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## The pinball players compounding conflict

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### **Police**

I remember when I started primary school. I would walk to primary school with my older brother which is unusual for a lot of kids nowadays and a policeman was sometimes at the crossing on the main road. One day our dog, a border collie which are bred to herd sheep, known to be really faithful and protective of their family would not listen to us and followed us to school. He was very protective and I was told that as a baby when I was crawling around in the backyard, he would herd me up, keeping me on the footpath and under control which really upset me, at least that was one story. We stopped numerous times, turning his head and pushing him towards home and telling him to go home but he wanted to be with us and protect us. We eventually got to the main road and the policemen yelled at our dog to make him go home and certainly followed those commands and probably knew we were now being looked after to cross that road. The police were part of the community, were well respected and protected all of us. The police were someone I could trust, a protector of all and deserved the enormous respect that they

held. Nowadays, maybe they are more insulated from the community and my view of the police have also changed.

Those that initiate the family separation often contemplate for years without communication with their intimate partner, they have gone through a grieving process and prepare, often consulting others. The number of times I hear from men that find out their relationship was over from the police, in the form of a restraining order (called by various names), that they cannot go home, go within a certain distance of their former spouse and often also includes the kids, I could not count. These are men where the only interaction they have had with the police was maybe a traffic infringement, which are often done by camera technology, so the police are removed from that as well. Others, like me, called the police when things got out of hand to try to settle things down but unlike me, their situation is often made far worse and they are issued a restraining order and told to move out.

The police spend significant resources on domestic violence matters and in some states the police claim it is 30% of their work, 40% of all homicides. Based upon the Australian Institute of Criminology Report 2015<sup>17</sup>, a quarter of all intimate partner homicides are toward the male which seems to go largely unnoticed in the press due to their societal focus. Regardless of the figures, domestic violence toward anyone is abhorrent and must be addressed without prejudice.

When I grew up, I thought it was a serious offence to lie to the police. The police, by not dealing with false allegations, appear to have made such practices acceptable and the

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<sup>17</sup> [https://aic.gov.au/sites/default/files/publications/annualreport/downloads/2015-annual\\_report\\_2015.pdf](https://aic.gov.au/sites/default/files/publications/annualreport/downloads/2015-annual_report_2015.pdf)

impacts appear to be significant. Conspiracy theorists say it is to get their crime statistics up in a campaign for more government funding, but I will stay clear on commenting on that! I will demonstrate the problems this causes by example of a man that we will call "B –." B – was picked up and questioned by the police more than fifty times for breach of intervention orders and many of the complaints alleged that he was driving past his former wife's place and screeching his tyres. The police (acting very unprofessionally) would ring him up and abuse him for breaching an intervention/restraining order by driving past her residence and demand he drop what he was doing and report to the police immediately. He would remain calm and often respond, "I cannot get there now, I am not even in the country. I couldn't have done what is claimed as was not in the country at that date," and, "I will see you Tuesday and show you my passport when I return." The police would often respond that they did not believe him and will send a car to his home or work to arrest him. The response was, "Feel free to try and as I am not there. You will not get anywhere, and I will report when I arrive back on Tuesday night." On his fiftieth complaint, he was not responsive by phone and the police tracked his whereabouts to a hospital, where they arrived to be told by the charge nurse they could not see him as he was currently in an induced coma (from a plane accident) and had been for three days (which covered when the alleged breach had occurred).

The case of B – show that the police rarely look beyond a single incident and treat each event in isolation. In my opinion, they failed in this case and in their duty of care and should have arrested the woman for making the false allegations so that the facts could be presented. If she was really lying,

then they could deal with it and bring an end to diversion of police resources away from those that are in danger. If it was paranoia or mental health issues, then this could be brought before professionals in this area with appropriate support and ensure the safety of the children. It should be recognised that when appropriately managed, mental health issues rarely preclude someone from being a parent. He was still having more complaints and police pickups when I saw him last. It should be noted that I have also dealt with a woman that has had 20 accusations filed with the police, all thrown out by the court, so this should not be considered a gender issue but poor police practices in terms of not following through when a false police report is submitted.

The police will act on an accusation of domestic violence and treat the claims as correct (i.e. guilty until proven innocent).

