



# Childhood Matters 2020

Towards an evidence-based approach to family violence,  
family separation and divorce

**for  
kids  
sake**

Protecting children – beyond family separation

[contact@forkidssake.org.au](mailto:contact@forkidssake.org.au)

**"The Family Court completely failed us."**  
[Amelia, 17]

**"I felt like everyone who spoke to me had an agenda."**  
[Amy, then 10]

**"There's no way I'm going back to that bloody court. Ever."**  
[Sylvia, then 11]

**"For me, a complete stranger told me I had to choose one parent over the other. That was a choice a 16-year-old could not make, so I ran."** [Frank, then 16]

**"We must have been interviewed by more than a dozen of those so-called experts when we were kids. It went on for years. That can't be right."** [James, then 8-14]

**"I don't want any other kid to go through what I did."**  
[multiple respondents, 10-18]

**"No child should be given the responsibility of having to choose between their parents."** [Emily, then 12]

**"No-one listened to me. No-one."**  
[Samantha, then 12]

**"The court psychologist asked all sorts of questions about things that would make my dad look bad but didn't ask the same questions about mum. I felt forced to say bad things about my dad."** [Emily, then 9]

**"It's very hard to get to trust again."**  
[Christine, then 8]

**"I lied to my lawyer all the time. Dad had told us what to say."**  
[John, then 11]

**"Get rid of any kind of adversarial nature the court has."** [Gabrielle, 15]

**"A judgment needs to be made by someone who knows the situation well."** [Mark, 15]

**"The number one thing that helped me was the fact that I was plugged into a church community ... because every single week I would see trusted adults ... I'm a massive advocate of mentoring for young people."** [Gabrielle, 15]

**"We should go easier on parents. Because it's very difficult being a parent. And for a divorced parent, it's particularly difficult."** [Adam 15]

**"It comes back to having people who are well-trained."**  
[Amanda, 15]

**"The focus should be on helping parents before anything happens."** [Tom, 16]

**"Families, even when they seem OK, should have back-up within their community so when something happens they have professionals who know the family and can make decisions ... We need to get rid of the stigma that counselling is for broken families."** [James, 15]





## About Us

*For Kids Sake* is a non-profit organisation<sup>1</sup> dedicated to creating a fresh approach to divorce and family separation – one of Australia's least-recognised, yet greatest, public health crises.

When separating, families are vulnerable and children are at increased risk; they need compassion and health-focused support, not family courts that are slow, unaffordable, adversarial and frightening and that increase the health risks to children and other family members.

This recently published opinion piece (right) outlines some of our views on why we need a safer, healthier approach to this major social issue. This summary (below) outlines some of the solutions, based on examples of world's best practices.

<sup>1</sup> *For Kids Sake* has no political, religious or professional affiliations and receives no financial benefit or reward for any policies it advocates.

## Separation is painful but Australia's adversarial legal system makes it harder

DAVID CURL

For many parents throughout Australia, not only those affected by our catastrophic bushfires, it won't be a happy New Year. Their New Year's resolution has not been to join the local gym, adopt a low-carb diet or take that long-awaited holiday in the South Pacific. It's been to split up or get divorced.

Between opening Christmas presents with the kids and watching reviews of 2019, mums and dads around the country have been finding time to Google "divorce", "separation", "family law" and other such search terms that always show a significant spike in January. On Monday, the first phone call some parents make will be to a family law firm that stands

to make tens of thousands — or, sometimes, hundreds of thousands — of dollars from each of its desperate clients. It may be the nearest these parents have ever come to a lawyer — or to writing a blank cheque — in their lives.

Family separation or divorce is one of the most stressful times in the lives of all who experience it. Apart from often extreme feelings of grief, anger or confusion, the most important things in a parent's life are now at risk: financial security and their relationship with their kids. It's a moment of enormous vulnerability for parents. It's also a moment of greatly increased risk for kids who will often find themselves, suddenly and for months or years to come,

promulgate is of prolonged, acrimonious, unaffordable separations where the escalation of potentially life-threatening conflict is inevitable, and even incentivised. With their draconian secrecy rules, they go even further:

### Divorce is a health and social issue — one of Australia's greatest public health crises

they prevent healthy debate about the issue and proper scrutiny and improvement of the system, and they entrench the stigma about divorce that still lingers.

