Legislation changes needed for how Australia outworks the Hague Convention
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The Family Law Courts and legislative Change

Vote 1 Julie Collins
to bring change to protect our children and families

Written and authorised by Julie Collins, Tamworth NSW.

See my brief video on the Hague Convention on my website in the video section.

I have witnessed firsthand the impact of the cold removal of children from protective parents. The destruction of families by false reports from expert witnesses, and the inability and disempowerment of people by being unable to speak out. The disbelief of the general public that such atrocities could occur in our nation and the refusal of politicians to intervene including our Deputy Prime Minister when it comes to the Family Law Courts, is deeply troubling. Our Attorney Generals' response that there is not enough public interest to intervene in the Hague Convention to protect vulnerable women and children from abuse is disgraceful. 10 years ago, I was driven to begin advocating for change, and more recently was the founding Director of a Registered Harm Prevention Charity Shiloh Life Centre Ark of Hope Ltd along with Daisy's House, a children's contact service. www.shiloharkofhope.com and www.daisyshousecontactservice.com

Currently we are seeing children removed cold. This means they are taken unable to say goodbye and, in many cases, separated from protective parents and placed in the care of perpetrators of domestic violence and paedophilia. The child does not get to see that protective parent again for a period of time so they can "adjust". This time can be anywhere from 3 months to never seeing those parents again unless the child runs away or until they turn 18. This sudden separation from their primary attachment for no valid reason causes irreparable damage. A study was conducted by a university which looked at 50 cases. Most often the reason for removal was some ambiguous unscientific term such as "enmeshment". We have seen false reports written up by Doctors, Psychologist and so called Expert Witnesses. These are relied upon in court while child protection bodies and police reports are ignored. The parent is called hypervigilant because they have reported disclosures the child has made. When these reports are reported to the governing bodies such as HCCC a blind eye is turned to the Doctors and Experts writing these reports and they have "immunity." In the UK if a false report is written the expert can be sued. But not in Australia.

Children are separated from grandparents. Father's commit suicide and mother's die of broken hearts, while the solicitors, barristers and judges grow rich. Legal Aid does not cover the cost of good representation.

In a nutshell, we need transparency, accountability, immunity of experts and report writers removed. The legislated state bodies need to be able to do their job. Section 121 needs to be amended or removed. All documents and evidence in the high court are redacted. We need the same in the family law courts and the files open for anyone to see. Judiciary need to be

impartial and separate to the barristers and legal representatives. Appeal bodies need to be separate to the below court Judiciary. We need a Royal Commission to weed out any corruption and compensation for the victims of injustice and unfairness.

We need "Fairness in Law" centres for all legal issues not just Family Law.

Vote 1 for Julie Collins below the line, then number all the other small Independents up to the number 12, leaving the Liberal, Labour and Greens out so that I can bring legislative change to protect our vulnerable.

You can read more on the Hague Convention on the "shiloharkofhope.com" website. Please read on for a more in-depth discussion of legal points.

The Hague Convention agreement **Family Law (Child Abduction Convention) Regulations 1986**
Statutory Rules No. 85, 1986
made under the *Family Law Act 1975* at item 16

16 Obligation to make a return order

(1) If:

(a) an application for a return order for a child is made; and

(b) the application (or, if regulation 28 applies, the original application within the meaning of that regulation) is filed within one year after the child's removal or retention; and

(c) the responsible Central Authority or Article 3 applicant satisfies the court that the child's removal or retention was wrongful under subregulation (1A);
the court must, subject to subregulation (3), make the order.

(1A) For subregulation (1), a child's removal to, or retention in, Australia is wrongful if:

(a) the child was under 16; and

(b) the child habitually resided in a convention country immediately before the child's removal to, or retention in, Australia; and

(c) the person, institution or other body seeking the child's return had rights of custody in relation to the child under the law of the country in which the child habitually resided immediately before the child's removal to, or retention in, Australia; and

(d) the child's removal to, or retention in, Australia is in breach of those rights of custody; and

(e) at the time of the child's removal or retention, the person, institution or other body:

(i) was actually exercising the rights of custody (either jointly or alone); or

(ii) would have exercised those rights if the child had not been removed or retained

(2) If:

(a) an application for a return order for a child is made; and

(b) the application is filed more than one year after the day on which the child was first removed to, or retained in, Australia; and

(c) the court is satisfied that the person opposing the return has not established that the child has settled in his or her new environment;

the court must, subject to subregulation (3), make the order

(3) A court may refuse to make an order under subregulation (1) or (2) if a person opposing return establishes that:

(a) the person, institution or other body seeking the child's return:

