



FAMILY COURT DECISION MAKING THAT ESCALATES RISK

Response to the ALRC Review of the Family Law System



NOVEMBER 13, 2018
AUSTRALIAN LEGISLATIVE ETHICS COMMISSION
PO Box 4293 Alice Springs NT 0870

Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



In Brief:

We firmly believe the ALRC review cannot possibly change the ingrained culture and inadequacy in managing abuse as demonstrated by the following case law. This is why we need a Royal Commission into the Family Courts of Australia.

The Australian Legislative Ethics Commission (Alecomm) is an Australian charity registered with the Australian Not-For-Profit Commission. It has been involved in the Australian Family Law Courts for almost two decades.

During this time, we have seen numerous cases where children have disclosed sexual abuse of a parent / step-parent or step-sibling. In many cases the disclosures were not just to a protective-parent but to professionals, judges, counsellors, psychologists etc.

Alecomm recently reviewed over sixty random family law judgements which were selected from the Austlii database according to keywords including “child sexual assault allegations”. The most relevant judgements are detailed in this document and a summary of the findings are detailed here below:

1. In the majority of cases, the child was labelled a liar, or it was said that he/she had a fanciful imagination which the protective-parent indulged in and the children were sent to either live with the person whom they disclosed abuse of, were given unsupervised access to or shared parenting with.
2. Many times, the protective-parents were labelled delusional, liars, borderline, psychotic by judges who had no clinical experience or qualifications.^{1 and 2}
3. Judges overrode substantiations of child sexual abuse by state child protection services and or police and claimed they seen no “evidence of paedophilia or paraphilia” in said parent - and then gave the father sole custody.
4. On other occasions judges announced that the sexual abuse of the child was not “as bad as the child or protective-parent had stated”.
5. Judges also made claims that because the paedophile-parent has been caught red-handed sexually abusing the child, that it would be more difficult for them to sexually abuse the child in the future and then gave the paedophile-parent regular overnight access to the child-victim.
6. Some judgements included an order that the protective parents to destroy the evidence of sexual abuse that was obtained ie a disc and or video of a child’s disclosure of sexual abuse.

¹ Earles & Highsmith [2016] FamCA 1012

² Gomez & Gomez (No. 2) [2007] FamCA 1391

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



7. Independent Children's Lawyers and Family Court Experts often encouraged that children who had disclosed sexual abuse should be sent to live with the perpetrator and that all contact with the protective-parent be ceased for a period of three months (or more).

Due to the nature of these judgements and our indepth experience within the family law arena, we do not believe the ALRC review could possibly change the ingrained culture and inadequacy in managing abuse of children ordered by family court judgements, as is demonstrated by the following case judgements.

This is *exactly* why we need a Royal Commission into the Family Law Courts of Australia.

Sole custody awarded to father after the child disclosed sexual abuse:

- Watson & Burton [2015] FamCA 549 (16 July 2015)³ - Tree, J.
The children disclosed sexual abuse by the father, repeatedly, including anal abuse. The protective-parent repeatedly disclosed what the children told her. The psychiatrists claimed she was delusional and the father was given sole custody.

In an offer of Consent Orders, the mother was offered extra time with the children - so long as she withdrew allegations of sexual abuse by the father. She did. But then she was crucified for why she withdrew them - even though it was a condition of extra time.

The family reporter then wrote she couldn't be trusted not to continue with her beliefs that the father sexually abused the children and the father then got sole custody with the mother being given extremely limited supervised contact. This case is interesting in that they promised the mother more time if she recanted the allegations, and when she did, they gave her less time and called her a liar. This is a Townsville matter.

- Stapleton & Hayes [2009] FamCA 437 (25 May 2009)⁴ - Moore, J.
E disclosed vaginal and anal digital penetration by Ms S's sons B and T, said to have occurred several times at their father's home, usually when playing games including the monster game using a blanket and the vacuum game when the girls are dragged into the bedroom, but she was unable to particularize a time frame. N disclosed digital penetration of her vagina and

³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2015/549.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁴ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2009/437.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



penetration of her anus by B using a stick while she was tied to a bed and she also made reference to games using a blanket and the vacuum game. Both children gave information that O had been present at the time these acts occurred and possibly was a victim of similar acts by B and T. Sole custody to the father.

- Bilney & Brisco [2013] FamCA 561 (9 May 2013)⁵ - Benjamin, J.
The mother made numerous notifications between 2008 and 2012 that her children were being sexually abused [by the father] and or at least facilitated the sexual abuse. She was repeatedly ignored and custody was given to the father. In 2010 the Court Expert said the mother was delusional and prone to beliefs that the children were abused when they were not.

*** In 2012 the neighbour of the father [N] was arrested and charged with sexual abuse of children who were in the care of the father who still managed to retain sole custody.

- Prentice & Wilfred [2017] FamCA 290 (11 May 2017)⁶ - Carew, J.
“The difficulty is the child’s age (20 months) and what interpretation one can place on these behaviours. She is too young to tell what is happening (if anything). The child is at an age where she would be highly suggestible. ... Pre-school children lack most of the techniques to minimise the creation of false memories, have the slowest processing speed and are greater risk for forgetting, failing to retrieve and having their original recoding of events altered by misleading suggestions. It is a possibility the child’s disclosures have come about due to suggestibility, along with the mother’s and maternal family’s topical discussions around their belief the paedophile-parent has sexually abused the child”. Sole custody to the father.
- Hartford & Ansilda [2009] FamCA 23 (22 January 2009)⁷ - Brown, J.
Child disclosed sexual abuse by the father. The mother was restrained from taking child to disclose further sexual abuse. Sole custody to the father.
- Licha & Wunscher [2008] FamCA 147 (11 March 2008)⁸ - Brown, J.
Child made disclosures of child sex abuse by the father, to state child protection agencies.