Don't presume, either, that those who avoid such dangerous proceedings are settling amicably, let alone managing to agree on what's best for their children; many are simply avoiding a court system they know they can't af-

ford, won't give a favourable outcome, or will damage their kids for life. Photos of new stepmums and stepdads enjoying New Year celebrations with their former partners and kids, or wearing the same family T-shirt to a footy match to support a child whose upbringing they all share, wouldn't go viral if truly amicable separations were the norm.

This year brings with it the latest in a long line of reviews of Australia's family law system, controversially co-chaired by lower house MP Kevin Andrews and senator Pauline Hanson, while recommendations from many previous reviews remain unaddressed. Each of these, however, has tragically failed, and other reviews will keep failing, because we continue to ask the wrong questions — and because our federal parliament is too paralysed and polarised, along entrenched gender and political faultlines, to reach consensus about even minor reforms. Like many of us, they've

without the two functioning parents they've relied upon.

For other such moments of human frailty and vulnerability, our society has put in place scaffolding and systems of support: there's well-promoted guidance for gamblers, well-known peer-support groups for alcoholics, and injecting rooms that recognise that drug addiction can better be addressed as a health issue than as a legal or criminal one. Society too has learnt to be less judgmental and more compassionate about these widespread social issues.

Not so with divorce. Whether because it's normal, if not de rigueur, for everyone to take sides — usually based on gender or family allegiances — or perhaps even because the rest of us know how hard keeping a family together can be and wonder if those who've failed are perhaps not worthy of support (they must simply be bad or "warring" parents), we have few support mechanisms in place.

There is no well-known road

map for healthy family separation; no road signs to help us navigate dangerous crossroads or behaviours; no orange flags to warn us of unfamiliar or unexpectedly high risks to children on the road ahead.

Instead, anxious mums and dads turn to their best friends, who recount horror stories about other disastrous separations, warn that whoever acts first will have the upper hand, and tell them to "go get a lawyer" — today. Instead of the support that every separating parent and child needs, the best-known, often easiest, pathway is into an adversarial court system that turns every family separation into a terrifying, quasi-criminal affair.

It's true that a majority of family separations don't end up with an actual trial, or even years-long court proceedings. But family courts set the tone for divorce and separation throughout Australia — anything else is officially described, to this day, as "an alternative" — and the model that courts

failed to recognise that divorce or separation is a health and social issue — one of Australia's greatest public health crises, in fact. It simply doesn't belong in a court of law.

Family separations, especially where family courts have been involved, contribute to childhood trauma, with lifelong health consequences; they're a significant contributor to teenage mental health problems and suicide, as well as those same consequences in adults; and they're even linked to many of Australia's most horrific family murders.

The solutions are not rocket science. But they require all of us to stop taking sides. This isn't a men's rights issue, though all men, women and children have and deserve rights. Nor is it primarily a women's safety issue, though we must do everything we can to keep women, men and especially children safe from all forms of harm.

This is a public health crisis that can be addressed by investing in earlier, safer and more cost-effective

measures than any family law system: measures such as well-targeted education of children, parents and society at large; earlier health interventions and support for families; clever apps and online tools that help kids and parents navigate separation and foster healthy relationships during and after separation; quality conciliation; and, where necessary, an arbitration process instead of hostile court proceedings. Measures that give families a chance of reinventing themselves, rather than guaranteeing their destruction.

Together, these and other measures drawn from examples of world's best practices, can create the fresh approach to family separation that our children and families so desperately need and deserve. Wouldn't putting that in place before the end of another decade be a great resolution to make for the New Year?

Dr David Curl is CEO of For Kids Sake ([forkidssake.org.au](http://forkidssake.org.au)).



