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Inquiry into Domestic and Family Violence—Policy approaches and responses

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Children of Disability Australia

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Inquiry into Domestic and Family Violence

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Children of Disability Australia

Australia is currently in significant contravention of both the United Nations Convention of the Rights of the Child (CRC) and also the Convention of the Rights of Persons with a Disability (CRPD) and MUCH WORK NEEDS TO BE DONE IN THIS AREA.

This submission identifies and focusses purely on areas of concern regarding children with a disability facing family violence. It highlights their additional vulnerabilities, and the multiple additional challenges their carers have to face. Families caring for a child with a disability are already complex families and need appropriate consideration. This is before family violence, drug or alcohol or mental health issues are added into the mix.

I have provided multiple recommendations for the Committee to consider along with examples of where I believe Australia is contravening the UN conventions of both the CRC and the CRPD.

I will use the following Acronyms for expediency.

- AHRC – Australian Human Right Commission
- CRC – Convention of the Rights of the Child
- CRPD – Convention of the Rights of Persons with a Disability
- SNAT – Special Needs Assessment Template

Family Violence and Children with a disability - The Issues:

1. Children with a disability – a dangerous oversight in reports and studies
2. Challenges for carers of children with a disability
3. The Special Needs Assessment Template (SNAT) (Appendix 1)
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6. The Effects of trauma on a child exposed to or experiencing violence
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Appendix 1 – The Special Needs Assessment Template (SNAT)

1. Children with a disability – a dangerous oversight in reports and studies

Multiple reports have been released over the years discussing family violence at all levels of Government. However all but one have without exception either completely overlooked or skirted over the issue of children with a disability.

One report issued by in June 2016 by the Family Law Council – ***Families with Complex Needs and the Intersection of the Family Law and Child Protection System 2016***¹ states many cases appearing in the Family or Federal Court system are considered ‘complex family situations’, with issues of drugs, alcohol, neglect and family violence. The report noted the significant extent to which families with complex needs have both family violence and family law related needs and indicated that a common pathway through the wider legal system for these families involves family violence related proceedings in a state or territory magistrate’s court followed by proceedings in a family court. It further noted that some families have engagement with all three jurisdictions – the family law, family violence and child protection systems.

The council drew on relevant research evidence including reports by

- The Australian Institute of Family Studies (AIFS)
- The Australian National Research Organisation for Women’s Safety (ANROWS)
- The Queensland Special Taskforce on Domestic Violence report ‘Not Now Not Ever’ (2015)
- The Victorian Royal Commission into Family Violence (2016)
- The Council of Australian Governments (COAG) Advisory Panel on Reducing Violence against Women and their Children
- The National Framework for Protecting Australia’s Children 2009 – 2020 and
- The National Plan to Reduce Violence against Women and their Children.

However, none of these documents – take into account the additional vulnerabilities and challenges for children with a disability. This is a pretty significant oversight that disability is not considered within a report discussing additional complexities. Children with a disability may get a token mention, but generally no significant consideration. This also includes, but is unlikely to be limited to the additional reports:

¹ Families with Complex Needs and the Intersection of the Family Law and Child Protection System – Family Law Council June 2016

- The Senate Enquiry into Family Violence 2015 (zero mention)
- The Children’s Rights Report 2015 (scant mention)
- The Tasmanian Children and Young Peoples Commissioner’s Report into Family Violence 2016 (zero mention)
- Victorian CRAF documents (Risk Assessment and Risk Management) – DHHS (scant mention)
- Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems – Family Law Council 2016 (zero mention)
- Independent Children’s Lawyers Study 2014 (zero mention)
- Child Maltreatment and Disability – AIFS 1996 (slight mention)
- Child Protection Australia – AIHW 2014 -15 (zero mention)
- Family Matters Report - AIFS 2016
- Exploring Family Violence: Links between child maltreatment and domestic violence AIFS 2000 (zero mention)

Any references regarding disabilities in any of these documents generally refer only to the parent’s mental or physical health. While ‘complex families’ are usually describing situations where family violence, drugs, alcohol or mental health issues are identified.

This is clearly a very serious oversight and **contravenes article 8 of the CRPD.**

The only report of any note that does take into account the additional challenges of children with a disability is the recent **Royal Commission into Institutional Child Sexual Abuse 2017**

2. Challenges for carers of children with a disability

Carers for children with a disability are also a group that is currently overlooked which requires specific consideration.

