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POSITION STATEMENT

MODEL PROCEDURE FOR THE INVESTIGATION OF CHILD SEXUAL ABUSE

The Federal and State Evidence Acts provide a clear legal principle and presumption in Australian Law and the Courts that children are competent witnesses and their evidence of children must be treated as reliable and credible.

The most clear explanation of this principle and presumption is contained in the NSW Evidence Act 1995, which states;

165A Warnings in relation to children's evidence

(1) A judge in any proceeding in which evidence is given by a child before a jury must not do any of the following:

- (a) warn the jury, or suggest to the jury, that children as a class are unreliable witnesses,
- (b) warn the jury, or suggest to the jury, that the evidence of children as a class is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults,
- (c) give a warning, or suggestion to the jury, about the unreliability of the particular child's evidence solely on account of the age of the child,

This legal principle and presumption in regard to allegations of child abuse is supported by research studies which show that in over 96% of instances of children disclosing or reporting they had been abused, that the children were truthful. Other research studies show that most children are in fact extremely reluctant to disclose or report that they have been abused, and many repress such memories of abuse throughout their lifetimes.

Child sexual abuse by stranger paedophiles is frequently reported in the media and rightly receives a lot of public attention. However by far the greatest amount of child sexual abuse occurs within a child's family and the confines of the child's own home. The perpetrators are the members of a child's own family or a close relative or friend of the family. Such intrafamilial child sexual abuse is a serious and widespread problem in Australia and the consequences of such abuse for children and for our society are incalculable.

Sexual abuse places children at high risk for serious and chronic health problems, including post-traumatic stress disorder (PTSD), depression, self harm, eating disorders, sleep disorders, substance abuse, deviant sexual behaviour, and suicide. Sexually abused children often become hyper-vigilant about the possibility of future sexual violation, and experience feelings of betrayal by the adults who failed to care for and protect them.

The most reliable statistical data has found that 27 percent of females and 16 percent of males are sexually abused during their childhood. The rates of 27 percent of females and 16 percent of males are considered to be solid, accurate rates by most researchers. [David P. H. Jones & J. Melbourne McGraw, "Reliable and Fictitious Accounts of Sexual Abuse to Children.]

Sexual abuse is a very private crime and there are seldom any witnesses. Those who may have seen the crime are often too intimidated to speak up. The child seldom feels able to tell about the crime. The victim is almost always told not to tell and threats of physical violence and killing the child or the other parent and siblings are common. Children in our society are taught to obey adults. All children need love and approval from their parents. Abusers tell the child that s/he will no longer be loved and accepted unless s/he submits and says nothing. Some children are told that that sexual activities are the way parents show their love for the child. Some children are told that if they submit to the abuse, their sister or brother will be spared. The child may disclose when she or he discovers that the sister or brother is also being abused, and there is no reason to keep silent.

CHILD PROTECTION PROCEDURES MUST INCLUDE:

Step. 1. Immediate Examination of the child by a forensically trained paediatrician for physical evidence e.g. cuts, scratches, abrasions in the genital area and other parts of the body, semen, blood etc;

Stage.2. Immediate Examination of the child by a forensically trained child psychologist for emotional/psychological evidence – most abused children demonstrate extreme emotional and behavioural disorders as a consequence of abuse. It is also important to evaluate the FEAR which the child may have for the alleged abuser which is now an important consideration under the Family Law. N.B. There must be no counselling of the child until AFTER such a forensic investigatory interview as counselling can corrupt and contaminate the child's evidence ;

Stage 3. Collection of direct and indirect witness statements e.g. school teachers, family doctors, friends and relatives to whom the child has disclosed/reported the abuse;

Stage 4. Sensitively handled interviews of the child by specially trained police interviewers with an independent adult present who is known to the child and can provide support and assistance. All such interviews to be audio/video-recorded;

Stage 5. – Collection and collation of all of the above evidence and presentation to the alleged offender for responses;

Stage 6. – A Social Background and Home Circumstance Report;

Stage 7. – Determination of whether the evidence can meet the civil standard of proof for Children's/ Family Court purposes to inform decisions concerning the need to protect the child from the risk of future harm (i.e. Balance of probabilities or `more likely than not/ 50% proven) and a separate determination of whether the evidence is sufficient to satisfy a criminal standard of proof i.e. `Beyond reasonable doubt'. The evidence may very often satisfy the former but not the latter.

FAMILY COURTS

The question which Family Courts have to address is:

Is there a risk of maltreatment, neglect, or impairment of the child's development, if the Court grants residency or contact with a child to a parent.?

A simplistic submission that the abuse allegations are `Substantiated' or `Unsubstantiated' are therefore unhelpful in such decision-making as they do not provide all of the evidence necessary to the Court, and are presumptive of the powers of the Court as the `triers of fact'.

This requires therefore an assessment of:

- 1. How each parent has participated in the life of the child to date in respect to the expected role of each parent in a child upbringing, , their understanding of the child's physical, emotional, intellectual, and social needs and each parent's ability to meet the child's needs, and in particular the emotional attachment of the child to each parent;**
- 2. Is there evidence that either parent has maltreated or neglected the child or otherwise harmed the child?. Has the child been examined by a forensic paediatrician for physical signs of maltreatment/neglect, has a forensic psychologist examined the child for any emotional/behavioural signs of maltreatment/neglect, are there sworn statements by direct and indirect witnesses of any maltreatment/neglect (indirect witnesses are persons to whom the child may have disclosed or complained about maltreatment/neglect);**
- 3. Is there evidence that either parent has used any form of violent towards the other parent, (as detailed in the Family Law Act as the primary consideration in the best interests of the child) thereby causing harm to the child?.**
- 4. How does each parent propose to provide for the child's physical, emotional, intellectual, and social needs in the future and to cooperate with the other parent in the upbringing of the child, and what barriers may there be to working together in such a way?.**