(i) was not actually exercising rights of custody when the child was removed to, or first retained in, Australia and those rights would not have been exercised if the child had not been so removed or retained; or

(ii) had consented or subsequently acquiesced in the child being removed to, or retained in, Australia; or

(b) there is a grave risk that the return of the child under the Convention would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; or

(c) each of the following applies:

(i) the child objects to being returned;

(ii) the child's objection shows a strength of feeling beyond the mere expression of a preference or of ordinary wishes;

(iii) the child has attained an age, and a degree of maturity, at which it is appropriate to take account of his or her views; or

(d) the return of the child would not be permitted by the fundamental principles of Australia relating to the protection of human rights and fundamental freedoms

Although the Law clearly states at 3b that the child need not be returned if there is a grave risk that would expose the child to physical or psychological harm…. 2 children have already been this year, by the same Family Law Court Judge, one was sent back to Spain a country greatly impacted by COVID.

It is generally understood within Domestic Violence workers, that the current restrictions caused by COVID increase the likelihood of abuse, further, 70% of Hague Convention Cases result in women and children being placed back in close proximity to abusers.

Dr Michael Salter of the University of NSW in his article "Getting Hagued" says

"A significant proportion of submissions into the Senate Enquiry Into International Child Abduction established in 2011 emphasised the role of domestic violence and child abuse in women's decisions to abduct children overseas….since 1994 the Australian Law Reform Commission has evinced concern about the impact of the Hague Convention in such cases and recommended legislative changes…" (salter) of which none have occurred.

Julian Leesor MP, Anne Aly MP and Deputy Prime Minister Barnaby Joyce have all been great supporters of change. Julian Leesor has raised the matter in parliament as has Rev Fred Nile in the State Parliament.

The Acting Attorney General has been contacted, regarding a petition we have running at the moment. https://www.shiloharkofhope.com/current-petitions Her response was to say that we have a rigorous and robust Family Law Court System experienced in dealing with domestic violence. Ms Cash further referred to "Guide to good practice under the Convention 25 October 1980..."

This manual makes way for Australian Judges to place safety measures in place for when the parent and child return to the foreign country to have the matter heard in that country.

The Attorney General also said at a later date to another writer saying "There is not enough Public Interest" for her to intervene.

The expectation that a foreign country will uphold decisions made in an Australian Court is naive. Further that a foreign country will deliver justice in the same way as we would in Australia is also questionable.

Many countries do not rely upon precedence law or testimony and do not view women the same way we do in Australia.

I sat in on a recent hearing and the Judge's response to evidence being given of a child being slammed down by the father, intimidating and violent acts towards the mother was to minimise the behaviour. I have witnessed victims of domestic violence being yelled at by barristers in court repeatedly sneered at and no one intervened. This type of behaviour is the rigorous and robust testing the Attorney General refers to.

Currently DCJ pays for the overseas father's application and is the applicant in the matter. When there are allegations of domestic violence or abuse there is no investigation by DCJ.

Surely this is a conflict of interest to have the same body supporting the father.

To my knowledge neither the Federal Government nor the Health Minister has addressed the effects of covid upon children being born overseas who would otherwise have been born in Australia nor the forced return of parents to overseas countries.

Legislation needs to be put in place to exempt those who were unable to return to Australia to give birth from being subject to the Hague Convention.
There is currently no precedence set with regard to these cases that we are aware of.

There is at this time no guideline for how we protect indigenous children from the out workings of the Hague Convention.

We want to see where allegations of domestic violence are found to be most likely to have occurred that the father have to pay back the funding he received from the Government.

Where allegations of domestic violence are found to have most likely occurred the mother be allowed to choose where she would like to reside with the child.

That all Hague convention Cases be stopped until the pandemic is under control. The Department of Health has put orders in place to protect Australians 28 changes have been

made since covid. We do not believe it is unrealistic to protect Australian women and children from going back into overseas countries riddled with Covid.

How we manage child protection issues in the Family Law Courts directly impacts the Hague Convention.

