QUESTIONS ON NOTICE

INTERVIEWING CHILDREN

***Senator Waters**: Some submitters have suggested that family reporter interviews with children in parenting matters should be videotaped and made available to both parties. In your experience working with children, do you see any risks with that suggestion?*

For Kids Sake: Thank you, Senator Waters, for this question. The shortest answer to your specific question is "yes": we do see, and there clearly are, potential risks associated with giving parents copies of videos of their own children's interviews. For instance:

- On seeing such a video, a parent might seek to coerce, punish or harm a child or abuse a child physically or psychologically;
- A parent-child relationship might also be adversely affected as a consequence of a parent viewing their child's interview;
- There is a further risk that if children know their interview will be seen afterwards by their parents, they may be reluctant to express their true feelings or may say things they know a parent wants them to say.

We know of no published evidence as to the likelihood of these scenarios, but such possibilities should be taken into consideration as a factor when determining what policies are best for children.

This important question, however, warrants a fuller and more nuanced response as there are also equally serious risks associated with not videotaping/recording interviews with children and, in some instances, with not making such recordings available, in some manner, to third parties for scrutiny.

"Without routine recording/videotaping and independent review of interviews with children, it is impossible to monitor the conduct of family law professionals and best protect children from harm."

Such issues highlight the fundamental flaw in believing that children can be safely interviewed, and reliably understood, in any adversarial context. Being adversarial and, in addition, lacking necessary high-level expertise, a family court context cannot provide the safe, trusting, child-friendly environment needed for potentially life-changing discussions with children. Among other issues:

1. One of the most common statements made by children involved in interviews for family law proceedings is that every interviewer 'seemed to have an agenda' or that children 'felt manipulated' by the interviewer. In many instances, children talk of being repeatedly asked what we'd call 'leading questions' and of giving in and simply saying whatever an interviewer seemed to want them to say. Coercion of this nature sometimes meets the definition of psychological abuse and can have lifelong ramifications for children exposed to it.

   Without the videotaping/recording of all interviews, there will be no indisputable evidence of such misconduct by interviewers, nor any evidence as to how common it is. Interviewers will also never receive feedback essential to improving their professional standards and interviewing techniques. Professional misconduct, and consequent harm to children and families, will continue. Furthermore, without the possibility of such recordings being routinely viewed by some third party, such misconduct will never come to light – however widespread it may be;

2. The issues of videotaping of children's interviews and of making such videos available to both parents/parties are two distinct issues. Despite having read all the published submissions to this inquiry, we're unaware of any organisation (including ours) making the specific suggestion

referred to in the Senator's question: namely videotaping children's interviews and (by implication, automatically) providing them to both parties;

3. By way of clarification, various titles are given to those who write reports for family law proceedings based on interviews with children or other family members: typically, they're called 'single expert witnesses' in WA and 'family report writers' elsewhere in Australia. The qualifications, experience and inter-personal skills of these interviewers vary widely. Some, for instance, are social workers; others are psychologists or psychiatrists. Independent children's lawyers and, in some instances, even judges – individuals with no specialised qualifications in conducting interviews with children or in child psychology – may also do so. Not all of these interviewers write reports; some provide verbal or written evidence.

   The lack of consistency and of uniform, high standards in how children are interviewed represents a major problem and puts children at risk. Many, if not most, family law professionals do not have the skills and experience that are essential for such a highly specialised task;

4. Without routine recording/videotaping and independent review of all interviews with children, it is impossible to monitor the conduct of family law professionals and to provide essential feedback and scrutiny. There is evidence from multiple sources (published judgments, academic papers, children's comments, notifications to AHPRA, anecdotal surveys etc.) of family reporter writers causing harm through how they conduct interviews and through what they write. However, once again, there is no good-quality data on how often this occurs.

   Importantly, the only instance where a family court expert was found guilty of professional misconduct, banned from acting as a court expert and publicly named (in 2019), was as a direct result of recordings of that expert's interview with a child being made available to the parties. The professional misconduct in this instance was not insignificant either: it nearly led to the death of that child.

   Without routine recording and reviewing of children's interviews, we have no data on what percentage of such court experts are causing harm to children and families.