When you meet men and

- their first encounter with the police is at their door when arriving home,
- police supervising them to pack a single bag and dropping them at a hotel,
- they often find their credit cards maxed out,
- due in court next week to ratify the restraining order,
- then find out that they cannot even get to present what happened,
- if do not agree (generally without admission of guilt) it is put off for months with an interim order,

- in many cases they find out they had bad legal advice from printed brochures and lawyers, and the restraining order prevents them from working (particularly in professions needing firearms or working with children). That is months away from seeing their kids which they have never been separated (apart from going to work), you realise how bad the system really is.

Another friend's experience was that of his wife attempted to stab him, she then threw knives and saucepans and then he did the inexcusable, he retaliated, with a cake.

I asked him, "Was it a heavy Christmas cake?"

Friend, "No, it was a cream sponge cake."

Trevor, "Was it on a plate?"

Friend, "No, I took it off the plate."

You guessed it, the man was arrested! For those from my era or before, this is classic 3 Stooges (cream cake in the face) and Keystone Cops behaviour! While in this specific incident, I do not know her side of the story, I do know that years later she was arrested, and the children's custody was changed as she was considered dangerous to them.

Police entering a domestic violence situation, generally want to separate the warring parties so that matters do not escalate into the assault and murder statistics. Their documented procedures are generally well written and non-discriminatory. Command and the culture that overlays the procedure manual is however exceptionally biased. A friend while doing a mediator's class was able to talk to an assistant superintendent in the domestic violence area. While this is secondhand information, it is from someone I trust and the assistant commissioner allegedly stated, "The

constables know that it is career limiting to arrest too many women in domestic violence situations.” Similarly, one social worker I occasionally deal with, interviewed around twenty constables in another state to determine how they work and the consensus was overwhelmingly “the sergeants rewrite their reports before they go into the system to match the current perspective of gendered violence unless the situation is overwhelmingly clear.”

The police are not trained in dual risk assessment in Australia. I only know of a couple of jurisdictions across the world where dual risk assessments are performed to work out which parent is the greatest risk to their children and spouse and therefore who should be removed. Statistically, mothers kill more children than fathers, according to the Australian Institute of Criminology (AIC).<sup>18</sup> Do the police even consider the AIC evidence in their culture when they decide as to whom to remove? In spite of the evidence they use a patriarchal construct of protecting the little woman, men are bigger and more powerful, and therefore pose the greater risk to each other, usually ignoring all other factors and the children.

When I called the police to attend the family home incident in Australia accordance with the court orders where Seth and his daughter appeared out of the dark, the police showed their true colours. While they refused to supply me the name of the unidentified trespasser (Seth’s daughter), the police sergeant even stated, “You can do what you like and if you subpoena any of us we just won’t turn up in court and will put them on essential police duties the night before and will keep avoiding the court.” This sergeant was convincing and appeared to think he was above the court and therefore the law.

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<sup>18</sup> Australian Institute of Criminology (AIC), Research In Practice No. 38, May 2015, Domestic/family homicide in Australia Tracy Cussen and Willow Bryant.

When I reported the death threat to a local police station and provided documents as to the sinister and probably mentally delusional nature of the suspected perpetrator, the treatment I got compared with the purchaser of the family home (a woman), or that of the woman that was hysterically screaming in the police station “so they had to deal with her,” was a stark comparison.

The way the police are acting, means that perhaps some demographics do not have the same level of protection, the same level of access to government services and just perhaps “*there is no option, I cannot be heard, I am not valued,*” is causing some of the social problems that we see. A level playing field may decrease violence and suicide.

Recently in the news, the Australian Federal Police have arrested various people for running an organised child abduction ring. The claims that the fathers were not fit had been investigated, put through the court and the fathers awarded shared care. They have been found to be good and decent parents, devastated for the loss of their children and fearful for the children’s safety both physically and mentally. The mothers contacted a group of what may be best described as vigilantes, taking the law into their own hands against court orders, that allegedly abducted the children and hid them and their mothers, evading police for sometimes years. Some involved have already been jailed, while others are on a very restricted bail (with tracking devices), yet others now charged with “Conspiracy to defeat justice.” Many of us await the future developments on that case.



The evidence I submitted to the police, (the court orders) and what the subpoena's revealed, I am informed that they clearly showed an attempt to defeat justice in the Family Court. The defence of Seth was that the law was wrong, the court was not properly constituted and therefore he was not obligated to follow its rulings. You would have every right to wonder if cases like mine were prosecuted, along with perjury, if such deterrents would have served as a warning, stopping such vigilantes with the consequent damage to those children of being abducted, not going to school for years and the mental trauma caused.