⁵ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2013/561.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁶ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2017/290.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁷ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2009/23.html>

⁸ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2008/147.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



Courts ordered unsupervised access for the father, and the protective mother refused. Sole custody was then given to the father.

- Dalziel & Belladonna [2009] FamCA 254 (7 April 2009)⁹ - Brown, J.
The judge discredited the contact supervisor - because she listened to the child disclosing sexual abuse by the father. Sole custody to the father.
- Tyler & Sullivan [2014] FamCA 178 (26 March 2014)¹⁰ - Watts, J.
Child disclosed sexual abuse by the father. A gag order was issued against the mother and the mandatory reporter stated child suicidal due to the father. Sole custody awarded to the father.
- Surnam & Cromie [2010] FamCA 470 (11 June 2010)¹¹ - Dawes, J.
During the interview A was described as having made “clear disclosures of alleged sexual and emotional harm”. Both parties were restrained and an injunction granted restraining them from permitting the child [A] to attend counselling at the [W] Sexual Assault Service - or any other therapy or counselling - without the written consent of the other parent AND the Independent Children’s Lawyer. Sole custody to the father.
- P & D [2001] FamCA 1197 (29 August 2001)¹² - Lindenmayer, J
Child disclosed sexual abuse by the father. Dr Gardner’s “Parental Alienation Syndrome” was used to attack the mothers credibility, and sole custody awarded to the father.
- Pollock & Breen-Pollock (No. 3) [2014] FamCA 1026 (19 November 2014)¹³ - Hannam, J.
The mother and children moved out of the family home, immediately after the child abuse allegation was raised. The mother was ordered to attend counselling by the courts and sole custody was awarded to the father.

⁹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2009/254.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

¹⁰ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2014/178.html?context=1;query=children%20to%20reside%20with%20father%20child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

¹¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/470.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

¹² http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2001/1197.html?context=1;query=father%20to%20have%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations;mask_path=au/cases/cth/FamCA

¹³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2014/1026.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



- Tothill & Crowther [2017] FamCA 460 (30 June 2017)¹⁴ - Hannam, J.
Child disclosed sexual abuse. Sole custody awarded to the father because the mother refused to encourage a positive relationship between the child and father after allegations of child sexual abuse were brought to light.
- Somers & Somers (No. 2) [2010] FamCA 1152 (17 December 2010)¹⁵ - Cronin, HJ.
Child disclosed sexual abuse by the father. Dr E thought that the mother was not paranoid but had discrete paranoid delusions. He said there was no treatment for an adult who believed without there being any foundation, that their child had been sexually abused. He further said that there was low success rate for any treatment of such problems (about the protective-parent) - because once the belief was soundly accepted, it was difficult to change. He gave examples of treating people for long periods of time. “Those problems were not amenable to reason”. Sole custody to the father.
- Rilak & Tsocas (No 8) [2015] FamCA 1235 (13 November 2015)¹⁶ - Loughnan, J.
Child disclosed sexual abuse by the father. The mother’s mental health and credibility was attacked. Sole custody to the father.
- Matthews & Bender (No. 2) [2013] FamCA 740 (27 September 2013)¹⁷ - Macmillan, J.
Child disclosed sexual abuse by the father. The mother was restrained from taking child to disclose further sexual abuse, and sole custody to the father.
- Seaver & Seaver [2015] FamCA 194 (24 March 2015)¹⁸ - Cleary, J.
Child disclosed sexual abuse by the father. Sole custody was awarded to the father. “The mother is restrained by injunction from spending time with the children for a period of three (3) months”.

¹⁴ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2017/460.html?context=1;query=father%20to%20have%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations;mask_path=au/cases/cth/FamCA

¹⁵ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/1152.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

¹⁶ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2015/1235.html?context=1;query=father%20to%20have%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations;mask_path=au/cases/cth/FamCA

¹⁷ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2013/740.html?context=1;query=father%20to%20have%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations;mask_path=au/cases/cth/FamCA

¹⁸ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2015/194.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



- Rose & Douglas [2007] FamCA 251 (23 March 2007)¹⁹ - Benjamin, J.
The mother be restrained from bringing the child into contact with her siblings J, R and S, except upon giving seven (7) days notice to the father.
- Habib & Ibrahim [2018] FamCA 633 (19 July 2018)²⁰ - Foster J.
Child disclosed sexual abuse by the father. Judge orders that the child spend no time with the mother for a period of four (4) months. Sole custody to the father.
- Gomez & Gomez (No. 2) [2007] FamCA 1391 (30 November 2007)²¹ - Rose, J.
ICL: The manner in which the mother has been involving the child further in the mother's delusional beliefs (that sexual abuse has occurred), have resulted in him concluding that there should be an immediate change so far as the child living with the mother and moving to live with the father. JUDGE: On the basis of the evidence of Dr V and Dr R psychiatrists I find that the mother suffers from a serious mental illness the diagnosis being schizo effective disorder. Sole custody to the father.
- Earles & Highsmith [2016] FamCA 1012 (25 November 2016)²² - Foster, J.
Judge at 288 "It is my view that the child's disclosures likely did occur more-or-less as described". Judge then said "I saw in the father no direct symptoms or attributes suggesting paedophilia or any other paraphilia". Sole custody to the father.
- Tamarovic & Gillard [2014] FamCA 532 (11 July 2014)²³ - Watts, J.
In undertaking this exercise, I, of course, immediately acknowledge that the resolution of allegations of sexual abuse is "subservient and ancillary" to this Court's determination of that parenting order which is in the child's best interests.^[4] However, a consideration of such allegations – and those asserting physical harm – is clearly necessary when the legislation imposes an imperative of protecting the child from harm.^[5] Sole custody to the father.

