key Finding: Child sexual abuse is rarely a single experience and can lead to complex/developmental trauma. In our view, where sexual abuse continues post-separation, it is better understood as continuous traumatic stress.

Source: Kezelman (2024); Eagle & Kaminer (2013)

All three of our participants were subjected to repeated sexual abuse over years, for Isabella and Rachel until they disclosed to their mothers, and for Annie until she stopped contact with her father, leaving her subject to continuous traumatic stress.

Key Finding: Child sexual abuse can co-occur with domestic abuse.

Sources: Hume (2003) Australian Institute of Family Studies (2015) Olejnikova et al. (2025)

For two of our three participants, child sexual abuse and domestic abuse co-occurred. All three experienced emotional abuse, and Annie also experienced physical and verbal assault.

Key Finding: Child sexual abuse has both immediate and life-long impacts.

Sources: National Child Traumatic Stress Network; Bravehearts Foundation: Breckenridge et al. (2022)

The immediate impact of the sexual abuse they were subjected to was different for each of our participants. For Isabella, the immediate impacts were terror, anger and resistance. For Annie, the immediate impact was confusion: she did not know how to make sense of her father's abuse. For Rachel, the impact of child sexual abuse was profoundly mitigated by the immediate supportive response to her disclosure. The abuse ceased, her contact with her father ceased: *there was lots of wraparound supports for me, and I was clearly the victim ... I was looked after, I was believed, I had good experience in school, good counselling.* She thinks that this, plus her outgoing personality, meant that the abuse impacted more on her brother and her mother than on her.

What our participants share is an immediate, sustained and crystal-clear wish not to have contact with their father. Isabella and Rachel did not see their fathers after they disclosed, but Annie continued to see him, and to be subjected to sexual abuse by him, until she was 11 and refused to attend contact.

The impact of sexual abuse in later childhood and adolescence also varied significantly for each of our participants. Isabella dissociated from the abuse during her childhood and experienced the impacts somatically as *this crashing weight that I had no idea what it was about.* For Annie, it took the intensification of the abuse, her growing understanding that it was wrong, and her growing assertiveness to end the abuse.

Alongside Rachel's more supported experience, she also notes ongoing, subconscious impacts:

- hating the Grade Two teacher who reminded her of her father: *there's obviously still things; I really wasn't aware or naming it*
- her sense of awareness and vigilance: *I do remember being young and being more aware of my safety than I think probably children need to be*
- her guarded response in therapy: *I remember avoiding all conversations in sessions with him, you know, just trying to play games.*

As adults, Isabella and Annie are determined to speak out. Annie told us: *I'm going to keep speaking, because I can. I'm doing whatever I can to help, to make sure it gets changed.* For Annie and Rachel, the abuse is largely in the past, but for Isabella it is a constant. She is still afraid, and her thoughts are filled with the abuse: *the words in my head like incest are so there and such a constant ... my head is just constantly filled with terror. And you know, words - like paedophile and incest.* Isabella continues to struggle with anger, assertiveness and boundaries, the parts of her that kept her safe, but the parts she thinks were unacceptable to adults involved with the Court. She is also terrified about her father's potential abuse of other children.

All our participants noted that the broader impacts on the family as a unit appear not to be understood by the Court. In practice, the experience of child sexual abuse, domestic abuse and the Court process itself is siloed and individualised, inserting distance into previously close relationships. The process cuts the child victim and survivor off from natural supports, critically the non-offending parent, and constructs an environment of solitude and silence around their experience. For two of our three participants, this contributed to internalise a sense of shame about the abuse. For our third participant, she did not internalise shame but knew that she was not supposed to talk about *the shameful secret*.

Key Finding: Recovery from complex trauma following child sexual abuse is possible. Immediate belief and support - parental and therapeutic - are critical for children who disclose. Recovery requires safety.

Sources: Herman (1998); Cruz et al. (2022); The Bravehearts Foundation

Belief and support from their mothers were not enough, on their own, to support Isabella and Annie to process trauma as children. They were explicit that there were two sources of trauma in their childhoods: the traumatic impact of child sexual abuse, and the secondary traumatic impacts of the Family Court.

In these circumstances, as children and teenagers, they could not establish the safety and stabilisation required for the first phase of recovery from complex trauma. Isabella told us:

I never felt like it was their job to help me heal the wound, but maybe back at 10 years old ... if I didn't have to fight for just basic safety, all that energy, all that fight I had the words in my head like incest are so there and such a constant. It wasted all my capacity for a long time; I spent a long time recovering from Court. Now I have to start recovering from my dad, and I feel like if I just had that basic safety, then maybe I could have made it a catalyst (for recovery).

While Rachel talked about internalising shame, her circumstances enabled a greater degree of safety and stabilisation, and she had weekly therapy throughout her childhood. However, the impact of the individualising approach of the Court prevented her family recovering as a unit, laying *the foundation for so many fractures and separations in our unit when all we had was each other.*

Safety and Protection

What did safety and protection mean to our participants as children? What are their insights on keeping children safe, with the benefit of adult hindsight?

Safety and protection through the eyes of the child

For our participants, immediate safety meant not seeing their fathers, and enduring safety meant a final Court decision that they would not have to continue with or resume contact. The time it took for that to occur created constant anxiety that their temporary safety would be taken away and replaced with danger. Continuing anxiety about the eventual decision the Court would make about contact was compounded by the proscription against talking about the matter with family. Their experience of the Family Court was that it considered safety to mean the absence of immediate physical risk, and that it was unaware of, or unconcerned about, emotional and psychological safety.

Our participants were very clear about the source of danger, and the sources of protection. Our participants were clear that their fathers were unsafe, and they remained firm in their wish for no contact with them throughout their childhoods. With hindsight as adults, they are clear that this was their own independent view - and that it was correct.

The primary protector for each of our participants was their mother, and they were all strongly aware of her implacable commitment to keeping them safe from abuse by their father:

Any attempt from the court or from his lawyers, or any systems and processes to come to some kind of compromise was not good enough for my mom - once a month, a weekend or something like that. Like, if they say that you have to go to him, then we are leaving the country. (Isabella)

Rachel's mother immediately removed her from contact with her father, but her father made persistent, ongoing efforts to contact her and terrorise her family. Rachel's mother took concrete steps to protect her, moving house on a number of occasions, taking out an Apprehended Violence Order (AVO) and calling police. Despite these efforts, it was not possible for Rachel's mother to create continuous safety:

My mum made me feel safe. There's moments of feeling unsafe in my childhood, these times when you get the knock at the door, and you realise that you're not safe and people can just appear at your door. And sort of uncertainty. But my mum really went above and beyond.

Despite Annie's mother's efforts, she could not persuade the Court that contact with her father was unsafe, and Annie continued to be subjected to sexual abuse by her father until she began to refuse to attend contact at age 11.

Rachel's experience stands out from Isabella's and Annie's in that she had a number of protective adults in her life: the police, her aunt, and particularly the judge in her father's criminal trial, who went out of his way to document his view that her father remained a real risk to Rachel's safety from abuse. Her brother was also a source of protection. He was hyper focussed on safety: *him being so hypervigilant is actually one of the things that made me feel safer. I'd always felt protected by him - like I had this, your own guard of you.*

For Isabella, her mother was her sole protector, and while she admired and relied on her mother's protection, she was also fearful:

What if it was just too much and she just died? Or stopped or was crazy, like grandmother, or it was just too much. It was really scary having just one person to protect me from everything. When she got ill, I was terrified ... I felt unsafe because safety felt conditional.

For Annie, other adults were bystanders rather than protectors. Annie and her brother were subjected to physical and verbal abuse: their injuries and the verbal abuse were witnessed by multiple adults, none of whom took action to protect them. Annie remembers child protection intervention only when she began to refuse to attend contact, but again *nothing came of it*. Her school forced her to attend contact with her father on multiple occasions.

Our participants also talked about a felt sense of safety. Rachel told us that her mother tried *to insulate us from the gravity of the situation*. Isabella redefined the concept of family to mean only her mother - the one adult that she trusted - and her sister. She was very clear that her father was not safe, and she did not feel safe when she spent time with her grandmother. Annie continued to include her father in her definition of family, but safety meant no contact with him and *us being together the whole time, because it felt safer when we were together*.