Another case that remains in my mind was the man explaining to me that his wife was removed from the hospital, after, according to hospital staff, caught her strangling him while still on the gurney under anaesthetic, screaming, "Why didn't you die?" He was also told that the emergency surgery was to have his stomach removed due to poisoning over a period of weeks, representing two counts of attempted murder and yet there was no police action which is very concerning and may reflect the gendered police focus on domestic violence.

The statements to the mediator in training; the survey by the social worker; the police protecting the family home purchaser and protecting the hysterical women but not protecting me; the man arrested in the cake incident; the man that had been poisoned and strangled; and the literally thousands of stories I have heard are of such frequency must lead me to some conclusion. Are we all equal before the police and deserving of equal treatment?





## Lawyers

We have all heard the jokes “What is a busload of lawyers that runs off the bridge and drown in the river: a good start.” In my opinion, lawyers play an absolutely essential role in society as I pointed out with my opinion of the relationship between the welfare, medical treatment and law in the Netherlands and they do defend people.

Lawyers however are human, and unfortunately, some need to be prosecuted and struck off, which in Australia, from my perspective, is simply not occurring at the level it should. The majority of lawyers that I meet through social or the peer groups, seem to simply work within the system, are ethical, and work to ensure their clients get what is fair and reasonable so everyone can move on with their lives. From running peer support, one of the challenges I regularly see for lawyers, is that clients often expect lawyers to win when they don't provide information in time or at all. Some people I have dealt with were so traumatised, they could not string a sentence together when talking about their case and some lawyers are not skilful enough at getting the information out of such clients.

There is also a darker side too, which is often reported in the press and occasionally makes national front-page news, when a judge actually says what they see. I gained significant insight into those who misuse their position to drive conflict and billable hours, those who fuel outrageous cases that usually get paid, win or lose. One lawyer informed me of a dinner meeting with a barrister who stated, “We will carve up this estate,” (largely to themselves as if carving up a Sunday roast or a side of

beef). I have already talked about incitement clauses, and how lawyers are able to keep conflict going.

Through my connections, I learned of a term called “Burn Off.” This is where two, less-than-honourable lawyers burn off, say 70% (sometimes up to 90%) of the assets and then pretend to be a hero, and mediate settlement of the remaining 30% (or 10%). The parties leave the room thinking, “Thank goodness, after all that, my lawyer managed to get him/her to settle.” The client then actually thanks their lawyers, never realising what has occurred and their assets have been “burned off.” One of the first questions that you get asked is, “What are the assets?” which may be used to advise on the likely split or, very often, determine if they want to get involved. If the assets are minimal, they may move straight to successful mediation, otherwise less ethical lawyers will use tactics to incite conflict, sometimes for years, regardless of the damage to the children.

Domestic violence has become major focus in the community concerns and so it should. It can come at a huge cost which is the misuse of accusations and gross over-exaggerations. A classic conversation I hear too often from females I speak to after their first meeting with their lawyer, is that the conversation goes:

Lawyer, “Has he ever hit you?”

Client, “No.”

Lawyer, “Has he ever yelled at you?”

Client, “No.”

Lawyer, “Has he ever withheld money?”

Client, “No.”

Lawyer, “I would like you to go away and think about that more, as it would be better for you if you can think of something!”

Invariably, what they are doing is trying to ramp up conflict and move litigation into the domestic violence court. What this has led to is an enormous increase in cases before the domestic violence court, often the applicant of the restraining order includes the children, which removes the children from the targeted parent's life.

This disturbing trend away from the family court to crush the opposition in the domestic violence jurisdictions is best described by a law firm L.G Yves Michel & Co in their "RESPONSE TO PUBLIC CONSULTATION PAPER & EXPOSURE DRAFT FAMILY LAW AMENDMENT (FAMILY VIOLENCE AND OTHER MEASURES) BILL 2017<sup>19</sup>." Their submission on 20th January 2017, which I have taken from their submission to the Attorney Generals website, has the figures, showing the migration of cases in one Australian state from the Family Court to the Domestic Violence Court and the relationship to mediation in section 4 along with some conclusions.