¹⁹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2007/251.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

²⁰ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2018/633.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

²¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2007/1391.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

²² http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2016/1012.html?context=1;query=father%20to%20have%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations;mask_path=au/cases/cth/FamCA

²³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2014/532.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



- Sony & Hansell (No. 2) [2008] FamCA 810 (11 September 2008)²⁴ - Benjamin, J.
“Restraining [the mother] from seeking medical treatment for [the child] without consulting an objective third person, such as the independent children’s lawyer”. Sole custody to the father.
- Donaghey & Donaghey [2011] FamCA 13 (19 January 2011)²⁵ - Murphy, J.
Child disclosed sexual abuse by the father. Father acknowledged having a memory of one occasion when the child was in the bed that he may have been naked and had an erection. Sole custody to the father.
- Shireman & Katsaros [2015] FamCA 896 (23 October 2015)²⁶ - Rees, J.
Child disclosed sexual abuse by the father. Sole custody to the father.
- Faden & Faden [2014] FamCA 1182 (19 December 2014)²⁷ - Le Poer Trench, J.
Child disclosed sexual abuse by the father. Mother restrained from making medical appointments without the agreement of the father. Sole custody to the father.
- Segur & Segur (No. 2) [2010] FamCA 801 (10 September 2010)²⁸ - Bennett, J.
The child made repeated credible disclosures of child sex abuse by the father, to the police - but judge overrode acceptance of that it occurred and awarded sole custody to the father.
- Webber & Hatton [2013] FamCA 150 (12 March 2013)²⁹ - Benjamin, J.
Child disclosed sexual abuse by the father. Sole custody to the father.

²⁴ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2008/810.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

²⁵ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2011/13.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

²⁶ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2015/896.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

²⁷ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2014/1182.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

²⁸ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/801.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

²⁹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2013/150.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



- Senn & Jolimont [2007] FamCA 1740 (28 August 2007)³⁰ - Flohm, J.
It is argued on behalf of the father and the Independent Children’s Lawyer that the mother has raised unfounded allegations of sexual abuse against the father, and that unless there is a change of residence the child's relationship with the father will forever be sabotaged by the mother raising further similar allegations and continuing to align the child with her position. ***
*** *It should be noted that the in majority of cases involving child sex abuse, the ICL supports the father. Sole custody to the father.*
- Goldman & Goldman (No 2) [2017] FamCA 531 (23 June 2017)³¹ - Cleary, J.
Child disclosed sexual abuse by father. Sole custody to father.
- White & White and Anor [2012] FamCA 804 (20 September 2012)³² - O’Reilly, J.
Child disclosed sexual abuse by the father. Sole custody to the father.
- Langmeil & Grange (No. 4) [2011] FamCA 605 (3 August 2011)³³ - Stevenson, J.
There was also an order that the protective-parent undertake psychiatric counselling to address “her near-delusional beliefs concerning what she perceives to be the father’s sexual abuse of the children”. There was video evidence of the children disclosing sexual abuse by the father, and Freda Briggs intervened to substantiate the video and sexual abuse. The judge dismissed her evidence and the fathers counsel repeatedly tried to discredit her to no avail. No wonder they wanted her out of the family law courts – she was amazing. RIP Freda. Sole custody to the father.
- McDonald & Choudhary [2017] FamCA 214 (7 April 2017)³⁴ - McMillan, J.
Children disclosed sexual abuse by the father - but there is no hospital examinations mentioned. Father was awarded sole custody and no contact with the mother for 3 months.

³⁰ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2007/1740.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

³¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2017/531.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

³² http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2012/804.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

³³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2011/605.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

³⁴ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2017/214.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



- Johnson & Field [2008] FamCA 591 (2 July 2008) ³⁵ - Mullane, J.
Child disclosed sexual abuse by the father. Judge stated “In the meantime there should be an occasion when, with the assistance of a Family Consultant, the mother and the maternal grandmother meet with the child and inform her that the father is not a “mean” person, did not try to kidnap the child, nor break her bedroom window when she was younger and did not sexually or physically abuse her”. Sole custody to the father.

Custody to mother but father awarded contact /access /unsupervised after the child has disclosed sexual abuse:

In other cases where children had disclosed child sexual abuse by a parent, the judge took away the mothers ability to protect the children by ordering shared custody. This is in direct violation article 19 of a child’s fundamental human rights to be protected protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. ³⁶

- Vasari & Sullivan [2015] FamCA 902 (21 October 2015) - ³⁷ - Tree, J.
Father charged and jailed for child sex abuse of child’s friend. Upon release he was given supervised access to the child whose friend he sexually assaulted. This is Townsville matter also.
- Hemiro & Sinla [2009] FamCA 181 (17 March 2009) ³⁸ - Brown, J.
Mother restrained from taking child to disclose further sexual abuse. Sole custody to the father.
- Susskind & Dean [2014] FamCA 500 (11 July 2014) ³⁹ - Tree, J.
Children disclosed sexual abuse by the father over period of 4 months. Judge claimed children were coached. Mother has custody but the father was given weekend overnight unsupervised access. This is another Townsville matter.