Isabella experienced protection from the Court as contingent, dependent on convincing them both that the abuse had happened, and that it had been bad enough to outweigh their strongly held belief that contact with fathers is beneficial.

For Annie, the nature of the Court process meant protection was not possible: *it was drummed into us, anything you say or anything you do will end up as evidence*. Because of this, Annie said as little as possible; she was not sufficiently protected to disclose sexual abuse from her father during contact, and the abuse continued. Rachel was more shielded from the process of the Court.

As children, our participants understood enough to develop sophisticated strategies to try to keep themselves - and their families - safe. They understood the Court's views on contact with fathers, and Isabella describes avoiding overt disagreement with the Court's agenda that children need a father, while being clear that contact would be unsafe with this particular father. The opportunity to speak positively about her stepfather was a significant help in these conversations. Annie's strategy was to say as little as possible, and 'play by the rules'.

Safety and protection with adult hindsight

As adults, our participants have reflected on how the Court arrived at their view that contact with their fathers would be safe. Isabella said:

It can't have been because they didn't believe that I was in danger. I don't understand how anyone could have thought that I would be safe with him. They just thought that I should be there anyway in spite of it all.

Annie too continues to struggle with the Court's views. In her matter, the Court did not know that the sexual abuse was continuing, but they were aware sexual, physical and verbal abuse had occurred in the past. She told us: *I can't understand how anyone could have thought that I would be safe with him.*

Our participants have also reflected on what needs to change to keep children safe, inside and outside the Court. Annie now understands that agencies as well as victims and their families can be groomed by abusers: her school forced her to attend contact *because in hindsight, I think they got manipulated by him*. She knows that adults can miss red flags. Annie argues that Court processes need to change to allow children to speak freely, and speak safely, about both past and current abuse.

Isabella's key insight as an adult is the critical need for the Family Court to understand the centrality of mothers for children's sense of safety:

When I spent time with my grandmother - time away from my primary caregiver - this was time that I was not safe - so constantly taking me away from her ... (my mother) ... was hurting me, even though it wasn't direct. So that should be much more of a priority, making sure that she wasn't constantly in danger of him showing up. There should be much more focus on keeping the protective parent/primary caregiver safe.

As a child, Rachel knew that the fact that she was being observed meant that her father could not harm her, and she was safe. Now a mother observing her own children, Rachel cannot understand why the social worker did not know this and appeared to be unable to distinguish between how a child acts when they are safe, and how a child acts when they are in danger. She speculates that the social worker in her matter may have become desensitised to risk and was astonished to learn that one single point in time observation continues to be considered a credible way to assess child-parent relationships.

Discussion

Moore et al. were commissioned to research how children understand safety by the Royal Commission into Institutional Responses to Child Sexual Abuse (Moore et al. 2015). They found that children and young people understand and experience safety differently to adults, differentiating between being safe, and feeling safe. Lack of safety is defined by the absence of safe people, the presence of unsafe behaviours and environments and the absence of strategies to keep them safe. Safety is defined by protection, security and being looked after. By contrast, adults are often focused on more observable threats and miss how children feel, and what they need to feel safe. Centrally, safety for children is relational:

Participants often characterised safety in relation to others: they felt most safe when they had adults and peers around them whom they trusted and who would protect them from danger; that they had faith in these people because they knew that they cared about children; that they knew them well enough to identify when they were unsafe; that they took time to be with children and took their worries and concerns seriously, acting on them when appropriate (Moore et al. 2015).

Our participants' mothers understood that safety for their children meant being safe, feeling safe, and being in safe relationships. In contrast, our participants experienced the Court as seeing only concrete danger, and as oblivious to felt safety and relational safety. Their mothers continued to fight to protect and secure the full safety of their child in

the face of sustained opposition from the fathers, and a Family Court process which they experienced as working against their efforts. While two of the mothers succeeded in keeping their children safe from sexual abuse, the combination of perpetrator strategies and the process and the culture of the Court prevented all of them from keeping their child fully emotionally and psychologically safe, and from establishing safety and stabilisation as the platform for recovery from trauma.

Agency and Voice

What did agency and voice mean to our participants as children? What are their insights on supporting children's agency and voice, with the benefit of adult hindsight?

Agency and voice through the eyes of the child

Our participants understood agency as being held by adults who they had never met and could not speak to directly, and whose decisions, as we saw above, were unexplained and inexplicable:

- *adult people sitting together and deciding whether or not I should have to spend time with the man who raped me. (Isabella)*
- *Very much removed from everything. We're waiting constantly for people to make decisions. Your life is being dictated by people that you have never met. How distressing that is; it's not just your parents; it's the Court process which is creating issues. There are different layers where you don't have any influence or control in your life. (Annie)*
- *I felt like everything was just funneled through the social worker ... It was very much a time when children were not included in processes about them, particularly young children. You know, there was no nuance - you're either eighteen or you're not. It's probably only in the early 2000s where people started to see maturity and competency as a continuum. I suspect in 1990 it was like you're five, stay at home and the adults will sort it out. (Rachel)*

While they did not see themselves as having meaningful input to decisions, our participants were conscious of enormous pressure around both what they said, and how they said it. Where they did have a voice, it was constrained:

- As a small child, and over ten years, Isabella worked out how to speak the language of the Court, deliver her message in a way that they could understand, and would listen to: *It was a constant fight to prove that I did need not him and I did not want him. Without being rude, to very nicely be very clear. Over time, and I just got better at it. On one occasion, Isabella's voice was directly denied, with her letter to her father rewritten by the social worker.*
- Annie was from the outset *hyper aware that we couldn't say anything, we couldn't do anything, because it would come back and bite us in the ass, basically. I was very hyper aware of the fact that anything I did or did not say was getting written down in a report and that would get back to my parents months before any Court date. There were always consequences for not saying exactly what my father would want us to say.*
- Rachel remembers *being very aware that what I said would be powerful, that it might be a decision-making factor, and I just wanted to remove myself from that.*

For Rachel, having to keep her interactions with the court social worker confidential from her mother operated as the most significant constraint on her voice and agency, and had long-lasting impacts on her, and on her family:

It was all of these, you know, private conversations. Don't talk to each other. The extension of that is this is something to not be talked about, which you then think is something of a deficit within you.

There was never a discussion with me, my mum and my brother together. I feel like it laid the foundation for so many fractures and separations in our unit when all we had was each other, we didn't have any external family support.

As she grew older, Annie's perspective changed:

The more I understood, the older I got, the more I wanted a voice, and the more it infuriated me that I didn't have a voice. It was like, this is ridiculous, especially when I was becoming a teenager. I mean the last time my parents went to Court, I was sixteen. I was like, this is ridiculous. These decisions only affect me ... (and) ... I'm completely excluded.

Agency and voice with adult hindsight

As adults, our participants are strongly critical of the mediation of the voice of the child through social workers and psychologists. However, enabling a direct voice is complex. Children and young people need to be protected from retaliation from abusive parents to be able to safely express their views, share their experiences and, particularly, to disclose abuse. Adults in the Family Court system need to be able to look beyond their preconceptions about family

and attune to the specific experience of the child in front of them. And, critically, they need to understand how children disclose sexual abuse: that it can be indirect, and that it can be angry:

It just felt like the parts of me that were angry and loud and had boundaries and said "no", were the parts of me that made me terrible ... I was never allowed to hate him. But I hated that man so much, I still do, and prior to court, those unacceptable parts of myself were the only things that kept me alive. If I was looking after that child, they would be safe, if someone tried to hurt them, I would just protect them without them needing to be good and nice and kind and polite. And if they screamed and were angry and sad and scared and terrified, that would not change the fact that I would look after them. There would be no criteria for protection, I would just protect them. (Isabella)

Agency and voice also require good information. As a child, Rachel did not always know which adults worked for the court, which worked for the hospital, and which worked for the police. She argues that children need resources, and they need to have an avenue for feedback and complaints:

There's no resources for kids in the Family Court system. Like nothing, you can't even find a fact sheet of the rights of children, let alone someone that kids can ask questions about what's going on. It's just, there's nothing.