The reason this may be occurring may be due to the complete lack of ethics of some lawyers and while I like to think they are a minority, other observers disagree. These lawyers are aided by the failure of their industry and government bodies to prosecute such damaging behaviour. Lawyer-client confidentiality in Australia is often used to hide their actions, the legislation that restricts publication of cases that identify persons (lawyers are normally named in

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<sup>19</sup> <https://www.trevorcooperauthor.com/book-referenced-material> and <https://www.ag.gov.au/Consultations/Documents/amendments-family-law-act-respond-to-family-violence/the-forgotten-victims-of-family-violence.pdf>

decisions but were not in several of my cases) has aided such practices, where anonymity is ensured.

The advice I received from the first two lawyers, one in Australia and one in the Netherlands, proved to be correct in terms of final outcomes and that the advice, “It is better to sort out yourself if you can,” proved to be both honourable and correct. One person I know, had even created a website where you could load in the critical factors such as how long together, financial situation, contribution, age of children and producing a normal range of the likely final settlement from litigation. If clients were given realistic expectations at the start, they would know they are only arguing about say five or ten per cent of the assets, rather than much more and may facilitate earlier compromise and settlement. It may help reduce the practice of “burning down.”

Should we eliminate lawyers from the system? The law reflects society’s values. It protects us from crime. Lawyers help judges keep police and others in check, by ensuring evidence is tested and as such, they are part of the glue that holds society together. Lawyers are specialists in interpreting the law and will always have a place in assisting their clients understand their legal obligation and the pursuit of legal entitlements. The real question however is, are these rogue lawyers a benefit or encumbrance to the good working of society, especially in their part of the family separation industry? Are the correct checks and balances in place to ensure they cannot turn rogue and be an encumbrance to maintaining the high ethical standards that the public have every right to expect?

How can we ensure that lawyers do what they are meant to do?

- Should we eliminate or reduce the adversarial system to assist separating parties (and I use the term parties as I remember in one case they were a gay couple and lesbian couple who had week-on and week-off shared arrangement of the upbringing a child for five years when the birth mother wanted full control)?
- Would an inquisitorial system be better? An inquisitorial system is where the court or part of the court is actively involved in the investigation of facts of the case, as opposed to the current adversarial system where the court is primarily that of an impartial referee between prosecution and defence.
- Would a collaborative law framework achieve better results? A collaborative law framework is where lawyers use skills similar to those in mediation enabling those that decide to separate to work with lawyers and may involve other professionals to reach a settlement that best needs the parties and their children without the threat of litigation.
- Should we limit lawyer's utility, (the income from a case)? Would a fixed fee 10% of the family assets turn the lawyers into the greatest of mediators (rather than utilising their skills to promote conflict and income) and the conflict finished in a couple of sessions rather than go on for years? Would a fixed fee stop the countless court appearances and ensure lawyers are ready in the first hearing as a second will not increase their utility and increase their effort? Note:

a fixed fee is completely different from a schedule of rates which may be so much per letter or so much per court appearance that can run on indefinitely.

- Should many of the cases be treated as a health issue? Some submissions show the devastating impact on the family, the children, the associated suicide and subsequent mental health issues and suggest that many of the high conflict cases are driven by mental health and personality issues.

The Australian Law Reform Commission (ALRC) is stacked with lawyers (according to the ALRC website the recently completed “review of the family law system”, president and commissioners consist of four judges, two solicitor/lawyers and one representative from Relationships Australia (i.e. 6 out of 7 representing the legal profession) and by its very makeup has to represent the values of lawyers. The Australian Law Reform Commission, for example, forms committees of which according to their website, “Members of these committees are selected because of the expertise of each committee member in a particular area relevant to the area of law under consideration,” and need to ask:

- Do these committees represent the values of the public and the consumer of the services?
- Has it been stacked to ensure the objectives of the lawyers, rather than the stated objectives of simplification of the law and its accessibility and cost, is in accordance with community objectives?
- Has it been stacked in a way that the committees suffer cognitive rigidity; essentially the inability to think about things in a different way or “outside the box”?

- Are they able to override and disassociate their traditional loyalties for their colleagues which is in significant conflict with the community at large?
- Is the barrier too high to climb? I believe it is!

There have been many reports and inquiries over the decades, speeches by the attorney general that lawyers that are found to have escalated conflict will be prosecuted, however I have not seen any action. Powerful vested interests have ensured the terms of reference for many inquiries, suit their agenda of making the law more complex and expensive while vital reforms do not happen! Is it time to force the governments to do something?

In terms of the current system, from the consumer and societal perspective it was best described by Lord Chief Justice Coleridge in the United Kingdom who refers to it as, “An exercise in absolute futility and a carnival of despair.”