³⁵ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2008/591.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

³⁶ <https://www.humanrights.gov.au/news/speeches/child-protection-every-child-s-right>

³⁷ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2015/902.html?context=1;query=+coker%20father%20sole%20custody%20child%20sexual%20abuse%20allegations%20%20%20;mask_path=au/cases/cth/FamCA

³⁸ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2009/181.html>

³⁹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2014/500.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



- Warsaw & Warsaw [2010] FamCA 591 (14 July 2010)⁴⁰ - Ryan, HJ.
Child disclosed sexual abuse by the father. Orders were made to restrain the father from sleeping in the same bed or bedroom with the child, being naked in her presence or from taking photographs of the child naked. Sole custody to the father.
- Helpman & Purton [2017] FamCA 1075 (21 December 2017)⁴¹ - Berman, J.
Child disclosed sexual abuse, police charged father, prosecutors failed to provide evidentiary documents and case was dismissed. Father now has frequent unsupervised access to the child-victim.
- Stamos & Mariakis [2008] FamCA 727 (16 July 2008)⁴² - Le Poer Trench J
Child disclosed sexual abuse by the father. The judge ordered “The mother is to destroy all copies of the DVD she caused to be taken of the child making disclosures of sexual abuse”. Mother to have supervisor at all times. ** Judge guilty of destroying evidence of disclosures by victim of child sexual assault. Is this conspiracy to defeat justice?
- N Appellant/Wife and S Respondent/Husband and the Separate Representative [1995] FamCA 139 (20 December 1995)⁴³ - Fogarty, Kay, Hilton, J.
IN this case the child made disclosures of sexual abuse by the father for two years, yet the judge said “The totality of the evidence does suggest that she perhaps has a predisposition to believe sexual abuse has occurred”, and the father was given substantial contact.
- Frome & Frome (No. 2) [2010] FamCA 1104 (6 December 2010)⁴⁴ - O’Reilly, J.
Child disclosed sexual abuse by the father. *** Finding no unacceptable risk *** Ordered family therapy counselling for the period of 12 months from the date of S’s first attendance with a view to:
 - i. restoring S’s relationship with the father,

⁴⁰ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/591.html?context=1;query=father%20to%20have%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations;mask_path=au/cases/cth/FamCA

⁴¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2017/1075.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁴² http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2008/727.html?context=1;query=children%20to%20reside%20with%20father%20child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

⁴³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/1995/139.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

⁴⁴ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/1104.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



- ii. encouraging in S and the protective-parent the belief that the paedophile-parent has not sexually abused S and,
- iii. encouraging in S confidence in feeling safe with the paedophile-parent as a person who will not harm her.

Details of the S child's disclosures of the alleged sexual assault are as follows:

- i. On 15 August 2009, [S] disclosed to [Pastor N] that the Applicant paedophile-parent entered the bathroom when she finished showering her and dried her, that she didn't like it and she had asked him not to.
 - ii. On 18 August 2009, [S] disclosed to the maternal grandmother and the mother, "Daddy touches my private parts" and, "I hate Daddy... because he touches my private parts." I asked her "Where does he touch you?" She said "my tongue and here (she pointed to her chest) and my fanny."
 - iii. On 21 August 2009 [S] made disclosures to CPIU and DOCS.
 - iv. On 26 August 2009 Dr. [SC] told the protective-parent that she (the Doctor) couldn't be 100% sure that [S] hadn't experienced vaginal interference or penetration.
 - v. On 1 September 2009 [S] disclosed to [Ms GA] and demonstrated to her how her paedophile-parent touched her body.
 - vi. On 4 September 2009, [S] made detailed disclosures to Dr [GI] of inappropriate sexual contact by her paedophile-parent following showering. Her disclosures included a description of how her paedophile-parent placed his fingers between her legs and then rubbed the front of her pubic area with the palm of his hand. She stated that this hurt her.
 - vii. September 16 & 30- [S] attended upon Dr [H] for therapeutic counselling and maintained disclosures of sexual abuse reported elsewhere.
- Leth & Yayathi [2012] FamCA 1031 (15 June 2012)⁴⁵ - Loughnan, J.
The child disclosed sexual abuse by the father. Judge ordered unwanted forced contact between the father and daughter. Dr J said that the long-term likely effect of B not having a relationship with her father is that she will grow up with a distorted belief about fathers and men and that will impact upon her ability to form and enjoy relationships in future. If B

⁴⁵ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2012/1031.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



maintains a view of herself as a victim of sexual abuse, Dr J said that could impact upon her capacity for intimacy with partners as she matures.

- Licha & Wunscher [2007] FamCA 357 (14 February 2007) ⁴⁶ - Guest, J.
On 19 December 2003, the child disclosed that her father physically abused her. The Department of Human Services directed the mother and father to suspend unsupervised contact pending investigation and on 24 December 2003 the child was interviewed again by SOCAU. She disclosed that her father "touched" her on the "inside of her bottom". At that stage the Department of Human Services assessed there was a "significant risk" to the child. However overnight access awarded to the father.
- Eicher & Roman [2010] FamCA 777 (7 September 2010) ⁴⁷ - Watts, J.
Statements have been made by M, his elder half-brother T and the father's fiancé's nephew L, which might indicate that each had been sexually abused by the father. All allegations were investigated by the Department of Communities ("the Department"). The allegation in relation to T was found to be substantiated by the Department but with no substantiated risk to M. The disclosures by M and L were substantiated by the Department concluding risk of emotional harm and risk of physical harm caused by sexual abuse. Unsupervised contact between the father and victim M.
- Seales & Pacillo [2010] FamCA 759 (31 August 2010) ⁴⁸ - The Hon. Justice Rose.
Child disclosed fear of father and sibling sexual abuse by father's older child to the school counsellor. The father was ordered to attend an anger management course and after that the child will be returned to overnights with the father he is scared of and the sibling who is sexually abusing him.
- Standen & Standen [2011] FamCA 966 (19 December 2011) ⁴⁹ - Loughnan, J.
The JIRT records note that it appeared that the father has perpetrated very serious sexual assaults on Ms L including oral sex and penile-vaginal intercourse.

The judge stated "Turning to the issues before me, the evidence does not permit a finding at the

⁴⁶ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2007/357.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁴⁷ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/777.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁴⁸ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/759.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁴⁹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2011/966.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..





required standard that the father sexually or physically assaulted Ms L or B. That could be seen as controversial in relation to Ms L because JIRT accepted her allegations and as a result, there is an endorsement in relation to the father on the COPS and KIDS databases.” Father retained sole custody of B.