RECOMMENDATIONS

The best policy for children MUST be inclusive of all potential risks, not just any one of them, as well as of basic principles such as children's safety and wellbeing, transparency and high professional standards. Based on the best available evidence, *For Kids Sake*'s position is that:

1. ALL CHILDREN'S INTERVIEWS SHOULD BE RECORDED
   All interviews with children should be videotaped, with good quality audio, (or, in exceptional circumstances, audio-recorded). This should include any interviews or discussions between children and court experts, report writers, lawyers, judges and other family law professionals.

   This is the best way to protect children from harm resulting from incorrect or improper interviewing techniques, misrepresentation or misunderstanding of children's statements, and inadequate expertise;

2. MULTIPLE INTERVIEWS OF CHILDREN SHOULD BE AVOIDED
   Any interview with a child carries its own risks of harm to that child. Such risks include putting the child under stress or pressure; making a child feel responsible for decisions for which they should not be made to feel responsible; and the risk of undue pressure or coercion being

applied to that child during the interview process itself.

We have received reports of children having been interviewed as many as 16 times by various interviewers during the course of legal and/or child protection proceedings. This of itself is child abuse. It is harmful and damaging to children and it potentially invalidates what children say given the high likelihood of contamination of their statements and views by intervening interviewers.

Ideally, children should be interviewed (and recorded) once at most and this should be done in a highly professional and skilled manner and in an appropriate, child-friendly environment.

3. CHILDREN'S INTERVIEWS SHOULD BE ROUTINELY SCRUTINISED BY A THIRD PARTY

Given the lack of uniformity and recognised standards and expertise among interviewers, it is essential that all interviews be available for review by a third party such as a family law professional and, in some instances, the litigants themselves or their legal counsel.

We do not propose that recorded children's interviews be routinely made available to parties. However, given the risks cited above, there must be an avenue for litigants, or their legal counsel, to request access to such recordings for review – possibly, as at present with other court recordings, on site at family law venues;

4. EVERY CHILD SHOULD HAVE A SUPPORT PERSON

Every child should have someone they know and trust that they can always turn to – especially in the context of family breakdown. Someone with whom they can discuss their feelings and express their thoughts freely; someone who can help them understand what's going on;

5. FAMILY LAW IS UNSAFE FOR CHILDREN

The risks to children associated with interviews are massively reduced when such interviews are done within a health-focused framework, rather than in the context of adversarial, legal proceedings. The latter is highly unsuited to dealing with children safely.

The court environment, in particular, exacerbates and in some instances, actually creates risk for children exposed to it – via the actions of their parents or family law professionals or by virtue the system itself. In an adversarial environment, among other issues, family law professionals are particularly prone to taking sides rather than objectively assessing all evidence and, consequently, to causing additional harm to children;

6. HIGHLY SKILLED PROFESSIONALS ARE NEEDED

Interviews of children should only be done by highly specialised and experienced professionals who not only have the pre-requisite qualifications and personal skills but have developed a relationship of trust with the child. We refer you to our submission detailing the characteristics and qualifications that we propose are essential for accreditation of all family law professionals dealing with children;

7. THE IMPORTANCE OF PLACE AND TIME FOR CHILDREN'S INTERVIEWS

Interviews with children should, wherever possible, be conducted in a neutral, familiar and comfortable place for each child. Conducting interviews at court venues, or even in unfamiliar offices, can add greatly to the pressure on children, put responsibilities on them that can have serious and detrimental consequences, and diminish the reliability, or sometimes even the admissibility, of their statements.

SECTION 121: FAMILY COURT PRIVACY/SECRECY PROVISIONS

Senator Waters: *You suggested that s.121 of the Family Law Act be amended to improve transparency. Currently, all final Family Court judgments are published online, but anonymised to protect children and parties from intimate details of their lives being made public.*

- *What is it that you want to change about the current restrictions?*
- *Do you think that it could be harmful for a child for those details to be made public?*

For Kids Sake: We refer the Senator to the section of our submission to this family law inquiry on this specific subject, and to our additional comments below, with regards to changes to section 121 that are needed to best protect children.

Yes, in some instances, it may be harmful for children for details of their family law proceedings to be made public. But we need to start viewing this – and all family law-related issues – from the perspective of a child. What do we mean by saying "made public"? Do we mean non-anonymised publication in a newspaper or mainstream media?

From a child's perspective, their family law case effectively becomes "public" the moment their parents separate. It happens when their friends know or talk about it; when school teachers or other parents become aware of it; when they're mentioned in social media or schoolyard gossip. This does not happen as a result of mainstream media publication. Section 121 can do, and does, nothing to stop a child's family law case from becoming public to those who matter most to a child.