There are MULTIPLE additional challenges to be considered for carers of a child with a disability in basic day to day survival before interaction with the judicial system commences.

Often carers are starting the process already in a state of complete burnout from the role of carer.

- They often have multiple physical and practical challenges to overcome to meet deadlines, and to attend appointments due to their child's needs.
- Below is a comprehensive list of just some of the additional challenges carers face on a daily basis which most people not in this role do not have to consider – but the judicial and family violence support networks needs to.

Supports / Medical challenges

A child with a disability usually requires a multitude of specialist intervention and medical appointments. These can include regular weekly / monthly / ad hoc appointments with:

- a. Dr's
- b. Paediatricians
- c. Early intervention supports
- d. Occupational therapists
- e. Speech therapists
- f. Physiotherapists
- g. Complex paediatric assessments
- h. Psychological assessments
- i. Surgeons
- j. Regular blood tests
- k. Scans
- l. Medical specialists
- m. Social workers
- n. Enhanced care maternal health nurses
- o. Play therapists
- p. Counsellors
- q. Psychologists
- r. Disability support services
- s. Respite services
- t. Podiatrists

- u. Manual therapists
- v. Child care centres or schools
- w. Case managers
- x. Dieticians

- There are normally long waiting lists to commence seeing a specialised therapist, and establishing a suitable support network with therapists, medical services and educational supports is challenging at best.
- There is often a multitude of paperwork to be completed on a regular basis, and a diary can very quickly become full just of medical and other supporting appointments.
- This is all in addition to providing the regular care as a mother.

Extensions to prepare for court due to reasons stated above is currently a luxury not available as an option for Family or Federal Circuit court hearings and needs implementing.

Carers are already under immense mental, emotional and physical stress in their caring capacity due to their child's often unpredictable needs. Physical attendance to attend a court hearing significantly increases this pressure, and needs to be taken into account.

- A carer missing a deadline, or failing to identify a child's particular vulnerabilities in this situation is potentially putting a vulnerable child's life in jeopardy. They NEED the assistance and understanding of the family violence service providers and courts to help.
- Finding a suitable person or organisation to care for a child with a disability so the carer can attend court is also another significant barrier.
- Depending on the nature of the child's disability, this alone can prohibit a carer from attending a court. It is often not an option to arrange for a family member, a friend or a 'respite service' to look after the child, unless they are familiar with the child and their disabilities and feel confident to be able to deal with any challenging behaviour.
- Most people would not have to arrange a baby sitter / replacement carer to look after a 16 year old – but carers of a child with a disability do. This also adds increased financial pressure on the carer and may prevent them from pursuing a course of action or accept an offer through exhaustion and desperation – placing their child at potential risk.
- It can be especially traumatic for both the mother (primary carer) and child to be placed in a situation where the child is left with a stranger, heightening the stress and tension for the mother while at court, and then having to deal with any resulting 'fall out' of behaviour or distress of their child afterwards.

- It is highly probable that the child will already pick up on the additional stress of their care giver and feed off it with their own behaviour.
- In comparison, the non-primary carer or perpetrator meanwhile has time to collect their thoughts, plan their case and present to court in a relaxed manner. Mental / emotional presentation on the day of both parents can be very misleading and this also needs taking into account.
- To put some of the additional challenges into perspective in very simple terms, sometimes merely getting a child up, fed, dressed and out the front door for school is a huge challenge and highly exhausting in itself (the writer documented it as being a 40 stage process with her daughter as a normal pattern) – without the added fear and stress of court.
- Consideration also needs to be given for some flexibility around court dates in the event of potential clashes with a medical specialist's appointment or medical procedure. Specialists can have waiting lists of many months for appointments from 6 – 18 months, and lists for surgery for children with a disability can also be as long. The period immediately post-surgery is also a highly vulnerable time.
- Narcissistic ex partners may deliberately time court applications to coincide with such events.
- Children with a disability are an incredibly vulnerable group and should automatically be included on a carers IVO application.
- Family violence service providers often have little or no knowledge or understanding regarding disabilities and the additional challenges carers face. It is often the carer who ends up educating the service provider when they are seeking help.