# Key Recommendations

## Recommendation 1: MINISTER FOR CHILDREN

Give the Minister for Children and Families direct and primary oversight of the budget for addressing the causes and consequences of family breakdown – including education, research, health-focused interventions and relationship, coaching and mediation services – with a focus on the long-term wellbeing of children. *Family breakdown should be treated as a major health and social issue, not primarily as a legal issue.*

## Recommendation 2: MAJOR, NATIONAL CAMPAIGN

Invest \$10 million over 3 years<sup>2</sup> into marketing and promotion of the safest, healthiest ways to address family breakdown and family conflict, such that parents will know how to seek early and effective support from those they trust and those who can provide the safest, healthiest solutions. The campaign should use TV, video and other modern technology as well as websites and traditional brochures for doctors' surgeries, with the aim of reaching all Australians with key messages about support available to manage relationships and separation better and how to protect children from the various risks associated with family separation.

## Recommendation 3: CHILDREN'S PROGRAM

Invest \$15 million over 3 years into well-designed and targeted Schools Programs that will, among other outcomes, equip children better to develop resilience, positive relationships, critical thinking, conflict resolution skills and self-management of behaviour and emotions.  
Promote the development of peer-support for children in schools

and in their local communities and ensure every child has an adult, mentor or peer they can turn to in times of need. *The earliest interventions are the most cost-effective.*

## Recommendation 4: PARENTAL EDUCATION

Invest \$10 million over 3 years into well-designed and targeted Parental Educational Programs for the whole Australian population, delivered via TV ads/programs, online and peer-group courses and personalised coaching. *Parents well-educated in the risks to children and themselves associated with family breakdown will be better equipped to handle and avoid them.*

## Recommendation 5: HEALTHIER INTERVENTIONS

Create financial incentives for medical and healthcare centres to provide integrated, coordinated services for families in potential crisis, including access to counsellors, coaches, mediators and conciliators. *Separating families need support, not courts.*

## Recommendation 6: MEDICARE FOR FAMILY HEALTH

Invest \$25 million p.a. into a new Medicare-funded Family Care Plan, administered by GPs and Integrated Healthcare Centres, to create a new, early intervention to triage stressed families and provide cost-effective access to an integrated package of multi-disciplinary support. *Earlier, health-focused interventions will save lives – and money.*

## Recommendation 7: INNOVATIVE SOLUTIONS

Invest \$6 million over 3 years into the development of innovative, modern solutions that offer self-help, early intervention and harm

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<sup>2</sup> For more detailed budget information and estimates of cost savings, see *For Kids Sake's* paper "Childhood Matters: Beyond 2020".

prevention, and that address issues of child safety, long-term wellbeing of children and risks associated with family breakdown.

*The online environment, smartphone apps and AI can already contribute to simpler, cost-effective solutions for many.*

### **Recommendation 8: PRE-EMPT COURTS**

Require families to pursue all safer, healthier approaches to family breakdown before family courts can accept their applications, including participation in: coaching/counselling and education courses; accessing support for children; use of modern collaboration aids such as smartphone apps; genuinely mandatory and enhanced mediation/conciliation services; and mandatory arbitration. Promote and market these approaches as mainstream, not as alternatives to courts. *Less familiar solutions must be made mainstream.*

### **Recommendation 9: NEW, INDEPENDENT REGULATOR**

Establish a new, independent regulatory body (“the Families Commission”) with the responsibilities of:

- a) oversight of all professionals in the family law system;
- b) defining requirements and standards for specialised training;
- c) establishing and overseeing accreditation criteria and standards for all professionals involved in addressing family breakdown, including social workers; healthcare, medical and family law professionals; mediators, conciliators and arbitrators; and all judicial officers;
- d) issuing accreditation and endorsement to professionals;
- e) appointing suitably qualified and accredited Commissioners throughout Australia to act as arbitrators where families have been unable to reach agreement on financial and/or children’s matters;
- f) ensuring that simple access to this body be made available and promoted to all staff and litigants within the family law system;

g) establishing measures comparable to those in ‘whistleblower legislation’ to ensure that an applicant is not adversely affected by making an application/complaint to this body;

h) ensuring that all complaints be addressed in a timely manner (with initial findings on a timescale that does not hamper ongoing litigation). Unlike at present, it should be possible for applications against family law professionals or appointees to be made and investigated during ongoing litigation;

i) pro-actively monitoring practices and conduct, and addressing complaints against any professionals in a timely, effective manner.