Shared parenting ordered after child disclosed sexual abuse:

- Dodd & Carson [2011] FamCA 256 (13 April 2011)⁵⁰ - Fowler, J.
The child made repeated multiple disclosures of sexual abuse by father – yet shared parenting was ordered.
- Crestwell & Judd [2007] FamCA 645 (27 June 2007)⁵¹ - Strickland, J.
On 12 December 1999 the alleged incident of sexual abuse of P by the father was reported to police. According to the Police Incident Report generated, P disclosed to a school counsellor that the father had placed his fingers into her vagina when she was 12 years old, being between 28 September 1996 and 27 September 1997. However, no further action was taken at that time. Shared custody was ordered including overnight, unsupervised access.
- Eyles & Seng [2010] FamCA 602 (20 July 2010)⁵² - Dawes, J.
The child made disclosures of sexual abuse by the father including : “Daddy made me smell his bottom”; “Daddy was touching my front bottom”; “Daddy did a wee in my front bottom”; “Daddy licks my back bottom inside”; “He made me sniff his willy, it smelled like wee and poo”; “He does poos in his pants and makes me smell it”; “Daddy sat on me and was rubbing himself on me and making noises like he was vomiting”; “Daddy told me it was a secret and for me not to tell Mummy because Mummy will get angry”; and “Daddy stands in front of his window and pulls his pants down and shows his bottom to me”. Shared was custody ordered with overnight unsupervised access to the father.
- Kent & Shaw [2010] FamCA 587 (15 July 2010)⁵³ - Strickland, J.
Child disclosed sexual abuse by the father. Judge made orders restraining the child from

⁵⁰ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2011/256.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

⁵¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2007/645.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁵² http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/602.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

⁵³ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2010/587.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



counselling, psychologists and any other support services unless permitted by the ICL. Shared custody was awarded and overnight unsupervised access given to the father.

- Heriot & Maverick (No 2) [2012] FamCA 986 (28 November 2012)⁵⁴ - Macmillan, J.
Court expert said : The alleged abuse took place according to the child when she was in her prep year. It was Mr P’s opinion that whilst “...it might be possible for a child of her age to recall what happened to her in excess of twelve months previously, it is more common for the delay in disclosure as described by SECASA to be significantly shorter than this, reflecting at least the possibility that what the child is recounting is a *reconstruction* and not a *recollection* of events...” Shared custody was awarded and overnight unsupervised access given to the father.
- Jamal & Akbar [2017] FamCA 586 (11 August 2017)⁵⁵ - Foster J.
Child disclosed sexual abuse by the father. Judge ordered that if the child makes further disclosures about sexual intrusion or other concerning behaviour, the parent to whom disclosure is made shall do the following acts and things: (a) show concern; (b) deal with the immediate circumstance; (c) advise Dr C as soon as practicable; (d) refrain from either reaffirming or dismissing the disclosure or questioning the child or seeking collaboration about the said disclosure; (e) as soon as circumstances permit and in the absence of the child make a note of exactly what the child said or did. Shared custody was awarded and overnight unsupervised access given to the father.
- Exelmans & Sully [2011] FamCA 3 (12 January 2011)⁵⁶ - Bennett, J.
Child disclosed sexual abuse by the father. Judge ordered mother not allowed to take to psychologist, counsellor, police, child protection etc for disclosures. Shared custody was awarded and overnight unsupervised access given to the father.
- Ilhan & Sett [2016] FamCA 319 (6 May 2016)⁵⁷ - Cleary, J.
Child disclosed sexual abuse by father’s male flatmate. JIRT have substantiated these allegations, assessing that sexual harm has occurred. Judge stated the father’s two friends who

⁵⁴ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2012/986.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁵⁵ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2017/586.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

⁵⁶ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2011/3.html?context=1;query=child%20sex%20abuse%20allegations%20;mask_path=au/cases/cth/FamCA

⁵⁷ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2016/319.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



live with him do not represent an unacceptable risk of sexual harm to the child. Shared custody was awarded and overnight unsupervised access given to the father.

Fathers as protective-parents have also been persecuted by family law judgements:

In credit to fathers who are not paedophiles, there is a substantial amount of judgements where there is no accusation of child sexual abuse by the paedophile-parent – and the mother is granted sole custody with father being given limited access.

- Delucca & Decarlo [2016] FamCA 497 (3 June 2016)⁵⁸ - Hannam, J.
Allegations that the mother’s boyfriend sexually assaulted the child. Custody was awarded to the father, but mother still had overnight access, hence leaving the child still at risk of being further sexually assaulted.
- Adamson & Forst [2014] FamCA 669 (21 August 2014)⁵⁹ - Cleary, J.
The father alleges mothers older child sexually assaulted fathers younger child. The Expert Court Reporter completely minimised the allegations of sibling sexual abuse and it’s affects on the children as they grow up, and claimed father is oversensitive due to his own older sibling sexual abuse as a young child.
- Merman & Cotton [2007] FamCA 47 (29 January 2007)⁶⁰ - O’Reilly, J.
Father made allegations about the mother’s current partner and withheld the children after they made disclosures of sexual abuse to him. Mother awarded sole custody and father supervised contact.

⁵⁸ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2016/497.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁵⁹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2014/669.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

⁶⁰ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2007/47.html?context=1;query=father%20sole%20parental%20responsibility%20child%20sex%20abuse%20allegations%20%20;mask_path=au/cases/cth/FamCA

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..





Earlier judgements for paedophile-contact with victim-children in the family courts:

1976

In 1976 McCall J, at 7 D'Agostini v D'Agostini, stated "The conviction of the husband was admitted by him; however an affidavit sworn by the eldest daughter upon whom the sexual assault took place was to the effect that the assault was not an isolated act and had occurred on at least three occasions." ⁶¹

McCall in 12 he states "I also accept that, following the sexual incidents referred to earlier this year, there has been some difficulty with the children settling down."