## **The social workers**

Social workers are generally idealistic, and the majority are acting in the best interests of the people they deal with.

I would like to go over a case of a man I will call “S – ” which I followed as his peer for many years as I watched his matter progress.

S – had been removed from the house in which they lived as S – was accused of violence and child abuse



and had not been allowed to see his child for around six months. “The Department” turned up where he lived one day, without notice with his son and said, “We know who the abuser is now, and you will need to look after the child.” No apology for labelling him as abusive when it was now clear to them it was his spouse. While he had no infant formula, bottles, nappies and other items, he was told to organise them which he did, took care of the child as every loving parent would, even though the child was presented to him with a broken arm and ribs and needed significant care. The child stayed in that loving environment.

A new worker from “The Department” arrived on his doorstep around a year later and took the child, again, unannounced, stating, “A child that young must be with its mother under the tender year’s doctrine.” The tender years doctrine is that a child under five should be with the mother due to parent-child bonding and development but has been largely discredited. “But what about the child abuse?” the loving father asked. “That was never proven, and you can no longer see the child as the mother does not feel safe around you!” was the response.

The father, denied legal aid, and with insufficient resources, self-represented and fought “The Department” in court. The social workers had a disproportionate influence and with their lawyers won.

The child, again neglected and in need, was eventually again returned to the father. Hearings were eventually instigated by the mother, and the father who had become quite competent as a Self-Represented Litigant (SRL), found himself against the Independent Children’s Lawyer

(ICL) and the mother's lawyer. The judge saw the progress of the child in school, extracurricular activities and the huge strides that the child had made in a loving and nurturing environment. The case was interesting in that the ICL represented the mother's interest, even though the mother did not even bother to turn up and the Judge seeing the bias asked the ICL to stand down. The judge saw the competency of the father from his latest submissions and was very critical that the father had not appealed the previous judge's decision that was clearly wrong. The child is now in a safe and loving environment.

"The Department" in so many cases, fail in its basic purpose of acting in the best interests of the child and history will judge the governments, its departments and the social workers who they fund. Unfortunately, it will be too late for many of our children and I foresee that yet another government apology will be issued to the victims of their poor policy and management.

Social workers are often the family report writers. They are of exceptionally poor quality and many family reports have been brought into question, most recently in the "Parliamentary inquiry into a better family law system to support and protect those affected by family violence." I sat in, listening to the part of the inquiry when the social workers' industry body was questioned and they agreed with the politicians that the problems were widespread. The inquiry clearly saw this and Recommendation 22 was: "The Committee recommends the Attorney-General pursues legislation and policy reform to abolish private family consultants, with family consultants to be only engaged and administered by the Court itself." We need

to ask if this would fix the core issue? I doubt this will fix anything, unless the family consultants video record their interviews which are subject to supervisory review and then made available for experts to use in cross-examination. Failing to implement those controls will simply result in another professional opinion that is not subject to checks and balances.

I know first-hand of cases where social workers reports have been so steeped in ideology that the needs of the child were largely ignored. A professional psychologist and report writer that the courts consider beyond question due to their knowledge, understanding, and integrity had to be called in at significant cost to counter the ideology-based family report. I am, by background, a problem solver, who has worked across many areas and one of the main methods are what are called Cause-and-Effect Diagram or Ishikawa Diagram, Root Cause analysis (drill down at least three levels to find the real root cause as to why a certain outcome occurred). When I consider the case of S – and the many others I have witnessed over time, there are some root causes that are evident.

When I talk to social workers, they tell me that there may be two or three men in a class of fifty, i.e. more than 90% of social workers are women. I do not have the exact enrolment and completion statistics. It actually makes sense, as courses are filled through self-selection and as social work is considered a helping profession, I understand there would be a gender bias. Those attending the courses, both men and women tell me there is, unfortunately, elements of their education that have included feminist ideology including the discredited Duluth

doctrine and have included the “tender years’ doctrine” and therefore this bias finds itself in the workforce. Compounding the issue is the lack of male social workers, including and especially those in mediation, whereby they fail the many people who come to them for support due to perceived bias. The universities (in Australia) have approved through their ethics committees, research, and publication of documents such as the “tender years’ doctrine”. In the 2010 study led by Melbourne child psychologist Dr Jennifer McIntosh, produced many papers such as the “Australian Association for Infant Mental Health: Infants and overnight care – post separation and divorce,” which influenced parliaments. A critique of that research can be found at Professor Warshak’s<sup>20</sup> website which had the support of 110 academics and found the research to consist of academic misrepresentation and while the counter-arguments ensued for many years, good parents would leave the courtroom having been McIntosh’ed. Eventually, even the court started to overturn the doctrine but many of the social workers have not, and as such remains and permeates through the social workers’ culture.