*Our current family law system lacks even basic levels of scrutiny, feedback and an evidence-based approach.*

### **Recommendation 10: INTRODUCE ARBITRATION**

Introduce a new system of arbitration for both children’s and financial matters. This is an essential, currently missing, component to help families finalise separation without recourse to a court of law. One option is for such arbitration to be overseen by a new Family Division of the Australian Administrative Tribunal and for accredited Family Commissioners to be appointed as arbitrators throughout Australia, not just in major cities.

### **Recommendation 11: FAMILY VIOLENCE**

Recognise family violence as violence, and potentially criminal, and ensure that it is investigated urgently and addressed in local/magistrates’ courts using standards of evidence appropriate to behaviour that may be criminal.

### **Recommendation 12: NO-CONTACT ORDERS**

Introduce a new category of “No-Contact Orders” – readily issued, reciprocal orders that provide immediate safety and protection for an applicant while avoiding potentially harmful side-effects inherent in current restraining orders, such as untested attribution of guilt or

unwarranted termination of parent-child relationships, until an evidentiary hearing has taken place.

### **Recommendation 13: CREATE A NEW ACT**

Create a new Act, the *Children & Families Act 2023*, to replace the *Family Law Act 1975* (Cth). This Act should be written succinctly in plain English, with key clauses and explanations up-front, and should, ideally, be drafted concurrently with a Royal Commission such that the Commissioners may provide explicit feedback into the redrafting process and contribute to the final version of the new Act. Consideration should be given to the detailed recommendations for changes to the current legislation contained below and in *For Kids Sake's "Childhood Matters: Beyond 2020"* paper. In particular, the need to:

- a) Adopt a rigorous, evidence-based approach as to what's best for children & ensure that institutional responses 'do no harm';
- b) Prioritise keeping children and their families out of adversarial, court proceedings, and not to involve them more;
- c) Open up legal and court proceedings to much greater scrutiny and accountability.

### **Recommendation 14: ESTABLISH A ROYAL COMMISSION**

Establish a Royal Commission into family breakdown with particular reference to institutional responses, evidence-based approaches and children's long-term wellbeing.

*Numerous unsuccessful reviews under numerous governments have demonstrated the need for a broad, independent Commission and for cross-party consensus if changes are to be successful and sustainable. Australia also needs the exposure and catharsis of a profound, nationwide review of the impact of our institutions on children and families over many decades.*

## **Family Law Recommendations**

### **Recommendation 15: DATA COLLECTION**

The *Children & Families Act* should require the routine collection of data. Every judicial decision-maker should, for instance, publish and provide to the new Families Commission (or equivalent), at the time of release of each decision, a short summary of the case – for the purposes of research, feedback and quality control – including key data such as whether the case involved: allegations of any form of violence or abuse and whether against a partner, child or other person; findings of any form of violence or abuse; an outcome of single parenting, co-parenting (>35% with each parent), or other; evidence of court orders being adhered to or ignored; timescales of proceedings and of judicial decision-making etc. Feedback from litigants should also be routinely sought.

### **Recommendation 16: ESSENTIAL FEEDBACK**

The *Children & Families Act* should require that all litigants and children be contacted at least once per year for a period of five years from the date of a judgment being published, or until the youngest child becomes 18 (whichever is the longer), to ascertain the ultimate outcome of the family law system's intervention and to provide feedback into the system.

### **Recommendation 17: TIMELY JUDGMENT**

The *Children & Families Act* should require that every judicial decision-maker be required to publish a judgment no later than 28 (or, in exceptional circumstances, 45) days after the conclusion of any final hearing.

### **Recommendation 18: ONGOING TRAINING OF JUDGES**

The *Children & Families Act* should require that a summary of new, relevant, peer-reviewed publications, with abstracts and digital links, be distributed at least once a year to all judicial officers as a supplement to a

published guidebook, or benchbook, that should address key issues such as child development, psychology and wellbeing.

