**JOINT MEDIA STATEMENT
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**Reforms Not Enough to Keep Children Safe**

The case of the four Queensland girls who have been ordered back to Italy by a Family Court has finally brought to public attention many of the defects and deficiencies in the Family Law and the Family Law system in Australia.
The reforms to the Family Law Act, which come into effect on 7th June, include broadening the definition of ‘family violence’ and ‘abuse’, direct courts to give greater weight to children’s safety, removal of the ‘friendly parent’ provision and give effect to the Convention on the Rights of the Child amongst other reforms.
While the NCCPS and NCPA applaud these reforms, unless the Family Court process is overhauled, these amendments will have little positive impact on children’s safety.
The widening and clarification of the ***definition of family violence*** is greatly welcomed by the NCCPS and NCPA and it reflects and embodies the findings of research studies, the experiences of organisations which assist the victims of family violence, and most importantly the personal testimonies of those who have suffered from violence, and psychological persecution in domestic environments.  It also acknowledges the reality that children suffer considerable and long-lasting psychological harm from being a victim of family violence and exposed to violence as an observer.

However for this to be effective in custody decision making, the process carried out in the Family Court needs to be overhauled. Currently, when allegations of child sexual abuse and domestic violence are made to Family Courts, the proceedings then become quasi-criminal proceedings, although no party in the proceedings is facing criminal charges and there are no penal sanctions which can be applied against them, and the determination of the Family Court should be solely in regard to the care and welfare of the children.
This is done because the Courts refer to the requirement in the Evidence Act that the `gravity’ of the allegations have to be considered and this acts as a barrier to proving such cases on a balance of probabilities standard of proof. Even if the child’s allegations of abuse and family violence are proven to the satisfaction of the Court, judicial discretion allows that such matters are not ruled as important or are dismissed from consideration and there are many instances where children have been ordered into contact with, and even the custody of proven abusers. This is now a consistent pattern in Family Law proceedings where such proceedings are contested.

Lawyers, Family Consultants, Court Experts currently appointed by Courts, do not have either the powers or the expertise to investigate any allegations a child may make or disclose in Family law proceedings (refer Chief Justice Bryant – Brisbane Speech 2009).
**The NCCPS and NCPA is concerned that court appointed experts do not have expertise in child development, the physical, emotional, intellectual and social needs of children and most importantly child abuse matters and therefore are not in a position to advise the Courts on the ‘best interests of children’**.  Only highly specialised experts are able to extract information from a child in a non-threatening and meaningful way and then be able to make a recommendation accordingly.

In one case, a child was ordered by a Family Court judge to spend nine years as the carer of her convicted child sex offending father who had AIDS.  More than forty reports of child abuse were ignored.  The child has made various attempts at suicide and has been hospitalised on several occasions.

In a Hague Convention case, the most infamous of which was the Wood case, the children were sent back to Australia from Switzerland to be placed in foster care and an institution for three years before being returned back to their mother in Switzerland. By that time, psychiatrists confirmed that they were mentally ill and damaged, possibly for life.

A greater understanding of child abuse and child protection needs to be enforced and only those with specialist training in this area should be permitted to be part of family court proceedings. **The NCCPS and NCPA is calling for only experts with child development knowledge be allowed to participate in proceedings and that family consultants, independent child lawyers judges and magistrates all undergo mandatory ongoing training in child development areas.**

The current Family Law provision that the primary consideration in the best interests of the child, that `the child should have a meaningful relationship with both parents’ is de facto a confirmation of the rights of parents to treat children merely as their possessions. This provision should be replaced with “Where the Needs, Wishes, and the Rights of the child/young person can most appropriately be met and such can be demonstrably and measurably to the benefit of the child.” The child’s right to be protected from harm and exploitation should be the paramount consideration, and supersede any and all parental rights in such matters.
Another concerning issue is that **children have only rarely been allowed to speak and give their views directly** to the Courts.
Recent research titled “*What Do Australian Family Law Judges Think about Meeting with Children*?” by University of South Australia family law lecturer, Dr Michelle Fernando, has shown that Australian Family Court judges and magistrates rarely meet the children whose fate they are deciding and many don’t think they should do so.  Dr Fernando believes the failure of the judges to hear from children directly may contravene Australia's obligations under the United Nations Convention on the Rights of the Child for children to be heard and the NCCPS and NCPA strongly support this view.
The benefits of including children and young people in Court proceedings is widely known as it is an opportunity for them to disclose information that might not otherwise be available and judges being better able to focus on their needs.  In addition it is an opportunity for judges to receive information from the child that is unfiltered, unbiased and not subject to interpretation by a third party.  In almost every other court in Australia, all parties are given an opportunity to speak directly to the person making the decision.  Why is it that children in the Family Court are not allowed to be heard directly?   Children as young as six have been known to ask their parents why they can’t speak to the judge who is making a decision about their future.

However, judges’ refusal to meet with the children is no longer tolerable as it denies children a fundamental human right and conflicts with the spirit and intent of the recent amendments to the Family Law and the U.N. Convention and the Rights of the child.  Children should be given an audience with a judge who has been trained in child protection and that should take place in the judge’s chambers or other nominated area that shields the child from any pressure from their parents.  In a court where a child has no control over decisions made for them, it is emotionally empowering for them to feel they are being heard.

The ***‘friendly parent’*** provision was an unnecessary inclusion in the Family Law Act and was used very punitively in Family Court proceedings.  Without discernible benefit to the children involved, this provision, on occasion, was directly harmful to children, when it resulted in a change of their primary caregiver and denial of further contact with that primary caregiver and in some cases placing the child solely with the abusive parent.
In all Family Law cases, children must be given the opportunity to speak directly to the Court, investigations of child abuse allegations must be competently investigated, and in Hague Convention cases, a thorough assessment must be made of the social background into which the children are being returned.

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\* Research: Dr Fernando surveyed the judges in the Family Court of Australia and the Family Court of Western Australia and the magistrates in the Federal Magistrates Court.  Eighty-six per cent of the Family Court judges had never met a child for the purpose of hearing their views, whereas in New Zealand, 65 per cent of Family Court judges said they often, very often or always met a child who was the subject of a parenting dispute.  Yet few judges expected they would meet with a child in the future and 25 per cent made it clear they were completely opposed to the idea. ''Judges should NOT speak with or to children,'' one Family Court judge replied to the study author.  Most believed they lacked the skills and this applied even when a family consultant, whose job is to interview children to provide the court reports, was present.

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