In the case of the of the child of S – , the root cause of the problem was the education system and young, inexperienced social workers who placed a high priority on a misguided, gender-biased, attachment theory. They ignored the physical abuse and lack of development that the child exhibited while with the mother.

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<sup>20</sup> <https://sharedparenting.wordpress.com/2014/05/22/45/> and <https://www.trevorcooperauthor.com/book-referenced-material>

I have met with men who have sole custody and hence “The Department” does not have a total gender bias, however, many men in society perceive a very strong bias that is due to the cases like S – .The perceived bias certainly, in my opinion, impairs “The Department” and their perceived right to morally operate. The bias however is not always present as I have seen loving mothers that have no access to their children, do not have a drug, alcohol or mental health issue and appear to be actively raising step-children well. The case I am thinking of, we will call “A – ”, and the root cause, seems to be that “The Department’s” social workers believed initial domestic violence claims that upset the mother to such an extent she appeared angry, and she possibly appeared irrational about the accusations. “The Department,” years later, refuses to admit a mistake may have been made and delayed the case for the maximum time they legally could, which was two and a half years, and has asked her to admit to child abuse (that has never occurred), before they will consider reassessment and child access conditions. It is cases like A – that brings into question why “The Department” seems unable to change their position, when new evidence is presented to them? Is it because they do not want to consider they made an initial mistake as there could be repercussions?

I must confess. I often feel sorry for many of the mediators. I know one who told me one day, “It’s so frustrating, some of those people need real help,” and was referring to people with personality disorders that will defy logic and cannot be reasoned with. It did not reflect her skill as a mediator, but her inability to inform the court

that in their opinion that there was an undiagnosed mental health issue. Should they have the right to outline their suspicions, so the court can enforce (on both parents), a proper mental health assessment to aid both the mediators and courts in their decisions?



## **The Judiciary**

We need to appreciate what must be a difficult and emotionally draining job that the judiciary face. How they manage to oversee what was described by the English Lord Chief Justice Coleridge, as an “Exercise in absolute futility and a carnival of despair” on a daily basis and see the worst of dysfunctional families, is beyond me.

I disagree that more resources are needed, and that puts me at odds with the judiciary, but I do agree that they need help. The judiciary rely on the social workers and their reports are often the primary focus of decisions, when the parliamentary hearings have outlined their concern to how misleading these reports can be. Legal precedents within the court system, seems to mean that endless delays can be easily orchestrated by legal teams on the court. The judiciary generally works meticulously and with caution, so that if a legal team lodges an appeal, it is unlikely to be successful, and a retrial not granted.

I was dealing with one woman who was frantically preparing for court (she left her court response until the day before her appearance) and then couldn't attend to her preparation as she was called up by “The Department,” who

wanted to meet her that day in their own desperate attempt to get their evidence together the day before the case. The fact is, the woman was not complying with the court processes and submitting documents in the required number of days in advance. The matter showed me the difficulty the judiciary face with the government services that are also meant to supply information to the court in advance.

It reinforces the experience I had with a department when I was asked to review their IT systems as a consultant. Reports from users at some locations were that the printing systems could not even manage to print a page with two pictures on it that were required for court submissions. Caseworkers were leaving in frustration as could not present the evidence they collected, and cases were being thrown out of court when the investment to fix the issue worked out to be paid back in two weeks with the productivity gains. The core IT issues and estimates were confirmed by the government IT division. Unfortunately, there was a change in government and a policy that meant nothing would be spent on IT, all contractors will not have their contracts renewed and will employ more front-line child support staff. The government decision was exceptionally counterproductive. This seems to be reflected in many systems to which governments are involved in and letting off a government department for being busy should be no excuse.