Changes needed to how we manage child safety issues in the Family Law Court

Case Study Webb & Guthrie 2016

In the matter of Webb and Guthrie a 4 year old child was raised by the mother, and maternal family. The mother left the marriage prior to the child being born due to domestic violence, she sought at the time the support of extended family, the maternal grandparents had been significant in the child's life and in assisting to parent and care for her. The mother initially sought support from police, domestic violence services and counsellors. She maintained these supports for some period of time following her leaving. The child never lived with the father. The courts had before them Department of Community Services documents and police reports. The legislated department for child protection noted that the child was exhibiting sexualised behaviour and the police said they had concerns about the father.
A section 7 Family Consultant report expressed concerns were the child to be placed in the father's care. The maternal family paid for and facilitated the child seeing the father fortnightly, for two years in a supervised capacity. The child made a disclosure to the mother's psychologist, who had vast experience in child sexual abuse, domestic violence including specific forms of abuse such as rsa, who had been a report writer for the children's court for many years. The psychologist made a mandatory report to Department of Family and Community Services, and also gave evidence in court. The maternal family made reports to Family & community Services as directed by police and the department themselves. The court requested that the mother take the child to a child psychologist, who spent just under three months with the maternal family and wrote a report noting that the child was happy, had good relationships with the mother and grandmother, the child was meeting all her milestones.

No jirt investigation took place, even though the Judge said otherwise in the reasons for judgement.

The court minimised or ignored the evidence of the Mother's Psychologist, the child's psychologist, and Department of Families and Community Services as well as the police concerns and based their judgement upon a single "expert" of the Independent Children's lawyers choosing. This was referred to as a S31. The mother's family was forced to pay $35,000 for this report.

The expert recommended the child be removed cold and placed with the father and a no contact order be put in place for the mother and the extended family. The expert noted that the child would grieve as if the family were dead, and that damage caused by enmeshment between the mother and child was more likely to cause harm. The opinion given on the stand

by the expert about the extended maternal family was outside of her professional practice guidelines. The Judge positioned himself above the recommendations of those with relevant experience and made a finding that the father's new wife would mitigate any negative outcomes for the child. The courts relocated the child.

There are four areas of legislation that need to be changed to prevent the above scenario continuing to play out.

Defining the Role of the ICL
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Child protection is currently a state responsibility not a Federal Responsibility. The state bodies such as Department of Justice and Communities, are the only legislated bodies for child protection in Australia. However, when state and Federal meet, the Federal legislation overrides. The Family Law Act is meant to work out what is in the best interests of the children and addresses child safety in Family Law Act 1975 Section 60CC. But as the Attorney General noted in Hansard it is not the Family Law Courts responsibility to make decisions on child protection but to work with appropriate bodies and experts.

Where there is a parent willing and able to protect the child, they are encouraged by DCJ to make an application to the Family Law Courts.

The courts have a denial culture of domestic violence and child sexual abuse. Evidence shows that less than 1.5% (Goldsmith) others say 2% to 10% (https://doi.org/10.1177/1077801210387747) of allegations of sexual abuse by children are false and one in three women in Australia have experienced domestic violence. An Organisation called Cassies House on the south Coast that specialises in working with children who have been sexually abused has said that "Digital penetration, during supervised contact visits is quite common."

The Hague Convention matters come before the Family Law Courts, we have had a number of parliamentary reviews and inquiries into our Family Law Court System.

The April 2019 ALRC recommended the abolition of the Family Court. This is beyond the usual tweaking of legislation, this was a recognition that the institution of Family Law Court needs to be abolished. There is a wide recognition that the judges exercise discretion in a manner which is simply unprincipled.

In the recent Joint Select Committee inquiry into the Family Law Court, it was found the Family Law Court as it exists does not have an accredited assessment mechanism in place for identifying Family Violence by Family Law Court Practitioners, something Ms Henderson commented on also saying with regards to the family report writers "I cannot believe the Family Court hasn't addressed this matter – they're not accredited, they're not trained."

Children are in danger and at risk. We are not talking about one or two children here but hundreds potentially thousands, as already stated statistics are hard to obtain. The recent Joint Select Committee headed up by Pauline Hanson, is filled with submissions from other advocates as well as ourselves who have been involved in seeking justice for children for over 10 years.

Bills have been put forward, but we agree with the ALRC that the culture within the court system is such that it cannot be repaired.

Yet the courts continue to wield the power and claim the expertise to make decisions on child protection **disregarding and minimising the Department of Communities and Justice and Police information.**

We want to see the child safety issue put back in the hands of the state legislated body, with a full investigation being carried out.

In the recent Coroner's Inquest into the death of John, Jack, and Jennifer Edwards, in Sydney in July 2018; the Independent Children's Lawyer (ICL), who is funded at a state level, claimed that she was deeply concerned and wanted an injunction against the father, however, evidence shows that she never asked for one. When questioned during the inquest her reason given was that she had been bullied by the counsel of the parties. The coroner did not accept this. It seems to me from reading the matter that neither did she make a mandatory report regarding any concerns she had for the safety of the children to DCJ.

