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The Honourable Judge William Alstergren  
Chief Justice of the Family Court

Friday 30 July 2021

Dear Chief Justice

**Re: Infringements of Women and Children's Human Rights within the Family Court**

I refer to our previous correspondence and your meeting with Nicolette Norris of the National Child Protection Alliance and myself on 3 March 2021. This meeting was also attended by Deputy Chief Justice McClelland, Justice Henderson and others.

Prior to this meeting, our letter dated 16 December 2020 provided you with survey data collected from NCPA and FLC members indicating that the family law courts are exposing women and children to male violence and abuse and are effectively impeding the safeguarding of children by their mothers. Our subsequent letter of 1 March 2021 suggested some areas that could be immediately addressed in a Practice Direction to help assuage these safety concerns.

However, at the 3 March meeting Justice Henderson claimed that our concerns were unfounded and asked for details of cases in which these problems were apparent. It was agreed that we should provide you and Justice Henderson with specific examples in advance of a future meeting. We undertook to do this and I am aware Ms Norris has already provided you with some case studies from her organisation.

However, for our service to comply with this request requires us to obtain permission from clients to share confidential details about their cases. The process of contacting clients and collating case studies is resource intensive and therefore challenging for an unfunded legal service like ours which must prioritise current casework. Furthermore, the cost of obtaining court transcripts to verify the accounts provided by our clients is beyond our financial capacity. Finally, for our clients and our organisation the proposed process poses personal and ethical dilemmas as many of these women still have ongoing proceedings or the potential for future applications before the court.

Fortunately, it turns out we do not need to rely solely upon the anecdotal accounts provided by our clients and members or upon the survey responses we have already supplied. The recently published research article *Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012– 2019* by Webb, Molony, Smyth and Murphy<sup>1</sup> provides strong empirical evidence in support of the concerns raised in our correspondence.

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<sup>1</sup> Webb, N., Moloney, L. J., Smyth, B. M., & Murphy, R. L. (2021). Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012– 2019. *Australian Journal of Social Issues*, 00, 1– 22. <https://doi.org/10.1002/ajs4.171>

<https://www.aph.gov.au/DocumentStore.ashx?id=734e8ece-6b2c-4a4f-b779-228fcc1da3be>

This analysis of published judgements involving cases where there have been allegations of child sexual abuse makes some key findings, including:

- Most allegations (90%) of child sexual abuse were made by mothers.<sup>2</sup>
- In fully contested cases, only 14% of judges expressed a belief in the truth or likely truth of the allegations.<sup>3</sup>
- In fully contested cases, judges found there was a risk of sexual harm in only 12% of cases.<sup>4</sup>
- In 23% of fully contested cases judges regarded the allegations as deliberately misleading.<sup>5</sup>
- In 25% of contested cases, restraining orders and warnings were made *against* the parent raising the allegations.<sup>6</sup>
- Almost two thirds (63%) of allegedly unsafe parents had their time with their child(ren) *increased*.<sup>7</sup>
- In 17% of judgements in contested cases, children's *living arrangements were changed to the allegedly unsafe parent*.<sup>8</sup>

In other words, **in most cases mothers are not being believed by judges when they claim their children are at risk** and it is **likely that they will lose time with their children** who may even be handed into the primary or sole care of the alleged perpetrator. This is despite the existence of research cited by Webb et al. that shows:

- one in five women (i.e. 20%) and one in thirteen men (~8%) were sexually abused between the ages of 1 and 17 years (World Health Organisation 2020).<sup>9</sup>
- it is well- documented that childhood sexual abuse is most often perpetrated by individuals known to the child (Snyder, 2000).<sup>10</sup>
- research indicates that a large majority of allegations of child sexual abuse are likely to be true (O'Donohue, Cummings and Wills, 2018).<sup>11</sup>

**It would seem the legal process frames mothers as liars and coerces them into dropping their allegations rather than supporting and protecting them.** The research by Webb et al. reveals that allegations of child sexual abuse were more likely to be abandoned where there was an expert report (15%) than without an expert report (5%)<sup>12</sup> and that Independent Children's Lawyers (ICLs) were involved in 100% of cases where allegations were dropped.<sup>13</sup> This accords with anecdotal accounts of the disproportionate influence of reports from individual experts known for their bias and the extraordinary pressure applied by ICLs who have frequently had no contact with the child. The analysis by Webb et al. also records that restraining orders or warnings were frequently directed by the court toward the protective parent (in 25% of fully contested hearings).<sup>14</sup>

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<sup>2</sup> (Webb et al, p9)

<sup>3</sup> (Webb et al, p12)

<sup>4</sup> (Webb et al, p12)

<sup>5</sup> (Webb et al, p13)

<sup>6</sup> (Webb et al, p14)

<sup>7</sup> (Webb et al, p13)

<sup>8</sup> (Webb et al, p13)

<sup>9</sup> (Webb et al, p3)

<sup>10</sup> (Webb et al, p3)

<sup>11</sup> (Webb et al, p4)

<sup>12</sup> (Webb et al, p16)

<sup>13</sup> (Webb et al, p8)

<sup>14</sup> (Webb et al, p14)

I would suggest that this important research reveals only the tip of the iceberg because in our experience women who raise these allegations are pressured by ICLs, their own and opposing lawyers to agree to consent orders under threat of otherwise losing their child(ren) altogether. As a result, some of the most disturbing matters do not appear in reported judgements which are the focus of this research. I also note that this study by Webb et al. corroborates similar research on this topic both within Australia and overseas.<sup>15</sup>

I look forward to hearing from you regarding these matters and scheduling a meeting in September when we can discuss these issues in detail.

Yours faithfully



Anna Kerr  
Principal Solicitor

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<sup>15</sup> (Webb et al, p16)