The judiciary seem to not care about the mental health of those entering proceedings let alone the long-term impacts of protracted litigation such as cPTSD. Are one or both of the parties, suffering from a mental health or personality disorder that would impact their ability to compromise, focus and act in the best interest for their



children and instruct their lawyers accordingly? There are always ethical issues in the restriction of access to the courts and the rights of those with mental health issues. While I would never advocate that the judiciary eliminate child access unless there are severe and dangerous mental health concerns, knowing personality disorders and mental health issues could assist the judges in managing the cases and the parents' personalities. In the case of S – ", the judge ordered a mental health assessment on the mother who returned to court three months later and simply said, "I didn't do it as did not have the finance." The judge seemed to progress the case regardless but this was clearly in no one's interest as three months were lost and no progress made. Was the government or court support also negligent in not ensuring services ordered by the judge were not made available and scheduled?

Do we expect the judiciary to act like public servants and process paper as and when it arrives? Or should we expect the judiciary to show a firm hand and leadership within their court?

A firm hand on the progress of court cases, not accepting the delaying tactics, and holding people accountable for their actions such as:

- If the government will not prosecute perjury, simply lock up the individuals for contempt.
- Awarding costs when perjury has been detected.
- Demanding government departments provide the reports as and when required (normally affidavits and evidence must be submitted several days before a

hearing) and raising hell when they fail to do so! Sure, a government may get embarrassed, government department heads may change, and eventually government department budgets will be appropriately reconfigured to meet the courts' demands.

- Demanding lawyers and their clients submit documents on time. Judges should not accept submissions on the day. Proceed with the case based upon the evidence submitted on time, unless there are extraordinary circumstances. Those lawyers that don't notify their clients of the specific need for documentation and court demands immediately they are aware, (so the client has the maximum time to process) and ensure they submit documents for their clients, may get sued by their clients or action taken against them by legal services bodies.
- Demanding legal bodies (such as the Legal Services Commission) to issue leaflets to all litigants of the ethical requirements of lawyers, their duties to their clients to inform them of documentation schedules, and availability to prosecute lawyers who are non-compliant and welcome complaints.
- Demanding the police perform the risk assessment on both parties, what logic they used to select which party was to be removed, and body camera recordings as part of the evidence.

If this was done, then the system may be brought into line.



## **The Australian government**

One of the most fundamental concepts in the environment is that an organism will maximise its utility. A fungus will multiply on rotting fruit until the environment will not support it and it dies off or is cast away to find somewhere else to survive. In the business world, we see the creation of a product and trying to manage the customer needs and perceptions. The business will try to manage its image as good, while keeping competitors in check and to maximise sales and profitability. The tobacco industry succeeded for decades suppressing information on the negatives of their product. The various components of the separation industry are no exception in their attempts to maximise their utility, promote their image and benefits, and suppress negative information. The things I learned from my journey and through that of peers, research, and the less reliable articles from the news services, confirm a system where the components are as toxic as the fungus on the rotting fruit.

While I cannot talk about other governments around the world, I can comment on the Australian Government, which has often followed both the best and worst practices from around the world, so this section may be of interest to those outside Australia.

### **117AB Costs where false allegation or statement made**

- (1) This section applies if:
  - (a) proceedings under this Act are brought before a court; and
  - (b) the court is satisfied that a party to the proceedings knowingly made a false allegation or statement in the proceedings.
- (2) The court must order that party to pay some or all of the costs of another party, or other parties, to the proceedings.

This false allegation clause was repealed which means removed. At the same time a more modern definition for what is domestic violence, including the coercive and controlling behaviours and financial abuse added.

While many politicians have even recently stated that perjury is still illegal (i.e. this was just a clarification and costs can still be awarded in other parties), the so-called simplification and removal of S117AB was a signal that perjury was acceptable, and litigation exploded into the new forms of violence to which lawyers could argue and litigate over.

The successive governments since the instigation of no-fault divorce has never measured the impact and has never considered the number of children impacted by the family court as revealed in a Senate Estimates committee hearing by the then Senator John Madigan<sup>21</sup>. The court administration keeps statistics on the number of parties in litigation (parents), timeframe from lodgement to deter-

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<sup>21</sup> <https://www.trevorcooperauthor.com/book-referenced-material>

mination, time from final hearing until judgement handed down, how many are in the family court process and passed through all of these statistics are easily recorded and managed. Unfortunately, in a dispute like mine that had ten court cases, each are recorded separately so they effectively reset the start date of any dispute with each new court case. One parliamentarian that stated in the “Parliamentary inquiry into a better family law system to support and protect those affected by family violence,” said that “they were informed that the worst case length was two years.” The family court administrators appear to not report in their statistics of litigation lasting a decade with the repeat business and some lawyers call the family court “the court of high returns”. The name is so appropriate as if parents do not comply with court orders the aggrieved parent is forced back to request compliance, children grow and circumstances change and the chances are there are new things to disagree over. Not to mention high returns in terms of fees for lawyers.