McCall J, at 24.2 makes orders that "The husband is to have access to the three said children on alternate Saturdays and Sundays".

We believe this is the beginning of the judicial attack on women and children in family courts, in that it is one of the very first cases used to make excuses - so that a paedophile can have access to their "child victim".

1986

(1986) FLC 91-758 pn 19 December 1984 in at 4 & 5 the husband pleaded guilty before Loveday J. in the District Court to a charge of committing an act of indecency involving the child, who deferred the sentence. At 21 The husband agreed that there were three occasions when he behaved in an indecent manner in relation to the child J. ⁶²

At 27 Bee J stated "I am not reasonably satisfied that the wife has established that on 12 July 1984 the husband sexually interfered with J to the extent alleged by her and I am not satisfied that he sexually interfered with the children otherwise than as admitted by him in evidence yesterday".

This case is used to discredit the mothers opinion that the children have been sexually abused and to label children's statements of sexual abuse as children's imaginations are sensitive and immature instruments, for good or ill and that they were so forced to believe they were sexually abused when in reality it was "nothing as extreme as stated" and was because of the mothers beliefs that had turned into "reality" at 32.

Bee J, also stated that the psychologist report that supported the children and the mother's evidence was not as preferred as other psychologists – because he didn't interview the father. Please note here that the paedophile-parent had already admitted it the previous day in cross examination and to the Loveday J, when he was first charged.

⁶¹ <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/1976/79.html>

⁶² <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/1986/52.html?query=>



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



No contact was ordered however this is another case where magistrates are minimising sexual abuse of a child that the perpetrator has already admitted to and parts of this judgement are used for that specific purpose.

1988

In 1988 Nicholson CJ in *M & M*⁶³, quotes “In *Hinch v. The Attorney-General (Vic.)* [1987] HCA 56; (1987) 61 A.L.J.R. 556. Mason CJ in referring to the requirement that a publication must be shown to have a tendency to interfere with the administration of justice expressed himself in terms of the necessity for showing that there was a *real risk* of it doing so (p. 560). Although the case involved a different subject matter, it is clear that his Honour considered that in that context it was necessary to qualify the word “risk”.

The *M & M* case is interesting in that it orders custody to the protective-parent and supervised access to the paedophile-parent – but throughout the statements backing up the sexual abuse of the child, Nicholson CJ routinely claims there is no evidence which he sees gives him the opinion that there was definitely sexual abuse. There was medical evidence, there were psychologists and doctors evidence, there was the child’s disclosures, there was the child’s regressing into bed wetting, etc. But the magistrate keeps coming back to there wasn’t enough evidence to substantiate the child sexual abuse.

The first references to *Hinch* may be of use in the argument of defeating justice as it can be proven that there’s a pattern of judges sending kids to either live with or spend time unsupervised with their child victims – including when there are child sex offences.

It is in the public interest that we know that judges and their “court experts” routinely recommend contact between child victims and their fathers.

2001

In 2001 *W and W FamCA 216* 14 March before Nicholson CJ, Kay and O’Ryan JJ,

The Department of Family and Children’s Services sought to intervene in this case, seeking leave to admit into evidence of an affidavit sworn by a counsellor who had interviewed the Husband. The Department said that the evidence of the Counsellor contained alleged **admissions by the husband of “inappropriate sexual behaviour”**

Nicholson CJ stated “The fact that the husband may have made admissions of inappropriate sexual behaviour to Mr Katsibardis” at 47 and “The evidence of Dr Cecchini supports the view that the husband had made admissions of some inappropriate sexual behaviour” at 50.

Nicholson CJ then states “The problem with this submission is that it overlooks the fact, that the wife did not provide anyone with the complete picture. In particular the wife did not acquaint anyone with

⁶³ <http://www9.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/1988/47.html>



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



the fact, that both she and the child had entertained belief systems which, on her own admission, were in some respect bizarre.”

And then gives custody to the paedophile-parent – whom admitted inappropriate behaviour, stating “13.6 *In the result I conclude that the husband, more likely than the wife, to be able to promote a positive relationship between the children and the non-residence parent.*”

And 15.6 *For so long as the wife continues to maintain her beliefs in relation to sexual abuse of the child [T], not only is it unlikely she will do anything to persuade the child from believing she had been sexually abused, I think it more likely than not, that she will provide positive reinforcement for the child’s beliefs.*

At 212 Dr W thought the child [T] was desperately in need of attention. The child liked being in a fantasy world, or having an active fantasy life. Dr. W thought it remarkable, the extent to which the child [T] had been drawn into the wife’s beliefs concerning New Age philosophies.

*** This case is quoted many times to discredit child sex abuse and enforcing that because a protective-parent will not adopt an idea that the judges have come up with (ie the child was not abused), that she will harm the child in the meantime and as such custody is awarded to the abuser. ⁶⁴

This W and W case been referred over 50 times presumably to discredit allegations of child sexual abuse. ⁶⁵

What is interesting though is there is an Austlii report by the Melbourne University that state 24% of family court claims where there are claims of abuse, are of sexual abuse. This resonates with the statistics that roughly one in four girls are sexually assaulted / or abused before they turn 15. ⁶⁶ It also gives rise to the fact that discrediting mothers whose children have disclosed sexual abuse is spiteful and vindictive because the governments own figures back up what the mothers and children are claiming anyway.