The role of an ICL is to offer representation for the children to ensure their safety and wellbeing. The ICL's recommendation and evidence presented is given great weight by the courts. The ICL in the above matter was found to have not given true evidence to the Family Law Court. Describing the father as being heavy handed in his discipline, she minimised the risks. The ICL made statements such as, 'this is how the Family Law Court works'. However, the coroner did not accept this, and the ICL is now under investigation by the regulating body OLSC.

Redefining the role of the ICL

An Independent children's Lawyer who has minimal training should not be making recommendations surrounding child protection. They are not adequately trained nor experienced, their recommendations should be limited to expressing the desires of the child and ensuring that the appropriate reports have been put before the courts and the legislated body.

A qualified experienced body like DCJ would have identified and not minimized the risks.

In so many of the cases I have seen, and in the evidence I have read. The expert called in to make an assessment has no expertise or experience within the field of Domestic Violence (DV). The court gives undue weight to these opinions and the child, some as young as 4 and

even younger, is removed cold with a no contact order the length being anywhere from 3 months to the age of 18.

The trauma this brings to the child, and the parent is immeasurable. In many cases the parent is unable to see the child again. The evidence and weight relied upon for these decisions comes at the recommendation of the ICL and the court appointed expert. An expert, in most cases, who has no expertise in DV or child sexual abuse.

DCJ have the capacity and experience in Domestic Violence, Child Sexual Abuse and neglect.

The Family Law Courts do not have the expertise as noted in the current recommendations they lack the training and Ms Henderson also noted this.

Safety of the child needs to come before the parents' rights and before a child is sent back to a foreign country via the Hague Convention. DCJ our legislated body for child protections should carry out a thorough investigation to determine the risk and ongoing health and wellbeing of the child and be the one making the recommendations. They have investigative services within their eschalons, as well as resources and funding.

We believe that a thorough investigation by the Legislated body will stop and prevent the "he said she said" in court, that they have the expertise the courts are lacking. That the courts need to rely upon their recommendations.

Accountability for Expert Witnesses

FLC 2004 15.61 Immunity for Expert Witnesses

In the Family Law Court, more weight is placed upon "expert witnesses" who are not expert in domestic violence than our legislated experienced state body for child protection. In the Webb & Guthrie the expert was not an expert in domestic violence, child sexual abuse or attachment. In one of the reports, they stated "the domestic violence is unrealistic as the mother has a weight advantage."

The expert's field of expertise was in the area of adolescent brain development. Yet the child in the matter was under the age of 4.

However, the expert gave an expert opinion on Domestic violence, child sexual abuse, she stated in court that a child believing that they were sexually abused was more damaging than being separated from their mother. Their professional opinion of the maternal grandmother who had been significant in raising the child was that of a narcissistic, histrionic, antisocial, border line personality disorder, based on no evidence, no medical records, without speaking to the treating GP where there were no records on file surrounding the maternal grandmother,

where they had not had a history of mental health after a 45 minute interview. The child's attachment to the maternal grandmother was considered to be enmeshed, though again no interview had been done with the child in the room.

The courts ignored the recommendations of the Mother's Psychologist, and the Section 7 Family Report Writer, who had identified the maternal grandmother as outgoing and had watched the maternal grandmother interact with the child over cctv footage for over 6 hours. The child was removed cold, not being allowed to say goodbye, (the family were court ordered to take the toddler to the Court Child Care room, at this point the mother is forced to sign a document placing the child into the hands of the court prior to a judgement being handed down) there was no transitional period for this child, and her mother and grandmother had promised they would be back to pick her up. The court orders placed her into the care of the other parent that she had previously only seen fortnightly with a no contact order put in place for the maternal family.

The mother and her family were unable to see the child for nearly 12 months, and the grandmother who had care of the child for 90% of the time is still unable to see the little girl.

In a recent matter before the court in February 2020

Judge X in response to the applicant addressing the Judge surrounding the "expert's" lack of relevant expertise qualifications and experience (February 2020 NSW FCC) responded,

"Nevertheless Mrs P she is the most qualified here and we have to listen to her recommendations. My Hands are tied." (Writers paraphrasing)

Another Judge:-

1. repeatedly ignored substantiations of harm by the State Agency, with disparaging and marginalising comments like:

"The Department of Family and Community Services are not party to these proceedings. It is not a matter where I will be inviting them in the proceedings. So the extent to which they have something to say is not something that this court is concerned with, nor is it necessarily something that parties ought to be concerned with." .... 'Again I would have concern with the unilateral actions of a parent apparently on the advice of FACs'… "nor would the department be relevant for these proceedings"…"it's a difficult one because ***I'm trying to write FACS out of the matter*** *because really they don't have a role".*

In the matter of Dr B, article available upon request, this Doctor recommended the removal of children from mothers that had healthy strong attachments, he conducted his assessments with the perpetrator, (I say perpetrator because there were DVO's in place) sitting beside the child and mother. One of the parents who lost her child was accused of moral outrage by the courts after the father admitted to touching the boy inappropriately. Yet Dr B is still practicing, his wife is a legal aid mediator and trainer in family law cases working for legal aid.