The government has never set up systems that would see liaison between the siloed courts and the Child Support Agency (CSA), that does not even consider court orders when calculating benefits. The CSA was set up to force parents to support their children which is something no one disagrees with and has the power to garnishee wages and take money directly from bank accounts. I know of a case where they took funds from the father’s bank account and could not purchase petrol to go to work and lost their employment. If one parent submits a statement to the CSA that they physically have the child

full-time (or the majority), then the parent that does not have the child will be forced to pay the higher amount. This applies even when the court order is equal time and the child is being withheld, often against both the child and the other parent's wishes, even if contravention cases have been filed and the parent still refuses to comply. What this means is there is a financial incentive to not comply with court orders to maximise financial benefit. In one case, a drug-addicted mother kept the children simply to receive greater funds from father through the CSA to support her habit while the children were neglected. Such siloed practices undermine the law.

The government have NEVER measured if the best outcomes for the children was achieved, which is meant to be the primary focus of the system through the legislation. They have NEVER measured the number of suicides— attempts or deaths between parties in litigation or the children.

The successive governments have also failed to prosecute perjury. Justice Collier, in the film, *DAD*<sup>22</sup>, a documentary made by independent filmmaker Karen Hodgkins in 2015, clearly stated that all the judges in the Australian family court had at one stage lodged cases to the attorney general for prosecution, however none were prosecuted. On the 29 June 2018, The Courier-Mail news service reported that that judges gave up and “‘In the last three years we have received no referrals from the Family Court relating to perjury,’ an AFP spokesman said.” While

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<sup>22</sup> [https://www.youtube.com/watch?v=v5n9vUZYzhc&feature=player\\_embedded](https://www.youtube.com/watch?v=v5n9vUZYzhc&feature=player_embedded)

some of the judiciary have called for additional funding for more judges and more legal aid, perhaps if the games were removed, the resources needed would not be so great. From my perspective, the government has failed to support our nation's judiciary through the lack of enforcement of perjury, so they can control the time wasted due to false claims that plague the courtroom.

I attended a presentation recently by a former chief justice of the Australian family court where he proposed that things have not changed much in 30 years as you still have one household trying to make two households and fighting for resources. Broadly speaking, he said the majority of cases can be categorised into:

1. Difficult issues relating to valuation of assets, e.g. what is a business worth especially after it is split up to give a proportion to a former spouse.
2. One of the parties is grossly unreasonable.
3. One of the parties has grossly unreasonable expectations given to them by advisors (mostly lawyers).

With all the inquiries and changes to the law, none seem to have addressed the issues associated with this former chief justice analysis of the situation and I have to ask why?

The successive governments have failed miserably in managing “the system,” from the education system that trains various components, police, lawyers, social workers, and supporting the judiciary and the family court itself, which does not consider measuring its impact on children. The government regularly diverts attention to law



reform rather than taking a systematic approach. Such law reform has proven ineffective when there is no support for the judiciary, no coordination of the various components upon which is essential for the judges, ensure compliance at each stage of the systems interaction with the family, and the best interests of the child is actually measured.

The relationship between a person's situation, their ability to cope, and that of suicide is unquestionable. A survey by one organisation dealing with separated fathers, found in a national survey that over 6% of clients would have died by suicide if they had not been there to assist. An analysis of the 10-year study of the Queensland Suicide Registry extrapolated across Australia, suggests that around 1 in 4 male suicides are related to relationship breakdown. At today's rates, that equates to around 10-11 men per week. Julian Lesser MP in his House of Representatives speech of 26 Nov 2018<sup>23</sup> talked about the link to suicide and the need for reform while discussing the amalgamation of two court systems.

I have already outlined the impact on the applicant or respondent's mental health and the possibility that the family separation industry is directly responsible for causing some mental health issues such as cPTSD. I have also outlined one example where 10 people lost their employment and the impact on the children where parental alienation is involved. The social and economic cost of failing to reform the system is enormous and the successive governments have, in my opinion, been negligent for failing to act.

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<sup>23</sup> <https://www.trevorcooperauthor.com/book-referenced-material>