2007

In 2007 Carmody J, at 86 in the Murphy and Murphy case of 2007, stated that “There is no presumption or a priori rule that even gross misbehaviour such as child sexual abuse or family violence disqualifies the offending parent or puts up an insurmountable barrier in the way of having contact

⁶⁴ <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCA/2001/216.html>

⁶⁵ [http://www8.austlii.edu.au/cgi-bin/LawCite?cit=\[2001\]%20FamCA%20216](http://www8.austlii.edu.au/cgi-bin/LawCite?cit=[2001]%20FamCA%20216)

⁶⁶ <http://www.austlii.edu.au/au/journals/MULR/1999/15.html#fn7>



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



with a child victim".⁶⁷ He also rambled on and referred to an unpublished report about "false accusations of child sex abuse" at 154.⁶⁸

Carmody J then states "I doubt that either of the girls could be persuaded to make false accusations against him at the instance of the protective-parent or anyone else," at 600.

Carmody J then states "Despite the possibility of past abuse and therefore the risk of future harm, there is no best interests basis for a finding justifying the termination of contact between these children and their father" at 603.

In this case M and A made statements to the mother, police, departmental officers, M's paternal grandmother and the maternal grandmother about sexual abuse by the father.

⁶⁷ <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2007/795.html?query=%2272%20Australian%20Law%20Journal%20434%22>

⁶⁸ "In an unpublished University of Queensland paper entitled "Psychiatry in the Family court - Mad, Bad, Sad or Fad?", Dr Frank Varghese^[97] identifies some of the characteristics suggesting false allegations as:

- Indications of envy on the part of the protective-parent about the closeness of the child's relationship with the father.
- Retrospective accounts of the meaning of certain events and observations which at the time meant little but is now of great significance.
- The interpretation of normal child behaviour as abnormal and indicating sexual abuse and nothing else.
- Inability to recognise that one's own behaviour has contributed to the abnormal behaviour.
- Attributing to the child's statements that are age appropriate.
- Escalation in the nature of the allegations over time.
- Refusal to be reassured by opinions of people who have investigated the allegations, indicating a string need to believe that the sexual abuse has occurred.
- A curious lack of emotion about what they say has happened to the child.
- Reliance on photographs or videos often taken by the accuser which were of no significance at the time but subsequently takes on great importance.
- Reliance on non-specific drawing or writings of the child.
- Reliance of smells of the paedophile-parent or finding hair of the paedophile-parent on the child's clothing as indicative of sexual abuse.
- Insisting that sexual abuse has occurred even during supervised contact.
- The involvement of a therapist who reinforces the belief system. Escalation of the accusations can sometimes be traced to the beginning of "therapy".
- Focus on the father's sexual behaviours towards the protective-parent during the relationship as indicative of a tendency to sexual abuse.
- Focus on a verbal statement which is sometimes an inappropriate comment by the paedophile-parent about the child.
- A willingness to accept that child sexual abuse has not occurred but insisting that it will occur on the basis that the child is being "groomed" for sexual abuse as indicated by various behaviours.
- An "apophanous" experience where various strands both past and present suddenly come together to indicate sexual abuse.
- A history indicating chronic underlying low self-esteem and fear that the child would prefer the paedophile-parent or the father's new partner.
- A wish for a highly enmeshed relationship with the child or children to the exclusion of other relationships.
- The accusation emerges *en passant* to other less serious reasons to deny contact."

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2007/795.html?query=%2272%20Australian%20Law%20Journal%20434%22>
at 154

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



However the two family reporters and a psychiatrist recommended increased time with the paedophile-parent in the event of a no risk or negative finding on the abuse issue.

Carmody J then stated “The best interests solution was a graduated re-introduction of unsupervised time with safeguards including a short period of supervised contact and post-order monitoring and review”.

Carmody J at 388 also ignorantly stated “Child sexual abuse is a crime and thrives in the darkness of childhood silence. Once detected the crime is much harder to repeat”.

Statistics show that 48% of paedophiles reoffend within four years of being released, and the AIC stated 52 percent of child sex offenders reoffended during the 25 year at-risk period.⁶⁹

It further stated the 52% recidivist figure should be considered as a conservative approximation of the true base rate for sex offense recidivism in previously convicted child molesters...[it]...represents the lowest approximation for extrafamilial child molester sexual recidivism.⁷⁰

His judgements and statements are made on absolutely incorrect statements about paedophiles and his thoughts on the crime and as such this case should not be referred to at all.

This case refers to M & M and W & W and B & B and D’Agostino – which all support contact with child victim.

2010

Rivas and Rivas before FM Roberts LNC 795 of 2007⁷¹

Child X disclosed to the mother about the father sexually assaulting her, and not long after she [mother] found child pornography photos taken by one sibling of another on her phone. She brought this to the attention of the solicitors and shortly after at 29 Roberts FM made orders restraining the parties and [X] from discussing the existence of the child pornography photographs found on the child X’s camera.

At 97 the psychologist stated “A factor mitigating against the risk of harm described above is the possibility that, because the father formed an attachment relationship with [Y] and [Z], he may be less likely to incorporate them in any sexualised ideas. A further factor reducing the risk of harm is the likelihood that, once detected, sexual abuse is much harder to repeat. The direct attention to the father’s sexualised behaviour in these proceedings may be a powerful deterrent to any further inappropriate sexualised behaviour”.

⁶⁹ <https://aic.gov.au/publications/tandi/tandi429>

⁷⁰ *ibid*

⁷¹ http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FMCAfam/2010/55.html?context=1;query=rivas;mask_path=au/cases/cth/FMCAfam#fnB4



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



At 151 Roberts FM states he “accepts that the father has abused [X] at a time when she was a member of the family”. And at 162 Roberts FM orders the father to have (supervised) contact with the younger two children. This case again refers to M & M and B & B

Common statements of concern made in family court judgements:

- That the mother is hereby restrained from making any complaint of sexual abuse regarding the subject child to any person, authority, police service or government agency without first notifying the Independent Children’s Lawyer of her intention to do so.
- The mothers’ evidence in respect of the incidents, observations and disclosures indicating sexual abuse must be seen *in the context of her mental illness* and her inability to be cross-examined on the material.
- This was the first, but not the last time the mother, in my assessment, may have fabricated sexual abuse allegations *in an attempt to bolster her case*.

Commonalities of concern in multiple cases of allegations of child sex abuse:

- The independent children’s lawyer often sided with the father and proposed orders together, making the Independent Children’s Representative not so independent.
- Independent Children’s Legal Representatives are routinely given counsel in proceedings. This would be a huge cost to the taxpayers and completely unnecessary given their role is “independent”.

The myth of mothers lying about child sexual assault in family court:

A review of over 700 cases awaiting pre-hearing conferences in the Melbourne registry of the Family Court in 1997 found that more than 40 percent of children’s cases involved allegations of some form of child abuse.^[4] Research by Professor Thea Brown and her colleagues in Melbourne and Canberra found a similar pattern. Their analysis of cases in Melbourne and Canberra between January 1994 and June 1995 found that one half of all the cases which went to a pre-hearing conference involved allegations of some form of child abuse.^[5] Of the cases which went to court, one quarter involved allegations of child abuse. In their detailed analysis of cases in Melbourne and Canberra, the researchers found that of all the cases in which child abuse was alleged, 24.1 percent involved allegations of sexual abuse. In Canberra, the percentage was 48.6.^[6]

A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



This would almost certainly backup the evidence of Professor Freda Briggs' claim that "1 in 3 girls are sexually abused before they leave school".⁷²

Other research on false allegations had a representative sample of 7,672 child maltreatment (tracked) investigations in 1998 (Trocmé & Bala, 2005). The cases were divided into four categories: 'substantiated', 'suspected', 'unsubstantiated but made in good faith' and 'intentionally false' (Trocmé & Bala, 2005:133). It evidenced found that while one-third of the maltreatment investigations were unsubstantiated, *only 4 percent were considered to be intentionally false*.

Within separated and divorced matters, the rate of intentionally false cases was higher, at 12 percent. However, the research revealed that contrary to the stereotypes that prevail about false reports of child abuse in separated families, the most frequent false allegation, at a staggering 43 percent, was an allegation of neglect, made by the non-custodial parent (usually the father).⁷³

Lack of protection afforded by the family courts after disclosures:

Research by Alecomm supports previous research that *also* claims "the federal government has created an environment in which mothers are discouraged from bringing allegations of abuse unless there is objective proof, and there is punishment for parents who do not comply with the new legislation (Ruddock, 2005c).⁷⁴

And "The dominant view found within the professions (psychology and psychiatry) with respect to child sexual abuse in family law matters is that of a deeply held sceptical belief that women and children who make allegations of sexual violence are likely to be liars who are hysterical, mentally ill or vindictive" (Freud, 1986; Hale, 1736; Scutt, 1997). This view has been woven into the contemporary forensic assessment models used by experts in family law disputes including Gardner, 1987, 1994; Lucire, 2000; Turkat, 2002).⁷⁵

Kaspiew (2005) found that in Family Reports the risks that were identified for children in being exposed to domestic violence were weighed up against the risks attached to difficulties in developing a sense of identity if children did not know their father. It was considered that there was less risk in being exposed to domestic violence and attending contact.⁷⁶

⁷² www.generationnext.com.au/wp-content/uploads/2015/06/Child-Sexual-Abuse.pdf

⁷³ Foote, W. (2006)

⁷⁴ Foote, W (2006) at 16.

⁷⁵ Ibid at 17

⁷⁶ Ibid at 63





Other external research findings

The dominant view found within these professions is that of a deeply held sceptical belief that women and children who make allegations of sexual violence are likely to be liars who are hysterical, mentally ill or vindictive.⁷⁷ This view has been woven into the contemporary forensic assessment models used by experts in family law disputes.^{78 and 79}

The psychiatric conceptualisation, and scepticism, about child sexual abuse allegations in family law disputes is challenged by recent research into family court populations that finds the majority of allegations of child sexual abuse raised in the Family Court *are based on valid concerns, and fathers (rather than mothers) have been found to be the group of persons who make the highest number of false complaints about child abuse.*⁸⁰

Child sexual abuse is a major health issue :

70% of mental illness is due to child sex abuse - depression, self-harm, anorexia, bulimia, PTSD, suicide, substance abuse and related crimes (Glaser 2005); Trauma from abuse affects the immune system, increases physical illness & lifespan is shortened by 20 years (Felliti); AND costs \$30 billion a year (Monash Uni research).

By Mishka Hudson and Marney Macdonald

⁷⁷ Freud, 1896; Hale, 1736; Scutt, 1997.

⁷⁸ Gardner, 1987, 1994; Lucire, 2000; Turkat, 2002.

⁷⁹ Foote, W (2006).

⁸⁰ Trocme & Bala, 2005.





Index of Contents

In Brief:.....	1
Sole custody awarded to father after the child disclosed sexual abuse:	2
Custody to mother but father awarded contact /access /unsupervised after the child has disclosed sexual abuse:	9
Shared parenting ordered after child disclosed sexual abuse:	13
Fathers as protective-parents have also been persecuted by family law judgements:	15
Earlier judgements for paedophile-contact with victim-children in the family courts:	16
1976	16
1986	16
1988	17
2001	17
2007	18
2010	20
Common statements of concern made in family court judgements:	21
Commonalities of concern in multiple cases of allegations of child sex abuse:	21
The myth of mothers lying about child sexual assault in family court:.....	21
Lack of protection afforded by the family courts after disclosures:	22
Other external research findings.....	23
Child sexual abuse is a major health issue :.....	23



Response to the ALRC Review of the Family Law System: FAMILY COURT DECISION MAKING THAT ESCALATES RISK



A compilation of Family Court judgements where there have been allegations of child sexual abuse, disclosures of sexual abuse by the child, and the outcomes of those cases..