I don't think that you can try and improve the Family Court system without the input of those who've been through it. It just does not make sense. I think you can go to the Attorney General, but that's the first point of call and it's quite extreme.

Discussion

Key finding: Contemporary domestic abuse research tells us that child victims and survivors can be manipulated and parentified, but that they can also exercise independent agency.

Source: Katz (2014) (2015) Callaghan & Alexander (2015)

At home, our participants developed creative strategies to resist the coercive control and abuse to which they were subject, using some of the strategies identified by Callaghan and Alexander: *carefully managing what they say, and who they talk to, to control what is known about their family; redefining who counts as family to exclude abusers and include trusted non-relatives; physical resistance* (Callaghan & Alexander 2015). In the Family Court, our participants clearly continued to act as *agentic subjects* (Katz 2014), striving to make independent sense of their experiences (Buckley, Holt & Whelan 2007) and to interpret unexplained adult thinking and behaviour. Our participants describe independently forming views about contact with their father and engaging strategically in Court processes, working out what responses were expected and would be helpful, and what they needed to conceal.

Our participants were highly observant and highly strategic, but as Nelson notes, they were negotiating in a *hostile legal terrain* and did not have the information or knowledge to predict the impacts of their strategies. Nelson further argues that the omission of children's direct voice on many occasions meant that the Court *thought it was safe, but it wasn't* (Nelson 2022).

Our participants' wish to participate in decisions and to have a voice is strikingly at odds with the Family Court's current approach to children's participation, but in alignment with existing research on children's views of what their participation should be in Family Court (Dimopolous et al. 2023; Graham & Cashmore 2018; Nelson 2022). There has been significant work exploring how children's participation in the Family Court could be strengthened (for example, Bell 2015), and the Centre for Children and Young People at Southern Cross University is currently working with children and young people *to better understand what meaningful, safe participation means and looks like for them in practice ... (and) ... to co-design and produce a children's participation toolkit*. (Centre for Children and Young People www.scu.edu.au) The findings of our study will feed into the development of the toolkit.

Our participants' views also align with contemporary understanding of children's capacity as developmental and changing, rather than 'all or nothing'. In some circumstances, developmental capacity is recognised via a fixed lower age limit, such as in adoption: for example, children over the age of 12 can consent to their own adoption in New South Wales, Western Australia, South Australia and the Northern Territory (Institute of Open Adoption Studies 2019). As noted above, the fixed lower limit approach was originally included in the Family Law Act. In other circumstances, capacity is not determined by age, but by demonstrated understanding, as in the Gillick principles used to determine a child's right to consent to medical treatment independently of their parents (Griffith 2016). Neither of these approaches were adopted in the 2023 reforms to the Family Law Act; children's participation is argued to be strengthened by making it mandatory that, where they have Independent Children's Lawyers, that those lawyers must meet with them, outside of exceptional circumstances. That change has been described by Dimopolous as *a missed* **I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts**

opportunity to embed children's direct, unfiltered voices into the framework for determining children's best interests (Dimopolous 2025).

Finally, our participants' views also align with what children told Moore et al. about safety:

- children felt most safe when they knew what was happening, why it was happening, and how to navigate any emerging safety issues
- attempting to *quell rather than explore children's fears* is ineffective, and not allowing children to understand when there are real risks leaves them vulnerable
- children need to be given a measure of control to avoid them remaining *in a powerless position* (Moore et al. 2015).

Our participants did not think their voices were heard; their experience of adult professionals acting as their voice was of adults interpreting their views through a strongly pre-determined lens. In our view, the balance between protection from parental conflict and allowing children a voice in decisions which affect them appears not to have been reviewed against either contemporary evidence or lived experience and is therefore not being appropriately struck in the Family Court. Despite their active and strategic engagement in Court processes, both the substitute decision-making model and failure to explain the Court process significantly limited our participants' capacity to exercise agency.

Conceptual Frameworks

As noted above, the case study approach allows researchers to test the conceptual frameworks used in systems, both those which are explicit and articulated, and those which are implicit and assumed. In the final part of this chapter, we compare the experiences and insights of our participants and the evidence with the conceptual frameworks around child sexual abuse that shape Family Court practice. The Magellan List and empirical analysis of matters where there are allegations of child sexual abuse act respectively as the articulated, and implicit and assumed conceptual frameworks which shape the Court's response.

Explicit and articulated

The Family Court has not yet articulated a distinct conceptual framework around child sexual abuse. It is not clear whether the Court has not recognised, or does not recognise, the need for an explicit framework around child sexual abuse, or whether its assumption is that its (extensive) documentation and guidance around family violence is sufficient. The closest the Court arrives at articulating a conceptual framework around child sexual abuse is in the description of its Magellan List. This tells us that the Court believes that child sexual abuse requires a different approach where allegations have been made within 12 months because these matters:

- involve the most vulnerable children
- require information from a greater range of sources, and are resource intensive
- require *a tightly managed approach with a multi-disciplinary team of Judges, Registrars and Court Child Experts who manage cases from start to finish* (<https://www.fcfcga.gov.au/magellan-list>; accessed February 2025).

Allegations of child sexual abuse made more than 12 months previously generally do not require this approach.

The Magellan List covers around 170 matters each year.

Family Report Writers and Independent Children's Lawyers are competent to provide expert evidence in matters where there are allegations of sexual abuse (<https://www.fcfcga.gov.au/expert-witnesses>; accessed February 2025).

Implicit and assumed

Empirical analysis of cases where there are allegations of child sexual abuse identifies an implicit and assumed conceptual framework which sits alongside the explicit and articulated position of the Courts (Webb et al. 2021). This tells us that the Court appears to consider that:

- Most allegations of child sexual abuse in the context of custody disputes are false or mistaken; a child's wish not to have contact with a parent against whom allegations of child sexual abuse have been made is not sufficient for that to occur and may well be the result of coaching for purposes of parental alienation.
- Judges' satisfaction that child sexual abuse has occurred is a reasonable test; more evidence is required in order for Judges to reach the degree of satisfaction required where there are allegations of child sexual abuse than in other matters.
- It is appropriate to require children and young people who are victims and survivors of child sexual abuse to keep their discussions with Family Court personnel confidential, including from the parent to whom they disclosed; it is appropriate on some occasions to prevent child victims and survivors from receiving counselling, and to prevent children and their non-offending parents from making further disclosures of sexual abuse.

Recent Disclosure

The focus on disclosure within the previous 12 months appears to assume that a protective response and/or investigation is likely to occur within 12 months of a disclosure. Lived experience, and the evidence outlined in earlier chapters, does not support this assumption.

Our participants had made recent disclosures, and their mothers responded protectively. They do not know if their matters were allocated to the Magellan List. Their experience challenges the assumption about recent disclosures, in two ways: their mothers' protective response to their disclosures did not resolve risk in the face of their fathers' denial of the abuse; and the Family Court process extended the period during which they were at risk of continued sexual abuse. For Annie, sexual abuse continued.

The evidence tells us that:

- Children's disclosures are not always heard or acted upon by adults; one in three adults may disbelieve disclosures, and many more may leave a child unsupported (National Centre for Action on Child Sexual Abuse 2023).
- Most child sexual abuse is not reported to Police; where it is, there is a high attrition rate (Australian Bureau of Statistics 2021-22).
- Disclosure should be understood as a gradual and ongoing process rather than a single event; the response children and young people receive will either encourage or discourage them from continuing the process (Australian Institute of Family Studies 2055).
- Responses to disclosure can be helpful, but they can also be harmful; some studies find a negative response significantly more likely than a positive response when children disclose sexual abuse to a parent or caregiver (<https://bravehearts.org.au/disclosure-of-child-sexual-abuse/>; accessed March 2025).
- Most victims and survivors do not access support services; for those who do, there is usually a long delay (<https://bravehearts.org.au/disclosure-of-child-sexual-abuse/>; accessed March 2025).

False Disclosure

Key Finding: False allegations of child sexual abuse are rare. Where they do occur, they are more likely to be made by fathers than mothers. Experienced practitioners are more concerned about false denials than false allegations.