Required changes include:

- Training and education needs to be provided for family violence service providers and all members of the judicial system regarding disabilities as a priority
- Consideration needs factoring in regarding possible carer burnout and the additional challenges carers face outside the judicial system
- Carers should be allowed the option of attending court from a remote location where necessary
- Carers should be allowed additional time to prepare papers
- Carers should be given special dispensation in the event they either miss a deadline for paperwork to be submitted or fail to attend a hearing due to the sudden behaviour / disappearance or health issue of their child.

- Providing evidence from a remote access is also the preferred option when issues of safety or security are raised.
- The complete implementation of both the UN Conventions of the CRPD and CRC
- The immediate collection of relevant data as outlined later in this submission.
- Implementation of the attached Special Needs Assessment Template (SNAT).

Courts need to be aware that **in desperation for support a mother or primary carer may agree to shared custody of their child purely due to the absence of any other support networks, even though they are highly concerned for the safety of their child and know it is not in the child's best interests.** This is where the court needs to make special consideration of all the facts.

The AHRC issued a report '**Desperate Measures**' which clearly outlined how some parents felt no alternative but to relinquish care of their child with a disability to DHHS due to inadequate support being provided. This is a travesty and demonstrates the extreme pressure carers can live under.

There is a distinct need for a community support network to be created for families caring for a child with a disability, with additional funding provided for overnight respite supports, or family support.

3. The Special Needs Assessment Template. (SNAT) – Appendix 1

- The SNAT is an essential key to safe guard children with a disability.
- It takes less than 2 minutes to complete and covers 7 key areas of vulnerability or challenge for a child. Each box has approx. 5/6 questions mostly requiring yes / no responses.
- This simple 2 sided form should be implemented across all levels of the family violence, family law and entire judicial system. It should be completed upon intake when families become involved at any level of the process and have a child with a disability or additional needs.
- Both parents should be given access to complete it, along with their child if they have the cognitive ability – although it is highly unlikely they will all agree on the answers. This is especially likely if one parent will not acknowledge that their child has a disability or additional needs.
- The purpose of the form is to jog a parents / carers memory regarding the level of support required and the level of vulnerability their child has. If any questions receive a yes response they can be asked to expand on this for their lawyer, ICL, Registrar, Court report writer etc.
- Likewise the child can be asked the questions.
- This will help a more accurate story to be presented to a court so that a safer and suitable care arrangement and property division can be negotiated or ordered.
- This form is already being implemented by some lawyers in Australia and overseas after it was launched in November 2017 at a National Family Violence Summit in Sydney by Emma Gierschick.
- This template can be implemented into multiple levels of both disability, judicial and family violence policy planning,

The implementation of the SNAT will address multiple articles of both the CRC and the CRPD including:

Articles 3, 12, 19, 23, 24, 33, 34, 39 and 41 of the CRC and

Articles 3 – 5, 7 - 10, 12 - 17, 20 - 26, 28 and 31 of the CRPD

Appendix 1 – Special Needs Assessment Template

A template for carers of a child with a disability to complete upon initial consultation with either a private or duty lawyer needs creating. This needs to be simple and short (max 2 pages per child to jog the carers memory of issues that may be relevant for a court. They can then expand in an affidavit as necessary. Below is the recommended template.

Special Needs Assessment Template			
Child 1. Full name			
Date of Birth:		Age:	Cognitive Age:
Disability or additional needs:			
Has there been a formal diagnosis	Yes / No	Do you have access to medical records to confirm this	Yes / No
Has your child been exposed to any form of family violence (witnessed it, overheard it, been on the receiving end of it etc)			Yes / No
Give details			

Describe your Child's Behaviour and Needs

1. Communication – How well can your child communicate			
Is your child verbal			Yes / No
Is your child's speech unintelligible			Yes / No
Does your child need aids or prompts to assist communication eg: Sign language, I-pads, Visual clues, board maker etc			Yes / No
Does your child have a recognizable speech delay			Yes / No
Is your child socially immature			Yes / No
How clearly can your child communicate	Non verbal	Difficulty communicating	Can communicate clearly
Can your child follow simple 2/3 step instructions	Unable to follow simple instructions	Needs assistance following simple instructions	Can follow simple instructions
Other / Please expand:			

2. Self-Care / Personal Grooming – How much assistance does your child need with the following:	
Toileting	No assistance / Some assistance / Dependant on carer
Washing / bathing	No assistance / Some assistance / Dependant on carer
Dressing	No assistance / