



National Child Protection Alliance Inc.

Charles Pragnell
National Secretary

Email: childconcernaus@iprimus.com.au

Website: www.NCPA.org.au

FAMILY COURT – PUTTING CHILDREN IN HARM’S WAY

Can you imagine, even if it is just for a moment, that your children are forcibly removed from you and they are put in a place where you know they will be abused and assaulted in every kind of way and for every day of their childhood. Perhaps even sexually assaulted and abused in the crudest possible ways and maybe such assaults are video-recorded for sale on the Internet for other child sex abusers to leer at and gain perverse titillations.

You are allowed to see your child for a couple of hours every few weeks and your child uses such meetings to tell you the details of the abuses they are suffering. But you can do nothing. If you report your child’s complaints to the authorities, they take little or no interest or even worse, they accuse your child or yourself of lying, or that you have ‘coached’ your child into making such allegations, or that you or your child is ‘delusional’ or that you have some non-specific ‘Personality Disorder’. If you report the matter to a Family Court in order to seek the return of your child or to an increase in your contact, there is a very high chance that the contact you have will be stopped. The Family Court are also likely to order that any further disclosures or complaints by the children of continuing abuse you must not report such allegations to the statutory authorities and if the children exhibit emotional and behavioural disorders, they must not be taken for psychological counselling. So the alleged abuser is given complete protection by the Court.

Yes it is difficult to imagine such a scenario, yet it is happening to many hundreds of Australian children with regularity and many thousands of children worldwide brought about by Family Laws which treat parental rights to continuing contact and custody of their children as an absolute and inalienable right and regardless of the children’s rights in domestic and international laws to be protected from harm and exploitation.

“But it couldn’t happen to my children.!” , you say. Well don’t be so sure. Almost 50% of marital and de facto relationships in Australia now end in parental separation and the vast majority of such relationships involve children. Approximately one in ten of those parental separations end up in Family Courts and involve disputes over the custody of children and the continuing contact for the non-resident parent. How can you be sure that you will not be one of those involved?. Many of those parents who become embroiled in such situations thought the same as you.

But this wouldn’t happen to very young children who need their mothers.!” Sorry but it can and does. Breastfeeding infants have been ordered to spend weekends visitation with fathers who have little knowledge and skills in caring for such young infants. However the Family Courts bridge this need by ordering the mother to express sufficient milk for the baby to be fed for the entire weekend.

Fortunately, or unfortunately, a great many parents take little or no interest in their children after separation but may still continue to abuse them without direct involvement. There are for example 250,000 Australian fathers including 12,500 who have fled overseas, who evade paying Child Support, thereby financially abusing their children and condemning them to a life of poverty.

So how and why is such abuse happening to so many Australian children, especially when Courts are supposed to offer protection for children against such harm.?

Firstly, the Family Law gives primary consideration “in the best interests of the child” to both parents having a continuing “meaningful relationship” with their children after separation. The Courts apply this provision regardless of whether that parent has a pre-existing ‘meaningful relationship’ with the child, has few or no parenting skills, and in many cases that the parent has abused the child physically, emotionally, sexually, or financially and may have criminal convictions for having done so. Or that the parent has been violent and abusive towards the other parent, who has obtained Intervention Orders against that parent but they are of little or no importance to the Family Courts.

To be scrupulously fair, this was a law of good intentions, which were to enable a small number of good and caring fathers to be able to have continuing contact with their children after separation, when a small number of mothers created difficulties for such fathers in maintaining such contact. Unfortunately, the ‘Law of Unintended Consequences’ intruded into this purpose and a door was opened for violent and abusive parents to use such a law for their own vengeful and perverse purposes.,

Secondly, the Family Courts do not have the powers, the expertise, nor the resources to investigate allegations of child abuse nor do they have the powers to order the State child protection authorities to do so. On occasions the State Child Protection authorities do intervene of their own volition or if the protective parent notifies them of the abuse, but in general they decline to do so with the excuse that, “Its a matter for the Family Court and so we don’t intervene”.

On those occasions when statutory authorities choose to become involved and to conduct investigations into child abuse allegations, such investigations are largely not carried out thoroughly and competently. It is extremely rare that forensic paediatricians are engaged to examine the child for physical evidence, or that forensic psychologists are engaged to examine the child for emotional/ behavioural disorders which may have arisen from the abuse. Rarely are sworn statements taken from the victims and witnesses and the focus tends to be on disproving the allegations by counter-alleging that the victim (the child) is lying, is imagining the abuse, or has been ‘coached’ into making such allegations. Bias and prejudice against the victims and their supportive witnesses by the investigators is frequently evident. Or there is a lack of knowledge of the nature and incidence of child abuse such as in the case of a three year old child complaining of being sexually abused by her father and the police officer stated, “Well all three year old girls dream of having sex with their fathers.!”

This is despite laws of evidence clearly stating and asserting that the evidence of children must be treated as reliable and credible, and research which shows that in 96% of instances of children reporting sexual abuse, the child is being truthful.

When they cannot find sufficient evidence to convince a Court of the child abuse, the statutory authorities record it as ‘Unsubstantiated’. This does not mean that the child has not been abused, only that there is insufficient evidence to prove it. The Family Courts however tend to wrongly interpret ‘Unsubstantiated’ to mean it didn’t happen.

In the absence of the interventions of the statutory child protection authorities or as well as, the Family Courts are likely to appoint persons they consider to be expert in child abuse. Such ‘experts’ rarely have the necessary knowledge and experience in investigating child abuse but will nevertheless offer their opinions to the Court and be a highly influential factor in the Court’s decisions. Despite their lack of expertise, they will charge amounts as much as \$37,000 for a single report which you will be required to pay. Again many of such ‘experts’ will use the starting point that the child is lying about the abuse, or has been coached, and/or may even pronounce to the Court that you are suffering a mental illness based on only a couple of hours interview and some with no professional or legal authority to make such diagnoses.

Thirdly is a major hurdle to proving child sex abuse set up by the Family Courts themselves to protect the alleged sex abusers. In such cases the `gravity' of the allegation (for the alleged abuser) has to be considered and a far higher standard of evidential proof is demanded towards the "extreme end of the scale" i.e. almost the criminal standard although no one is charged with any offence in such civil proceedings, nor are they on trial. It is solely to determine whether, or not, a child has been sexually abused and therefore may be at risk of further abuse. Such an incredibly high standard of evidential proof is rarely capable of being obtained by statutory child protection authorities so a parent acting alone and without the knowledge, skills, and experience to do so, has very little chance of succeeding.

Knowing this scenario, you may decide to flee Interstate or even overseas as a last resort to protect your children. You will be giving up your home, your friends, perhaps even your career to do so, but you consider the safety and protection of your children as the primary and only importance. You are unlikely to have any income, have difficulties in finding somewhere to live, have no support system, and with the constant fear and dread that you are being hunted down, much like a wild animal. And you will be hunted down. The alleged abuser will be hunting you down, maybe with the assistance of one of the shady organisations which look for monetary gain in finding children and grabbing them and bringing them back. Information on you and your children will most likely be posted on the Internet so a thousand eyes will be seeking you and your children as well as international police forces who may not actively search for you, but if you are encountered for the slightest law infringement, will have your details on record.

Most parents who have fled interstate to escape and protect their children have been discovered and brought back and very severely punished by the Courts. Some have been imprisoned, and ordered to pay huge fines and court costs, but worst of all their children have been ordered into the sole custody of the alleged abusers with no contact with the children for the protective parent.

Similarly most parents who have fled overseas have been found and brought back and immediately imprisoned. In this instance, the alleged abusers are aided by the Hague Convention, another well-intentioned law which has been a God-send to such abusers. Courts have tended to ignore evidence of child abuse and the need to protect of children and give primary importance to the crime committed by the absconding parent of denying the other parent their right to contact with their children.

Courts will not permit children or young people to give direct evidence of the abuse nor to give their views on where they want to live. Various unseemly tactics are used by Courts to prevent children being involved in Court proceedings, primarily by using `professionals' to interview the children and variously give (distorted) impressions of the children's views.

Even the most eminent of Family Court judges have expressed serious concerns regarding the functioning of Family Courts when they have said,

Hon. Justice Tim Carmody:

"Community confidence in the Family Law system in Australia is reportedly at an all-time low. This is due in part to its perceived inadequacies in dealing with the sexual abuse allegations made by or on behalf of children against one or other of their parents in the Family Court". Hon Justice Tim Carmody – Speech in South Africa 2005

Hon Justice Alastair Nicholson;

"We have no less than eight sets of child protection laws with fundamental differences in such critical matters as:

- *how abuse or maltreatment is defined;*
- *the systems through which abuse notifications are investigated".*

Last but not least are the costs to you of Family Court proceedings. Costs exceeding A\$500,000 are not unusual and if you do not qualify for legal aid (and in most cases don't), then you are likely to have to sacrifice your home and life savings and any other monies you may have. Relatives who give you financial help may suffer similar losses, as so many have.

Well you still think, "It can't happen to me and my children!". I hope you're right for your children's sake, but would suggest you hold your children close and say a quiet prayer every night for yourselves and all those children who are suffering around Australia.

Charles Pragnell.