Sources: O'Donohue et al. (2018); Trocmé et al. (1994) Bala & Schuman (2000); Fessinger & McAuliff (2020)

Isabella and Rachel were clear from the outset that what was happening to them was wrong; Annie took more time to reach this conclusion. They each describe unprompted disclosure to their mothers. Each of our participants was clear from the start that continued contact with their fathers was unsafe, continue in that view as adults, and believe strongly that the Court should have acted on their wishes. For Isabella, where there are allegations of child sexual abuse and the Family Court is weighing up whether the mother is lying, or whether the father is an abuser, the benefit of the doubt should fall on the side of safety for children:

I say it all the time, I would much rather believe a potential liar than a potential rapist.

The evidence is clear that false allegations of child sexual abuse are rare, occurring in the range of 2 - 5% overall, and in the range of 4.7 - 15% in custody disputes (O'Donohue et al. 2018; Trocmé & Bala 2005). Fathers are significantly more likely than mothers to make false allegations of child sexual abuse (Bala & Schuman, 2000). Researchers and experienced practitioners argue that we should be more concerned about the more common phenomenon of false denials - children who deny or minimise sexual abuse (Trocmé & Bala 2005; Fessinger & McAuliff 2020).

As noted above, child sexual abuse can co-occur with domestic violence. If we apply Olejnikova et al.'s (2025) analysis to Orders made by the Family Court in 2024 - 2025, we would expect child sexual abuse to have been present in 207 matters using the 1% lower range figure, 7,550 matters using the 36.4% upper range figure, and 2033 matters using the 9.8% mean (FCFCOA 2025 c; Olejnikova et al. 2025).⁴²

⁴² The Courts made a total of 36,318 Orders (Interim and Final) in 2024-25. In addition, 1112 parenting matters were finalised via dispute resolution. The Court notes that 65% of Final Orders included parenting in Division 1, and 60.8% in Division 2. (Data is not available for Interim Orders) The proportion of parenting matters involving family violence has risen to 86%. Applying these percentages, 22,792 matters resolved in 2023-24 which included parenting alone, or parenting and property together, are likely to have included family violence. (37,430 Orders of which 60% (approx.) include parenting: 22,458 + 1112 DRCs: 23,570 of which 86% involve family violence: 20,742. The Court notes that this excludes matters where participants do not disclose family violence, matters where participants do not realise that what they are being subjected constitutes family violence, and does not account for dynamic risk (FCFCOA 2025 c).

Determining abuse, assessing risk

Our participants were as children, and remain as adults, utterly incredulous that the Family Court disbelieved the evidence that they had been sexually abused and saw contact with their fathers as safe:

I can't understand how anyone could have thought that I would be safe with him. (Isabella)

In hindsight, having seen the report from the social worker, she certainly didn't understand what was happening. She didn't believe it was happening. My experience was sent to her which wasn't believed, which was then reframed. I don't think the family court got any insight into me at all - all they got was her take on me. The family court social worker is saying the five-year-old is wrong. (Rachel)

As noted above, there are concerns about, and concerns held by, Family Report Writers about their capacity to complete a comprehensive best practice assessment, due to, inter alia: limited training and ongoing professional development; a felt pressure to avoid clear and direct recommendations; the curtailed nature of the process. Guidance to writers does not mention child sexual abuse, and writers are as subject to the pervasiveness of parental alienation concepts in the Family Law space as are any other actors. Similar concerns and pressures apply to Independent Children's Lawyers, and it remains to be seen whether legislative reform will allow the child's perspective on their best interests to cut through.

Under these circumstances, we argue that Family Report writers and Independent Children's Lawyers cannot advise on whether child sexual abuse did or did not occur with an acceptable degree of reliability. We agree with the Rapid Review Panel's view that the Scottish Court Service is correct in this area, and that Australia does not currently meet the required standard:

With respect to child-related expertise, the Scottish Court Service made the following observation: "There must be sufficient investment in the quality of interviewing, questioning, and examination applying the highest international standards and requiring appropriate training and qualification." This would appear to remain aspirational with respect to child sexual abuse allegations in Australian courts. To the best of our knowledge, no measurable trauma informed forensic interviewing model is used that from a developmental perspective, meets children "where they are" (Rapid Review of Prevention Approaches 2024).

Judges rely on Family Report writers and Independent Children's Lawyers as expert witnesses, and their reports are the primary formal way in which research can be entered into evidence (Rathus 2025). However, it is the Judge who determines facts: did the abuse occur? is the child at unacceptable risk? It appears that Judges see determining whether sexual abuse did or did not occur as a decision they can safely make, based on their training and the evidence before them, provided the degree of evidence reaches the level of sufficiency commensurate with the seriousness of the issue. Judges are now able to conclude that a child is at unacceptable risk from the parent against whom the allegations have been made, whether or not they have determined that abuse did occur.

The evidence supports the latter approach, but not the former view. As noted above, the Full Court judgement in *Isles v. Nelissen* (2022) notes that Family Court Judges can take possibilities into account, not solely probabilities. In this Judgement, it was asserted that:

... risks are capable of classification in only one of three mutually exclusive categories: possibilities, probabilities, certainties ... courts should (and do) react to dangers in the form of risks of harm that are merely possibilities; it is an oxymoron to expect those possibilities to then be forensically proven on the balance of probabilities (Isles v Nelissen (2022) FEDCFamC1A 97).

This shift in approach aligns with thinking about, and experience in, risk assessment in child protection. It has long been known that assessing the probability that a child will face future risk in a complex and changing situation will always be subject to error, regardless of whether a professional judgement or statistical algorithm approach is taken. The determination is more art than science and is strongly shaped by the conscious or unconscious orientation of the decision-maker towards child protection or family preservation (Harnett 2024).

Child sexual abuse, by its nature, is not a crime where corroborating evidence is likely to often be present. Holding child sexual abuse allegations to a higher standard of proof/satisfaction does not align with the realities of the crime. The most compelling evidence, the direct voice of the child, is not heard by the Judge. Expert evidence on this issue cannot be relied upon.

Judges are no more immune from societal denial of child sexual abuse and the pervasiveness of parental alienation concepts than are other members of the community. Developments in neuroscience confirm that the human brain does more than react to what we see and hear - what we perceive is also shaped by our brain's predictions about what will happen next. We see what we expect to see, and we hear what we expect to hear.

I wish they knew what they'd stolen from me: child sexual abuse and the Family Courts

(<https://neuroscienceschool.com/>; accessed October 2024) If we expect allegations of child sexual abuse to be likely to be false or coached, that is what we are primed to see, and to believe.

The Family Court has made extensive and admirable steps to educate its stakeholders and reform its processes to align with the realities of family violence. Chief Justice Alstergren spearheads the 'Family Violence: It's Just Not On' campaign, commenting as follows:

These figures are a sobering reminder of the shocking prevalence of family violence in Australia and in our communities. It is an issue that over the past 7 years, as Head of Jurisdiction, I have felt compelled to speak up about. Unfortunately, despite significant investment and extraordinary efforts of many leading Australians focused on the prevention of family violence, the male population has not yet been galvanised to address this issue in a meaningful way. I believe it is time for men to step up. Men need to be leading the change for other men and light the way forward into a positive and accountable future - if we cannot meaningfully connect with men and boys, we risk undoing decades of progress (Federal Circuit and Family Court of Australia 2025 c).

As noted above, the Court is moving to consider sexual violence as a distinct area of practice. With training commissioned on sexual violence towards adults and children. We hope that this will allow the Court to understand child sexual abuse as a discrete area of knowledge and practice with its own complex bodies of evidence. As Death, Ferguson and Burgess note, *the original family law system was never designed to manage allegations of child abuse, but these quickly became core business of the courts* (Death, Ferguson & Burgess 2019). In our view, child sexual abuse is not core business which the courts are currently equipped to manage. While training will of course be helpful, this will not ensure that Family Court Judges have access to the expert advice or assessment processes necessary to determine with reliability whether child sexual abuse did or did not occur.

We return to this theme in the following and final chapter of our research.

Silencing

Rachel was deeply affected by the proscription against talking to her mother about what was happening in the Family Court:

I was told that I wasn't allowed to talk about anything to do with my interactions with the social worker, with my mum, like nobody could be seen to influence things, I guess. That's a really big ask of a five-year-old. I was a very 'these are the rules' type of kid, but it meant I didn't have a dialogue with anyone. I remember wanting to talk to her, I remember going home and wanting to ask a question and being like, I'm not allowed to. I remember being aware that I might mess everything up if I talk to her, but it was like there was no consideration of who I should be talking to then.

She also told us that the expectation of confidentiality led her to believe that what was secret between her and the social worker was shameful and her fault:

When you ask everyone to keep all these secrets, it's very shameful, isn't it? You learn unconsciously very early on that this is all some shameful secret. And I remember I didn't tell anyone, any of my friends, until well into late high school. It's like I knew that this was our family's secret. I don't know where I'd gotten ... (that) ... certainly my mother had never said, don't tell. But it was all of these, you know, private conversations. Don't talk to each other. The extension of that is this is something to not be talked about, which you then think is something of a deficit within you ... (from) ... early on.

The separation of Rachel, her mother and her brother throughout the Court process also fractured what had been a close family unit and placed impediments in the family's capacity for mutual support and collective sense-making.

The expectation of confidentiality between a child who has been sexually abused and an adult who is a relative stranger to her has three key detriments: it perpetuates the secrecy of child sexual abuse; it increases the possibility of self-blame; and it isolates the child from her most needed source of support. As noted above, the evidence is clear that where a child is able to disclose to their mother, and where their mother is protective in response, both immediate and long-term negative impacts are significantly mitigated. Indeed, safe connection is essential to recovery from trauma:

Trauma destroys the social systems of care, protection, and meaning that support human life. The recovery process requires the reconstruction of these systems. The essential features of psychological trauma are disempowerment and disconnection from others. The recovery process therefore is based upon empowerment of the survivor and restoration of relationships (Herman 2002).

Preventing children from accessing counselling denies them a key recovery relationship. Preventing a child or their mother disclosing sexual abuse is a direct form of silencing, and is highly likely to promote shame and self-blame, known risks for victims and survivors of sexual trauma (McElvaney 2021).

We return to this theme in the following and final chapter of our research.

Delay

As we have seen, lengthy Family Court processes had significant negative impacts on our participants, as is found in all other research with children involved with the Family Court. The Family Court prevented recovery and cast a shadow over our participants’ childhoods. We are struck by the contrast with permanency principles used in child protection, which are set out in Table 12.

Table 12: Permanency in Child Protection

Permanency Principles in Child Protection
Permanency is a multifaceted concept, with at least three dimensions including: • relational permanence: the opportunity to experience positive, caring and stable relationships with significant others • physical permanence: stable living arrangements • legal permanence: the legal arrangements of a child’s custody and guardianship (Osmond and Tilbury 2012; Wright and Collings 2021). Best practice involves achievement of orders and permanency outcomes within 2 years of admission to out-of-home care. Best practice also means that children are included in decision making about their permanency arrangements and receive timely decisions about their permanency arrangements.

(Australian Institute of Health and Welfare 2023)

Chapter 6 Observations

In this final chapter of our report, we share our two key observations, drawn from our own research and the research of others:

- in practice, and unintentionally, the Family Court process is both a retraumatising and an anti-recovery experience for victims and survivors of child sexual abuse
- in practice, and again unintentionally, the Family Court has drifted into functioning as a parallel child sexual abuse investigatory agency, alongside child protection and police.

Making these observations from outside the system, we argue that serious and intentional consideration needs to be given to two key questions:

- how can Family Court processes adapt to become more trauma-informed?
- should child sexual abuse investigation be contained within the Court's scope of practice?

Trauma and Recovery

All too often victims of crime report that enduring the criminal justice system is itself a type of victimization - a secondary or re-victimization. Factors that impact how victims experience the system include how they are treated during the process, and the amount of control and participatory access that they have (National Crime Victim Law Institute 2013).

Research shows that many people who experience complex trauma-related problems have been re-traumatised by the very services they have accessed for assistance. Such re-traumatisation occurs across the full spectrum of sectors, practices and services, including within and across the legal and justice sectors (Kezelman & Stavropoulos 2016).

Engagement with the courts may exacerbate or prolong the trauma ... lengthy court processes may contribute to a victim's re-victimisation or secondary abuse through the court system ... lack of information about the court process ... perpetuates a sense of powerlessness ... (and) ... risks re-traumatisation. Child victim-survivors can be particularly adversely impacted by delays ... (which can be) used as a deliberate defence tactic (Murphy & Lumley 2022).

Isabella and Annie experienced the Family Court as a second trauma. Making it through that second traumatic experience meant that they had neither the safety nor the energy to focus on recovering from the first trauma, child sexual abuse.⁴³ Nelson and Lumby's participants also describe being traumatised by the Family Court process, and the trauma resurfacing in their adult lives. (Nelson & Lumby 2021)

Two of us - Tunya Petridis and Morag MacSween - have extensive experience of providing therapeutic and psychosocial support to victims and survivors of child sexual abuse. We were struck by the stark contrast between best practice in responding to child sexual abuse and the experience of our participants going through the Family Court process as children. Clinically, we know that children need to recover from the traumatic impact of child sexual abuse: belief; transparency and protection when they disclose; an end to the abuse and security that it is over; safety and stabilisation, critically including strengthening the relationship with the primary caregiver; developing a clear narrative of the traumatic experience which integrates events, thoughts and feelings; and integrating new understandings and learning into everyday life.

Children who have disclosed sexual abuse in childhood represent a minority of victims and survivors. Children who have disclosed to a protective and supportive response from their mother are a subset of that minority. They, unlike children who have not been safe to disclose, or who have been ignored, blamed or disbelieved, are in the best possible position for recovery.

⁴³ For Isabella and Annie, their mother was their sole protector. Rachel had additional layers of support and belief and describes herself as *more insulated* from the Family Court process.

Where children in this group are involved in the Family Court, we argue that they have an **anti-recovery experience**:

- they either are, or perceive themselves to be, disbelieved
- some are forced into continued contact with the perpetrator and thus continue to be abused
- others experience temporary physical safety but enduring emotional danger
- they are not able to develop the safety and stabilisation needed to process trauma
- barriers are introduced into their relationship with their primary caregiver
- their primary caregiver is under continuous financial, emotional and psychological stress.

In parallel to the anti-recovery experience, children are also re-traumatised by the Family Court. Herman tells us that the central experiences of complex trauma are disconnection and disempowerment (Herman 2002). In the Family Court, children are disconnected from their natural supports and in practice fend for themselves in a confusing, complex and unexplained system, where they are again subject to the agendas and decisions of powerful adults. This was the experience of Isabella, Annie and Rachel.

The Family Court recognises the trauma that victims and survivors of domestic abuse experience; by extension we expect that they also recognise the trauma experienced by victims and survivors of child sexual abuse. One of the areas of training provided in the Family Court in 2023-2024 was training in trauma-informed practice (FCFCOA 2024). The Court has also introduced the Critical Incident List, working with the Queensland Homicide Victims Support Group to ensure faster access where children do not have a parent to care for them because of homicide, suicide, critical injury or imprisonment because of family violence. The Chief Executive of Queensland Homicide Victims Support Group described the initiative as *a progressive and trauma informed process ... (which recognises that) ... energy and focus needs to be on the welfare of the children, and not on how to navigate the right to support them in the most basic of ways every day.* (<https://www.fcfcqa.gov.au/innovations/critical-incident-list>; accessed March 2025))

How can Family Court processes adapt to become more trauma-informed for victims and survivors of child sexual abuse?

There is emerging work upon which the Court could draw to build on its existing work to provide a trauma-informed experience for victims and survivors of all forms of trauma. Guidance on adopting trauma-informed practices has been produced by the Judicial Commission of NSW (Murphy & Lumley 2022) and the Australasian Institute of Judicial Administration (<https://dfvbenchbook.aija.org.au/article/1080291>; accessed February 2025).

The former includes an adaptation of the trauma-informed practice principles - with which we are very familiar as clinicians - to the court environment. These are set out in Table 13 overleaf. The In Good Faith Foundation has developed the Trauma-Informed Legal Education (TILE) program for lawyers and paralegals *to address the unique practice challenges arising in the legal world when working with victim-survivors* (<https://igff.org.au/trauma-informed-legal-education/>; accessed May 2025)

Table 13: Trauma-informed principles in the Courtroom

Trauma-Informed Principles in the Courtroom
Safety: throughout the courtroom, all participants feel physically and psychologically safe.
Trustworthiness and transparency: operations and decisions are conducted with transparency with the goal of building and maintaining trust with all court participants.
Peer support: peers are understood as individuals with lived experiences of trauma; peer support and mutual self-help are key vehicles for establishing safety and hope.
Collaboration and mutuality: importance is placed on partnering and levelling the power differences in the courtroom.
Empowerment, voice and choice: the courtroom fosters a belief in the primacy of the people served, in resilience.
Cultural, historic and gender issues: the courtroom actively moves past cultural stereotypes and biases (e.g. based on race, ethnicity, sexual orientation, age, religion, gender); leverages the healing value of traditional cultural connections; incorporates policies, protocols, and processes that are responsive to the racial, ethnic and cultural needs of individuals served; and recognises and addresses historical trauma.

(Murphy & Lumley 2022)

As non-lawyers, we were also interested in, and see the direct relevance of, the concept of therapeutic jurisprudence:

Therapeutic jurisprudence emphasises the value of autonomy, that people wish to be involved and have a say in decision-making that affects their wellbeing and that processes that violate that principle are likely to be counter-productive and to adversely affect their wellbeing. Procedural justice has found that people are more likely to perceive that judicial proceedings are fair if they have been treated with dignity, they have been given the opportunity to be heard and that the decision-maker is trustworthy, that is they demonstrate a genuine commitment to listening to the parties and reaching a fair outcome. To be listened to properly and with dignity requires sensitivity to issues of trauma, culture, gender and background that should inform the place and process used for telling a person's story, a listener alert to those issues and the listener's use of body language and communication skills that conveys listening, interest and understanding (George et al. 2024).

Murphy and Lumley also point out that as many victims and survivors of trauma going through the Court process will not have had access to support, *every interaction is an opportunity* to change this (Murphy & Lumley 2022). Our research reveals that for child victims and survivors of sexual abuse, the Court can do more than minimise retraumatisation. For victims and survivors of child sexual abuse, every interaction could also function as an opportunity to disclose, with new research telling us that it is likely at least 207 and potentially up to 7550 child victims and survivors of sexual abuse will engage with the Court each year (FCFCOA 2025 c: Olejnikova et al. 2025).

Murphy and Lumley argue that we should map the justice needs of victims and survivors against court process, to identify both triggers and opportunities (Murphy & Lumley 2022). Conducting this process through a child sexual abuse lens would have made an enormous difference for Isabella, Annie and Rachel. For thousands of children who have not been able to disclose, or who have disclosed and been disbelieved, the difference could be life-altering, unlocking the prevention potential of the Family Court.

Investigating child sexual abuse

I don't think that knowing how to throw and catch would have been worth all the torment. I don't know, maybe they didn't believe me, or maybe they thought it was a worthwhile exchange. They were wanting to send me there in spite of the danger. Isabella

Isabella, Annie and Rachel did not know as children what decisions the Family Court had made about the child sexual abuse to which they had been subjected, and the risk of harm which they continued to face. In adulthood, the Court's decisions continue to be something of a mystery. The Court clearly did not believe that Annie was at unacceptable risk of harm in contact with her father, and she continued to be sexually abused until she decided to refuse contact. Isabella did not have contact with her father but recollects continuous pressure on her to accept the views of the Family Report writer that contact was not only safe, but in her best interests. Rachel had supervised contact with her father until the Family Court received the judgement from the criminal trial, which aligned with Rachel and her mother's assessment that contact with her father was unsafe but contradicted the view of Family Report writer.

Two of us - Morag MacSween and Jodi Death - have frontline and executive experience in statutory child protection. We were struck by the contrast between best practice investigation of allegations of child sexual abuse in child protection, and the approach taken in the Family Court. We explore that contrast in the final section of our report.

The Family Court refers all allegations of child abuse to State and Territory child protection authorities, but capacity issues mean that many of those allegations are not investigated. The Family Court is in practice making the same decisions as are made in child abuse investigations: on balance of probabilities, did the abuse occur; and what risk of harm does the alleged perpetrator pose to the child going forward.⁴⁴ These decisions are made by the Judge, informed by the Family Report and evidence submitted by the parties. In our view, this is an investigative process.

Family Court investigation of child sexual abuse

As noted above, there are long-standing concerns about the competence and accountability of Family Consultants in their role as report writers, and concerns that they do not work within a consistent evidence-based assessment framework. Family Report writers are generally allocated 20 working hours to complete their report by Legal Aid, with the interview and observation process generally occurring in a single day; seeking other information or interviewing other people in children's lives is not routinely included.⁴⁵ The assessment is forensic and moment-in-time, rather than therapeutic or extended, and Family Report writers are constrained by concerns about allegations of bias and/or complaints from parents and by their understanding of the Court's expectations. While they are expert witnesses, the Court is the fact finder, and their recommendations are couched against alternative scenarios, depending on the facts the Court finds, rather than directly expressing professional conclusions (Rathus 2021). The Court has noted *as with all evidence, the evidence of experts may or may not be relied upon in the courts' determinative process* (Clark & Davoren 2019). Following *Isles v Nelissen*, the Judge may determine unacceptable risk whether or not s/he has determined that abuse occurred. There is extensive guidance and training for Family Court officers on family violence, but minimal guidance and training on child sexual abuse.

Family law researcher Professor Patrick Parkinson holds significant concerns about the capacity of the Family Court to determine whether child sexual abuse has occurred:

Family law proceedings are private proceedings so from a legal point of view, the applicant makes his or her case, the other side responds with his or her case and the judge is the neutral arbitrator ... that model where the judge is a sphinx-like decision-maker doesn't actually give you any scope for an independent investigatory capacity ... which is why the system relies upon independent family report writers, certainly for child sexual abuse. And they do their best, but what we really need in these cases in terms of the welfare of children is an independent investigatory capacity. There's been this problem for years. All the investigatory capacity is in the states, it's the police, the child protection services. We have a huge problem. Often the children are too young for it to go to criminal justice, child protection departments may or may not take it on, and it's left to the family law system
(Parkinson quoted in Clark & Devoran 2019).

⁴⁴ Criminal investigations focus on whether the abuse occurred beyond a reasonable doubt.

⁴⁵ Clare Colquhoun told us that where the report is commissioned privately by a parent, writers can charge more, spend more time, and include other activities, such as home visits.

Child protection investigation of child sexual abuse

Child protection is a State and Territory responsibility, and each State and Territory has adopted its own approach, including its approach to investigating child sexual abuse. In this section we outline the approach taken in NSW, as the approach with which we are most familiar.

In NSW, wherever possible child sexual abuse investigation is conducted by the Joint Child Protection Response Program (JCPRP).⁴⁶ The JCPRP is a specialist tri-agency response. NSW Health contributes an integrated medical, forensic and psycho-social response to children who have been subjected to sexual assault. The NSW Police Child Abuse Squad contribute specialist investigatory skills, and lead assessment where there is potential that the matter could proceed to criminal prosecution. The Department of Communities and Justice (DCJ) contributes child sexual abuse assessment and safety planning and leads where the matter will not proceed to criminal prosecution (www.health.nsw.gov.au/jcprp; [www.police.nsw.gov.au/crime/child abuse](http://www.police.nsw.gov.au/crime/child%20abuse); dcj.nsw.gov.au/jcprp; accessed April 2025).

Tables 13 and 14 overleaf set out the Principles and Objectives of the Program.

⁴⁶ Some child sexual abuse reports are allocated to local child protection offices for assessment and intervention. Local assessments are delivered within the same guidance and standards of practice as are used in the JCPRP.

Table 13: The Joint Child Protection Response Program: Principles

The Joint Child Protection Response Program: Principles
The JCPRP is a tri-agency program delivered by the NSW Department of Communities and Justice (DCJ), the NSW Police Force (NSWPF) and NSW Health. The program operates state-wide and provides a comprehensive and coordinated safety, criminal justice and health response to children and young people alleged to have experienced sexual abuse, serious physical abuse and serious neglect. The underlying principle of the joint partnership is recognition that the safety, welfare and wellbeing of children and young people is paramount. By working collaboratively, JCPRP staff from DCJ, NSWPF and NSW Health are able to coordinate agency specific expertise around the child or young person's needs. Principles: • <i>the safety, welfare and wellbeing of children and young people is paramount</i> • <i>staff and agencies are responsible for ensuring children and young people remain the central focus of procedures and decisions</i> • <i>children and young people receive protective, therapeutic and other support services when they need them</i> • <i>children and young people are protected from further trauma, including repeat interviews</i> • <i>children and young people in out of home care are entitled to and provided with special assistance and protection from the State</i> • <i>intervention is sensitive to issues of age, gender, culture, language, religion, disability, sexuality, socio-economic status and location</i> • <i>significant policy changes involve full consultation and joint communication prior to implementation</i> • <i>mutual respect for the statutory and other responsibilities of DCJ, NSWPF and NSW Health is essential to the effective functioning of the Program.</i>

Table 14: The Joint Child Protection Response Program: Objectives

The Joint Child Protection Response Program: Objectives
Children, young people and the community are protected from further harm and achieve safety, justice and recovery by: • <i>entry to the Program occurring via tri-agency assessment of Risk of Significant Harm (ROSH) reports containing allegations that may constitute a criminal offence, consideration of information held by each agency and agreement the threshold has been met</i> • <i>agencies exchanging information relevant to the safety, welfare and wellbeing of a child or young person in a timely and effective manner throughout the Local Planning and Response (LPR) process including real time access to victim interviews to inform safety and risk assessments</i> • <i>the NSWPF taking the lead on and coordinating the response to allegations of child abuse where it determines that there are sufficient grounds for the likely commencement of criminal proceedings</i> • <i>staff ensuring that the processes surrounding care and protection, health and wellbeing, and criminal investigation assessments and responses are as seamless as possible</i> • <i>staff and wherever possible children, young people and families, being clear on what action, further to the interview and/or initial field response, each agency intends to take</i> • <i>staff being responsible for ensuring that children and young people in out of home care, whether victims and/or persons of interest are provided with emotional and/or legal support throughout the process</i> • <i>agencies which provide an immediate or after hours response to a report outside of tri-agency assessment and decision making at the JRU, notifying the other agencies and initiating the LPR process at the earliest possible opportunity</i> • <i>agency leaders collectively modelling a culture of continuous practice improvement and jointly undertaking systemic case reviews</i> • <i>agencies implementing policies and practices which ensure staff are appropriately screened, qualified, trained and supervised to support best practice.</i>

Child Protection Assessment

The contribution of child protection practitioners to the JCPRP is child protection assessment. Practitioners are supported by the *See, understand and respond to child sexual abuse* Resource Kit (dcj.nsw.gov.au/caseworker-resources-and-tools; accessed April 2025). Assessment is delivered to Practice Standards:

- multiple sources are drawn on to inform the assessment
- hypotheses are used and tested
- assessment tools are applied according to policy
- assessment timeframes are met
- assessment tools are used to determine assessment decisions
- the family's support network is drawn on throughout the assessment process
- the child's relational, cultural, physical and legal permanency is considered in assessment processes
- the challenges that the family faces and that cause risk issues are considered throughout the assessment process
- theories and research evidence are drawn on
- rationales for decisions are recorded clearly
- gaps in information are noted and followed up
- each household member is included in an assessment and their views are explored
- family interactions and the home environment are observed
- the needs of the family are clearly identified
- copies of assessments are provided to the child and family, or if assessments were made verbally, a rationale for this is recorded

(NSW Department of Communities and Justice 2020).

The timeframe for the Safety and Risk Assessment (SARA) tool is 90 days.

In contrast with the approach adopted by the Family Court:

- child sexual abuse investigation is recognised as a specialist area of practice requiring tri-agency specialist expertise, but is not held to a higher standard of proof/satisfaction than investigation of other abuse types
- investigation sits within a comprehensive and coordinated safety, criminal justice and health response
- the safety, welfare and wellbeing of children and young people are the primary focus of the process; the child's safety and wellbeing are assessed and responded to in parallel with the investigative process; the child receives an integrated safety, criminal justice and health response
- the views and needs of the family as a whole are included in assessment
- assessment is explained to the child and family
- assessment is structured and conducted within a clear timescale.

Should child sexual abuse investigation be considered as within the Court's scope of practice?

Fogarty describes the establishment of the Family Court as a late, unthought through adjunct to the Family Law Act, and as having spent its first twenty-five years working out where the Court should and should not *find fault* (Fogarty 2021). The Court was not intended to function as a family violence specialist court - or indeed a child abuse specialist court - but in practice, these are the matters that come before it.

The main response to this challenge to date has been seeking to improve the way the State and Territory and Federal Jurisdictions work together:

- The Parliamentary Inquiry into Family Violence Orders noted that for families involved with both State and Federal jurisdictions, *this dual system can be time consuming, confusing, costly and re-traumatising for victims and survivors, and can put them at risk and anchor them to their abusers*. Submissions to the inquiry noted that state court family violence orders are frequently overridden by the family law court granting perpetrators access to children. The Inquiry recommended that state courts be given the power to amend family court orders to protect victim-survivors and their children, and that the Family Court be able to make personal protection injunctions when making parenting orders.
- The Attorney-General's Department told the Inquiry that the National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems and the Co-location Program pilot - co-location of child protection and police in family law registries - is intended to *ensure family law judges have relevant information about family violence and child-abuse risks as early as possible in proceedings* and foster a coordinated response. The initiative will be evaluated in May 2027 (Standing Committee on Social Policy and Legal Affairs 2025).

A dramatic and rare exception to the incremental improvement approach was argument by the Australian Law Reform Commission in 2019: that the Family Court should be disbanded and administration of family law handed back to States and Territories. The Commission argued that *closing the jurisdictional gap* would improve the management of matters including domestic violence and child abuse:

There have been growing concerns about the separation of the federal family law and state and territory child protection and family violence systems, and the risks to children's safety associated with this situation ... There has been little progress towards the creation of a nationally streamlined, coherent, and integrated approach to meeting the needs of children and families across the family law, child protection, and family violence jurisdictions ... The fundamental structural difficulties of the family law system can be remedied only by enabling family law, family violence and child abuse matters to be dealt with in the same place at the same time. One court considering the best interests of the child in totality (Australian Law Reform Commission 2019).

Our research leads us to question both approaches. Improved coordination and information sharing between jurisdictions leaves child abuse investigation within the scope of the court. An integrated family law, family violence and child protection jurisdiction at State and Territory level does not, on its face, resolve the chronic capacity issues which prevent child protection assessment of all notified risks to children's safety, welfare and wellbeing. We argue that attention should instead be focused on assessing the strengths and weaknesses, benefits and costs of the Family Court attempting to supplement capacity in the child protection system by running its own parallel system investigation of child sexual abuse. The contrast between the specialist skills, detailed structures and established standards in the JCRP and the generic skills and absence of structure and standards in the Family Court process could not be starker.

We agree with Baker's argument:

Tunnel vision constitutes the most insidious pitfall in the investigative process. Investigators who approach a file with preconceived notions have a tendency to ask questions that confirm their beliefs. To avoid falling into this trap, professionals (police officers, social workers, prosecutors) must work to obtain information from several sources and to analyze all of it in the light of multiple hypotheses in order to avoid preconceived notions ... trained socio-legal professionals ... must base their decision on a set of criteria ... Only rigorous and painstaking investigations, based on multiple hypotheses and information sources, are likely to reconcile the quest for truth with absolute respect for the child (Baker 2022).

The issue, in our view, is not of competing jurisdictions, but of specialist expertise and capacity. One of the most significant clinical risks identified in the literature is practice outside of scope. In our experience, the risk of practicing out of scope increases exponentially when gaps in the system leave significant needs and serious risk unaddressed,

and practitioners and agencies feel compelled to, or drift into, filling the gap. It is this risk which characterises the Family Court's current approach to child sexual abuse: stepping into an area of specialism where it does not have the required structure and process because it cannot rely on child sexual abuse investigation from State child protection agencies.

Clearly, this is not the Family Court's issue alone. As we have seen, the Family Court was intended to offer a less formal and speedier approach to separation with the introduction of no-fault divorce. In practice, the Court has become immersed in determining matters of fault in family violence and child sexual abuse. Statutory child protection is caught in an equally enormous gap between design and reality. Professor Leah Bromfield, one of Australia's leading experts in child protection, argued recently that the key issue facing child protection is that systems are based on outdated assumptions:

Our systems were designed initially on the idea that child abuse and neglect was a small problem. We've come so far and we've improved so much in our responses to child abuse and neglect, but our systems are still not good enough for our kids and as a consequence, children are falling through the cracks ... we are such a new field - really, the science around child abuse and neglect and child protection started in the 1960s and the systems we have now are basically the systems we put in place in the 60s.

(<https://www.unisa.edu.au/connect/enterprise-magazine/articles/2022/story9/>; accessed May 2025)

The exponential growth in evidence around child abuse and neglect also tells us that the belief that light touch early intervention could prevent the escalation of child abuse to more serious levels is not true. We now know that reports of child abuse and neglect are much more likely to involve multiple risks, complex needs, and often intergenerational abuse and neglect. With this knowledge, Bromfield argues that what is actually needed from child protection is intensive therapeutic services to disrupt that intergenerational cycle.

Our child protection services currently struggle to investigate most of the notifications made to them, let alone to provide long-term casework and fund intensive therapeutic services. In our view, enduring denial, deflection and disbelief about the true extent of child sexual abuse is a key contributory factor to that situation.

We are reminded of the phrase: the standard you walk past, is the standard you accept. We are walking past the standard of child protection capacity which is wholly inadequate to need. We are walking past systemic denial and disbelief in the true extent of child sexual abuse. We are walking past funding for prevention and response which treats a national emergency as a small problem. These are not Family Court responsibilities to remedy.

Recommendations

Expertise from lived experience highlights the importance of:

1. The relationship between the child and the safe parent and the child and their siblings, safeguarding those relationships by:
 - a. developing processes to routinely include a whole of family perspective on outcomes which align with the best interests of the family; and
 - b. in all matters where there are allegations of child sexual abuse, safety planning with the safe parent on how best to manage the impacts of the Family Court process on the family as a whole.
2. Where the Court is considering both allegations of parental alienation and child sexual abuse, its judgment clearly setting out:
 - a. how the judgement has responded to the evidence that suggests allegations of parental alienation in the context of domestic or child sexual abuse should be subject to critical analysis, and the evidence that allegations of sexual abuse are likely to be true; and
 - b. that the judgement has separated its findings in relation to child sexual abuse from its findings on the risk of future harm to the child.
3. Developing and consulting on strategies to ensure that the Court functions act as a safe space for children who wish to disclose sexual abuse.
4. Ensuring that all Family Report Writers and Independent Children's Lawyers either:
 - a. demonstrate existing capacity to recognise the range of ways in which children disclose sexual abuse and respond appropriately; or
 - b. are enrolled in training on disclosure and response from a reputable agency.
5. Developing an environment in which children feel both empowered and comfortable to:
 - a. ask questions about the Family Court;
 - b. if they choose, provide an unmediated message to the Magistrate about the outcome they see as in their best interests; and
 - c. if they choose, provide feedback at the end of their involvement with the Family Court on both process and outcome.
6. Commissioning an independent expert review of the risks and benefits of relying on one-off relationship evaluations as an indicator of the safety of children and young people with a parent against whom abuse has been alleged, and making both the review and the Court's response publicly available

The research team recommends that the Chief Magistrate:

7. Responds publicly to the recommendations derived from Lived Experience.
8. Commissions an expert independent review of the pathways through the Family Court process for child victims and survivors of sexual abuse, their siblings and their safe parent. The review should identify trigger points for retraumatisation, strategies to minimise retraumatisation, and opportunities to support recovery. The Chief Magistrate should make public the review and the Court's response to it.
9. With the leadership team, considers the findings of our research on decision making, and makes public the Court's response to them:
 - a. Family Court Judges do not have available to them the rigorous specialist assessment required to conclude, on balance of probabilities, whether child sexual abuse did or did not occur in most of the matters before them.
 - b. Absent that assessment, where there are allegations of child sexual abuse which have not been or cannot be properly investigated, in our view children remain at unacceptable risk of harm in unsupervised contact with the alleged perpetrator.
 - c. The application of the Briginshaw Principle in matters where there are allegations of child sexual abuse should reach conclusions on the three considerations identified in Justice Dixon's original formulation which align with the best available research evidence summarised in this report (<https://www.austlii.edu.au/au/cases/cth/HCA/1938/34.pdf>; accessed March 2025).

10. Commissions and make public a review of the extent to which Judges are in practice treating as separate:
 - a. the finding of fact on whether child sexual abuse did or did not occur on balance of probabilities; and
 - b. the predictive finding whether there is an unacceptable risk to the child in contact with a person against whom allegations of child sexual abuse have been made.
11. Issues, and make publicly available, guidance on the tests which should be applied by Family Consultants and Judges in cases where there are coinciding allegations of child sexual abuse and parental alienation. The guidance should be based on David Mandel's 'call to action' to lawyers involved in the Court who are faced with allegations of parental alienation in domestic abuse matters:

For actual parental alienation to exist:

There must have been a prior positive, nurturing, abuse-free relationship between the child and the parent they are resisting. *In domestic violence cases this is rarely the case. Many children have never had a safe, nurturing or trusting relationship with the abusive parent.*

The child's resistance must be unreasonable or unjustified. *But children frequently have reasonable, experience-based, and developmentally valid reasons to feel afraid, ambivalent, or unwilling to engage in contact. This does not even require a history of abuse— in many cases neglect is sufficient. When we center children's experiences, the justification becomes clearer.*

Other explanations must be ruled out before alienation is considered. *Even the suspicion of domestic abuse or coercive control should remove parental alienation from consideration until those dynamics are fully explored (Mandel 2025).*

12. Make public the results of the Court's consideration of the research of Webb et al. flagged in 2021. (Federal Circuit and Family Court of Australia 2021).

Our research, and the lived experience of our participants, supports the recommendations made by Salter et al for independent review of:

- Family Court interactions with state and territory-based agencies, such as child safety and police services, and barriers to child sexual abuse investigation (such as whether these agencies are reluctant to investigate when family law proceedings are underway or anticipated, statutory limitations on child safety investigation when a willing protective parent is identified, or officers decline to investigate due to assumptions about what victims look/act like).
- The ability of Family Court to fully investigate sexual abuse concerns beyond existing external evidence (the "investigation gap" in family law), and recommendations about how to address this gap.
- Attitudes of family law professionals to allegations of child sexual abuse, and whether these inhibit disclosures or affect how cases are presented.
- Whether the Magellan/Evatt models remain fit for purpose, and any recommendations for change.
- Whether family law solicitors are advising victim-survivors not to raise issues about child sexual abuse due to concerns they may lose "custody" of their child.
- Independently evaluating whether and how child sexual abuse investigations are being conducted by child protection, police, and courts. Collecting basic data on the percentage of reports investigated and excluded from investigation, independently studying what investigations involve in practice, and evaluating compliance with established international best practices.
- Independently reviewing screening, evidence gathering, and decision-making/triaging tools and processes in Family Court to determine whether sexual abuse is explicitly screened for, why most cases with child sexual abuse identified are not being referred onto the Magellan/Evatt list, and whether outcomes of Triage are adequate to protect children and mothers.
- Research on matters involving domestic violence and child sexual abuse settled by FCFCOA mediation or private mediation that do not proceed to trial.

- Independent research on family law cases to assess whether reported cases are representative of all family law cases where co-occurring child sexual abuse and domestic violence are indicated.
- Research on perpetrators of child sexual abuse/domestic violence, how they present to systems, and their motivations, including having children with the intention to abuse them or commencing relationships to obtain access to children with the intention of abusing them, understanding tactics of grooming and coercive control and whether current risk assessments and domestic family violence risk screening and assessment are adequate to identify these abusers (Salter et al 2025).

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