

## Child abuse, Family Violence and Family law

### Context – why law reform is needed

Being safe at home is a basic human and legal right. According to the ABC, Australian police deal with domestic violence ‘every 2 minutes’ or on average 5000 cases per week. Child abuse and family violence are public health epidemics that affect 1 in 3 women, 1 in 3 girls and 1 in 4 boys. Research shows 98% of child abuse victims tell the truth but less than 1% of pedophiles are convicted.

The devastating physical, mental, financial and social consequences of abuse are not new. But new research is showing how abusers maintain control of victims using family law gaps.

### The legal framework<sup>i</sup>

The key legislation is:

- NSW Crimes (Personal and Family Violence) Act 2007;
- NSW Children and Young Persons (Care and Protection) Act 1998;
- Australian Family Law Act 1975 (Commonwealth).

All of these laws are designed to protect people from harm, particularly children. When it signed international treaties like the United Nations Convention on the Rights of Child, Australia promised to protect its people, act in the child’s best interests, not interfere with a family and let people enjoy meaningful relationships unless there is harm.

Some people argue about what is meant by abuse and family violence. These Acts define what is meant by the terms ‘child abuse’ and ‘family violence’. This means there is a legal not a personal definition. The definition of personal violence in the Crimes (Personal and Family Violence) Act is hard to follow because it references a lot of other sections which feels like a wild goose chase. The Family Law Act defines family violence as “violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family or causes the family member to be fearful’ and it lists various behaviours as examples.

### The interrelationship between the legal system and societies’ response to this change

For many years the police rarely attended and often refused to attend domestic violence incidents and dismissed them as ‘just a domestic’ or said it was two-sided parental conflict.

But violence anywhere is still violence. Nationally Australia has had to squarely face the problem that its domestic violence rates are out of control, too often resulting in one partner (typically male) killing the family. This is known as familicide which is shockingly common: women are murdered weekly, often children too.

Some of the better-known family tragedies are

- In 2009, with her two brothers watching, [four-year-old Darcey Freeman<sup>ii</sup>](#) was thrown off the West Gate bridge by her deranged father. He fought for custody but was known to be violent. He was sentenced to 32 years for Darcey’s murder.
- In 2014, [Luke Batty<sup>iii</sup>](#) was knifed to death by his father at a cricket match in broad daylight, before police killed the father. A 13 month inquiry into Luke’s death also looked at how the system could better handle family violence. Despite the father’s irrational behaviour, threats of suicide and violence, the Coroner said “No one, including police, child protection services, the legal system and Rosie Batty, could have predicted that Greg Anderson would kill the boy”

- In early 2020 the [Clarke children<sup>iv</sup>](#) and their mother were doused in petrol, set on fire and torched to death in a car by their father. Warning signs were there – especially of coercive controlling family violence.
- In 2018 the teenage [Edwards children](#) were killed by a violent father described by the children’s lawyer as ‘a bit overbearing’.

When circumstances force people to leave homes, risks increase and people need the law’s protective arm more than ever. According to research by the US National Centre for Injury Prevention and Control, women have a 900% increased risk of intimate partner homicide where there is coercive control, violence and a recent separation.

Few abusers are convicted despite society becoming increasingly aware of family violence. When the law fails, abusers get bolder and abuse gets worse. People who should know better- from their training or positions that they hold- still refuse to recognise evidence of family violence and still trivialise it, like the Edwards case.

These are just some of the cases that drew media attention and made us ask if the law was working.

- **More education** to help doctors and police recognise the warning signs was a key recommendation from the Batty and Darcey Freedman inquiries.
- **Better links to information and flagging mental health issues** were also recommended.
- The Clarke inquiry heard about **warning signs and** asked if **appropriate actions** were taken to manage the risks because, “The evidence on those matters is abundant and, tragically, painfully clear.” As a result of this inquiry, Queensland (with other states following) started to reform the law about coercive control.
- The Edwards inquest in 2020 considered how and why this tragedy had occurred. At the heart of the problem lay **the children’s lawyer being unwilling to do her job** which is to act in the children’s best interest where the law states that the highest best interest is to protect a child from harm. The court heard of the extensive evidence showing that the family violence was undeniable. The sole reason the children were put into harm was due to family court orders which the father and children’s lawyer had secured.

The rates of these horrible cases are worsening and show the legal systems to protect people at home are failing. Reoffending is a big problem and the rate of prosecuting offenders was low.

The law was not working and is still not working. Either

- the law needed to be redesigned by the legislature or
- the executive (police, child safety) need better education to perform the law properly, or
- the judiciary needed to apply the law more faithfully.

or it is a combination of all of these.

## How law reform has been pursued

In addition to the coroner’s inquests like the ones mentioned above, there has been and still is extensive lobbying by victims, advocates and interest groups. More media exposure has driven the nation to focus on fixing the problems. This confronted the parliament to run inquiries, or have state or federal law reform committees review the law or run a Royal Commission.

Some of these processes are tedious and slow. Some work better than others. Some don’t work.

The Royal Commission into Institutional responses to child abuse was announced in November 2012 but the final report was not until December 2017. It was long but effective. Another problem is continuity because governments change every four years or more if leadership transfers. Unless both parties agree to changes, there is no guarantee that changes will be implemented if the government changes.

Family law, violence and child abuse in the family is the subject of constant inquiry and reform. By 2019 there had been at least 67 federal government reviews since 1974 when the family law act began. For example, in 2011 there was a special amendment to the Family Law Act to give a better definition of abuse and family violence, and make protecting a child from harm the highest best interest. It was meant to stop punishing protective parents who report abuse and believe the child.

### Effectiveness of the law reforms

Despite all the lobbying and changes to the law, familicides continue. In QLD last year, there were more deaths related to family violence than COVID.

Family violence is getting worse because perpetrators are given control and custody over children. This is against the law saying a child has a right to be safe from harm. The Australian Institute of Family Studies, academics' and media report that if you 'dob on dad, you lose mum'.

Is it a problem with the law, the law reform process or that the law is not being applied?

Despite all the reviews, family law is seen as *"the most dangerous institution in Australia for children...Judges are frequently ordering children to spend time, or even live with, the very people they disclose have sexually assaulted them, often despite glaring evidence. This systemic failure leads to court-ordered child abuse."*<sup>vi</sup> Family violence reformists want *"urgent attention to how Australia's Family Law system is failing domestic violence survivors."*<sup>vii</sup>

*"Faith in the system is lost,"*<sup>viii</sup> and not just due to resourcing or money. In 2019 the Law Reform Committee resolved the best course is to abolish family court as an institution. The federal attorney general is also reviewing family report writers and if judges are impartial.

### Has the law reform process achieved just outcomes?

Although it took five years and the recommendations are still being implemented, the Royal Commission<sup>ix</sup> was seen to be a just process because the wrong was recognised and it looked back at what happened to see how things today could be improved.

Other law reform reviews were partially effective because it drew attention to the problem.

But things only change if the people who should know better- from their training or positions that they hold- are made to recognise evidence of family violence and child abuse and if those people (police, child safety, children's lawyers and judges) are made accountable for protecting people.

The problem of family violence and child abuse is still real and growing.

But there are signs of improvement or at least that the things that need to improve are being looked at. The children's lawyer in the Edwards case was held personally accountable. People act better when they know they are being watched. What gets focus has a better chance to get fixed. Being safe at home is a basic human and legal right.

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