### **Recommendation 19: A SCIENTIFIC APPROACH**

The *Children & Families Act* should incorporate a statement that all judicial officers be required to be familiar with the latest, most relevant peer-reviewed scientific research on what's best for children during and after family separation and that they be entitled and expected to make use of this in judicial determinations irrespective of whether or not such evidence has been presenting during proceedings. At present, case law inhibits consideration of scientific evidence unless expressly presented by a court expert.

### **Recommendation 20: LEGISLATED EXPERTISE**

The *Children & Families Act* should require that every professional involved in family law proceedings (from social workers and those at child support centres, to psychologists and psychiatrists, to lawyers and judges) should – in addition to observing any professional standards of their own discipline – have high levels of skills, experience and knowledge in a wide range of disciplines including, but not limited to, those listed below (in proposed “Family Law Professional Accreditation” standards) and as determined by the proposed Families Commission.

### **Recommendation 21: TRANSFORMING A MONOPOLY**

The *Children & Families Act* should allow all litigants, without the requirement for an application, to have a “Lay Representative” to assist them with proceedings and to speak, where necessary, at hearings or trial. Different individuals should be permitted to perform this role for the same litigant over time. The litigant should be at liberty to share and discuss all court documents with a lay representative.

### **Recommendation 22: RESPONSIBILITIES FOR LAWYERS**

Every family lawyer should be required to:

- a) Undertake additional, specialist training, particularly with respect to their distinct responsibilities as officers of the court, first and foremost, and to the best interests of children before the interests of their clients;
- b) Provide up-front costs estimates that must be seen, signed and accepted by any client;
- c) Complete proceedings to a high, professional standard for no more than the maximum cost estimated; and
- d) Sign an acknowledgement that their client was fit and competent to sign any such costs agreement.

### **Recommendation 23: MODERNISATION**

The *Children & Families Act* should, under specified circumstances, allow parties to submit applications and affidavits by video and via an online portal. Current procedures, based on written affidavits and applications, are arcane and archaic and inhibit access to justice for many. Modern procedures, making appropriate use of technology, should be adopted wherever possible.

### **Recommendation 24: EQUALITY**

The *Children & Families Act* must enshrine fair and equal access to the family law system for all litigants of all backgrounds, ethnicities, genders, abilities and financial means. Measures must be put in place that demonstrate adherence to this fundamental principle.

### **Recommendation 25: ENHANCED PROCEDURES**

The *Children & Families Act* should require that each family law case be allocated to one judicial officer and that a preliminary decision in children's matters be made no later than 28 days after initial application. The outcome of this decision must be monitored and the decision may be varied in consideration of new evidence. In the event that orders are made that do not ensure that a child maintains and develops a relationship with a pre-existing carer, the court must make a finding of fact as to why such a parent or carer is unfit to be with a child. The court

should be required to ensure that financial matters do not delay decisions in children's matters.

### **Recommendation 26: TRANSPARENCY, NOT SECRECY**

The privacy provisions (s 121) of the current *Family Law Act (1975)* (Cth) should be replaced with an explicit statement near the front of the new Act that, unless the court makes an order to the contrary:

- a) participants may discuss proceedings in private;
- b) participants may discuss and share court documents in private for the purpose of receiving advice and support;
- c) in the event that participants discuss non-anonymised proceedings on social media or elsewhere, they should be aware that any such discussions may be used in evidence and adversely affect their case;
- d) media outlets may publish details relating to family law proceedings that are in the national interest including some non-anonymised information, such as the names of court experts and family law professionals, as specified in *Media Guidelines* that should be published and updated annually.

### **Recommendation 27: CHILDREN'S FRIEND**

The *Children & Families Act* should ensure that all children have a nominated "Children's Friend" to keep them informed, in an individually appropriate manner, of proceedings and to provide personal advice and support. Wherever possible this Friend should be chosen at the earliest possible time by mutual agreement from a short-list of family friends provided by both parents. In the event that a mutually acceptable Friend cannot be found, the Court should appoint a suitably qualified professional.