The HCCC & other bodies responsible for the licencing of medical practitioners, again refuse to investigate or have any recourse towards these "court appointed practitioners" who are not experts. According to the legal framework, the practitioner is meant to comply with their field of expertise and professional standards first, and then give evidence. They do not do this.

The report writers , and medical practitioners are immune from prosecution, it appears, after numerous attempts to bring them to accountability.

There are at least 30 cases that we have personally viewed where the expert has breached their code of conduct. With no recourse available these "experts" continue to impact people's lives and children are harmed..

This situation is not an isolated case.

Currently in Australia Expert Witness' are not subject to litigation. (FLC 2004 rules 15.61) in recent years changes have been made so that they are in the UK. Following the Webb & Guthrie matter the mother filed a complaint with the HCCC regarding the Expert witnesses breachs of the professional code of conduct. The HCCC refused to investigate because the evidence was given in the Family Law Courts.

Clearly it is not the responsibility of the courts or counsel to understand the expert witnesses professional code of conduct or ethical requirements. But what is to be done when it is found that an expert has blatantly breached these, without constraints as in the case of Webb & Guthrie the results are catastrophic.

The known long term effects of trauma and attachment disruption on a child is researched and documented by Goldsmith, Sanderson and others and permanent psychological damage is caused by this disruption of attachment. Mental health issues such as ADHD, a precurser to borderline personality disorder, BPD, and other personality disorders, resulting in long term treatment. (The Australia and New Zealand Professional Clinical Practice guidelines for dealing with borderline personality disorder)

Evidence available reveals that the child in the Webb & Guthrie matter who is now nearly 9 has only just regained continence, and is struggling in school, at the age of 5 they were diagnosed with ADHD and chronic anxiety. Was tested for learning disabilities and confirmed the problems are emotional. Yet prior to the removal as evidence was put before the courts by professionals they were thriving and meeting their milestones.

To prevent this type of harm occurring there needs to be change to legislation that removes immunity of "Expert Witnesses" who get paid for their recommendations and so called opinions.

Stop the Gag Order from Hiding the Truth s121

Section 121 of the Family Law Act to be repealed or modified. With section 121 in place no one is allowed to talk about their matter or view the evidence.

In Webb & Guthrie there were a number of statements in the reasons for judgement that did not line up with the evidence held on file and viewed by the author, not being limited to the following. No jirt investigation took place, even though the Judge said otherwise in the reasons for judgement, the Police reports included the words "grave concerns" yet the Judge concluded that the maternal family were hypervigilant making no mention that the Department had continually encouraged the family to keep reporting.

Where there is no transparency and accountability justice can be perceived to be failing. If section 121 was modified and the cases and evidence were open for public scrutiny with name changes and pseudonyms this would prevent any perception of corruption.

The family law courts are a mess as the past inquiry's and reviews have shown.

A study was carried out regards the courts removal of (known) children. The reference is included in the submissions Shiloh Life Centre put in to The Joint Select Committee Inquiry into the Family Law System. All of these children were not removed because of physical assault or sexual harm, but because the mothers relationship with the children was somehow enmeshed. In attachment this is referred to as cohesive and is necessary for a child's healthy brain development.
COSI

2018/19 10.6 billion was spent on mental health.
Pauline Hanson's parliamentary inquiry suggested the need for Educating the Family Law Courts in child protection, this is only part of the answer. The power for child protection should not rest solely in the hands of the courts, our state legislated authorities an external body should I believe maintain that role. DCJ are trained and specialised and have been operating within the field of child protection for a very long time, they are hesitant and only in extreme circumstances do they remove children from primary caregivers, time and time again they put in place measures to facilitate and support parents in their role. It has been acknowledged by the AG that the Family Law Courts expertise is not child protection. To keep relying upon a system that was never set up to determine child protection issues is inappropriate.

We want to stop the cycle of domestic violence and sexual abuse. We know that children who are exposed to domestic violence often become perpetrators, because that is the culture they were raised in.

We believe that implementing these changes will alleviate and prevent trauma, sexual abuse, domestic violence and lifelong mental health issues.

I was the author of submissions made to Pauline Hanson's Parliamentary Inquiry on behalf of Shiloh Life Centre Ark of Hope, into the Family Law Court System. These were published and I can make available to anyone who would like more information.

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