In terms of evidence, there is no evidence of a net benefit of s.121 to the best interests of kids – there is merely a presumption that children should not have their cases discussed in mainstream media and a further presumption (not generally supported from international evidence and world's best practices) that media will be irresponsible and incapable of self-regulation with respect to what's appropriate to publish.

One of the few, but most definitive, pieces of evidence that we have on the specific issue of whether or not mainstream media publicity is harmful to a child comes from one of the most high-profile of all Australian cases – that of the so-called "Italian sisters". The evidence is that the now-grown children were not harmed specifically by the quite extreme levels of publicity in that case. In fact, one or more of the sisters have stated that the mainstream media publicity did not have a big impact on them and, in fact, they welcomed the opportunity of being able to air their views publicly and potentially help others. In the absence of other relevant evidence, such comments should be given significant weight.

Furthermore, if we believe that publication of the details of family separations is so harmful to children, then should we not be legislating to ban such publication for all families across the board, not merely for that small percentage that happen to be involved in family court proceedings? At present, the media is not restricted from reporting on the majority of family separations and divorces – those that don't involve family court proceedings – and many of these are far from amicable. Yet, our newspapers are not full of inappropriate details of these family breakdowns. This provides further evidence that the draconian powers of s121 may, indeed, not be necessary.

"Section 121 does nothing to stop a child's case from becoming public to those who matter most to a child."

By contrast, there is significant evidence of net harm to children caused by section 121. This section of the legislation does not protect children; it harms every child involved in family law proceedings by protecting the system from essential scrutiny. Much, much greater harm to children is caused by family court proceedings themselves than by any mainstream media reporting on them.

There is incontrovertible evidence of incompetence, unfairness, idiosyncrasy and harm to children caused by the current family law system. This results, in part, from the fact that there is:

- No accreditation for family law professionals;
- No agreed, essential training;
- No routine monitoring of family law professionals;
- No feedback available for, or provided to, family law professionals; and
- No readily accessible complaints process, even for egregious misconduct.

The fact that, on top of these and many other failings in basic accountability, the family court shrouds itself in secrecy by actively wielding section 121 as a defence against the exposure of incompetence, makes this a dangerous and harmful institution. Great harm is done to every single child, thousands every year, by having a system that's effectively above the law, unmonitored, unscrutinised, uncontrolled, and immune to complaint. This huge, known and existing risk far outweighs the potential risks of inappropriate journalism in perhaps a few cases should section 121 be relaxed.

"Section 121 does not protect children; it harms every child involved in family law proceedings by protecting the system from scrutiny and effectively hiding professional misconduct. Much, much greater harm to children is caused by family court proceedings themselves than by potential mainstream media reporting on them."

RECOMMENDATIONS

For Kids Sake's policy positions are based on the best available evidence, not on any pre-existing prejudice or ideology:

ESSENTIAL, BASIC CHANGES

There are strong arguments in favour of the following, relatively conservative changes to s.121 and *For Kids Sake* supports legislative changes such that:

- Family law professionals and professional witnesses should be named in judgments;
- Any family law professional or professional witness involved in proceedings may be named and their conduct (or misconduct) may be made public (providing that family members involved remain anonymous); and
- Restrictions on public discussion of family law matters be automatically lifted once all children involved reach the age of 18 or are no longer alive.

MORE MAJOR, RECOMMENDED CHANGES

For Kids Sake recommends greater changes than these to the current restrictions. Based on the best available evidence, and world's best practices and international recommendations, we believe that children's best interests would be best served by rescinding s.121 in its entirety and replacing it with a simple, legislated requirement that professional media publication must adhere to published Media Guidelines that could be adapted regularly without requirement for further legislative change.

Such guidelines could initially be simple – for instance, allowing for a degree of self-regulation by the media or for publication based on specific criteria (e.g. 'national interest') – and they could be tightened immediately (or media could be warned) in the event that a media outlet overstepped acceptable boundaries or that self-regulation was not working satisfactorily.

The risk here is minimal and the benefits great: every single child would benefit from the easing of restrictions on reporting of family court matters. It would, for the first time in 44 years, open the family courts up to the type of monitoring and scrutiny that is present, and recognised as essential, in almost every other avenue of life. The safety and wellbeing of children demands the removal of the extreme restrictions created by the current section 121 of the Family Law Act 1975 (Cth).