### **Recommendation 28: CHILDREN'S REPRESENTATIVE**

The *Children & Families Act* should allow all children, without the requirement for an application, to have a "Children's Representative"

involved in proceedings, and with access to all court documents. This Representative could also be the Children's Friend but is likely to be an appointee of the court with full Family Law Professional Accreditation (see below) and appropriate qualifications in child psychology. This position would replace the current, often-problematic role of Independent Children's Lawyer where qualifications different from, and beyond, those of a lawyer are essential.

### **Recommendation 29: VIDEO RECORDING OF EVIDENCE**

The *Children & Families Act* should require that, in the event that it is determined that a family law professional will interact with a child:

- a) Any professional must have Family Law Professional Accreditation;
- b) A child should be interviewed as few times as possible, without coercion and in a child-friendly environment;
- c) Any such interview must be recorded with clear, transcribable audio of the entire interaction and, unless an exception is granted, with good-quality video.

### **Recommendation 30: CHILD SUPPORT**

The Child Support Agency should not be permitted to ignore court orders in the calculation of payments, as at present. It should also be staffed by highly qualified personnel, specially trained to deal with vulnerable clients under stress; this is not currently the case.

More broadly, the current system intrinsically prolongs acrimonious interactions between parents and creates dangerous, financial incentives for parents to act in ways that are not in a child's best interests, such as withholding children from another parent or carer. Consideration should be given to alternative models that, for instance: encourage parental collaboration, instead of prolonging conflict; prescribe the amount of financial support needed by a child; and do not reward behaviours that may be harmful to children.



# The **for kids sake** 6-point plan

A safer, healthier, cost-effective approach to family breakdown

1

**TREAT**  
family breakdown as  
as a child health  
and social issue

2

**EDUCATE  
& SUPPORT**  
families better,  
especially around  
separation

3

**PROMOTE  
& INVEST** in healthier,  
earlier, evidence-based  
approaches that  
prevent harm

4

**REQUIRE**  
non-adversarial  
approaches when  
children are  
involved

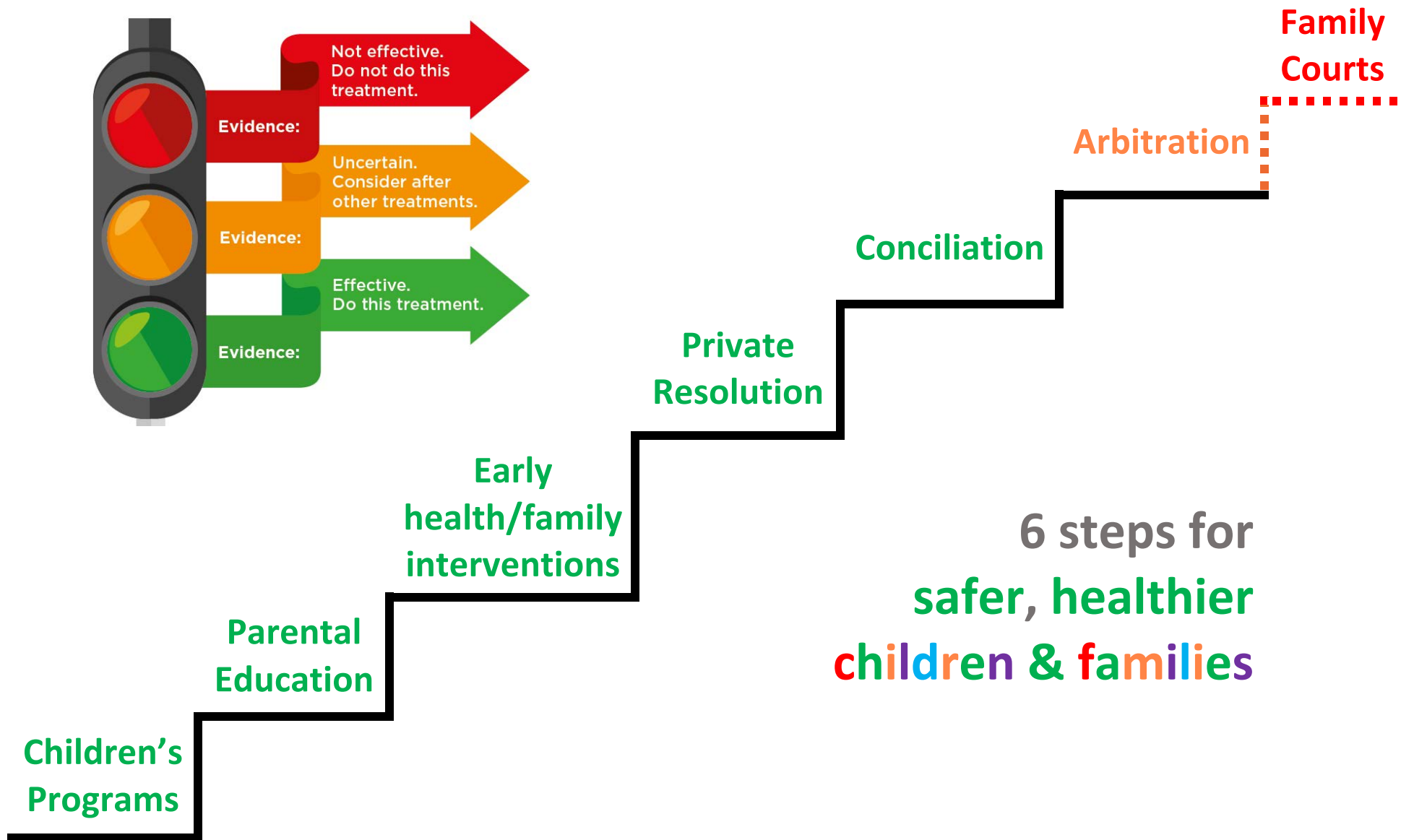
5

**INTRODUCE**  
specialised training,  
accreditation &  
accountability for all  
professionals  
involved

6

**SIMPLIFY**  
family law and  
make the long-term  
welfare of children  
paramount

# Divorce & separation re-imagined <sup>for kids</sup> <sub>sake</sub>



	← Protection →		← Early Intervention →		← Assisted Resolution →		
	Children's programs	Parental education	Health/family interventions	Private resolution	Conciliation	Arbitration	Family courts
Content	Building resilience Self-management of behaviour/emotions/conflict Critical thinking Relationship building	What separation means for kids Children's welfare, childhood trauma and its consequences Management of emotions/behaviour	Children's and family wellbeing before, during and after separation Management of emotions/behaviour	Coaching, counselling and collaborative legal advice Arrangements for ongoing communication	Negotiated agreements for financial and children's matters Enhanced intake procedures, incl. integrated coaching	Binding third-party decision on financial and children's matters	Final, third-party ruling on financial and children's matters
Delivery	Teacher training courses (via Education Departments) Online courses Peer support for kids in schools and communities	Online courses Peer-group courses Personal coaching Printed materials at GPs/healthcare centres TV ads/programs	Healthcare specialists New, Medicare-funded Family Care Plan, via GP/Integrated Healthcare Centres, providing access to psychologists, coaches & divorce specialists	Online platforms, apps and access to professional services Local divorce coaches, mediators and collaborative lawyers	Professional, accredited coaches and mediators/conciliators Widespread, local availability	Accredited, private-sector arbitrators Proposed Families Commission/Tribunal with Commissioners widely available	Family court hearings/trial/judgment Limited locations Limited online functionality
Timescale	⌚ ⌚	⌚ ⌚	⌚ ⌚	⌚ ⌚	⌚ ⌚	⌚	⌚ ⌚ ⌚ ⌚ ⌚
Personal cost		\$	\$	\$ \$	\$ \$	\$ \$	\$ \$ \$ \$ \$ \$
Taxpayer cost	\$ \$	\$ \$	\$ \$ \$	\$ \$	\$ \$ \$	\$ \$ \$	\$ \$ \$ \$ \$ \$
Effective-ness	♥♥♥♥♥♥	♥♥♥♥♥	♥♥♥	♥♥♥	♥♥♥	♥♥	
Harm						💔	💔💔💔💔💔💔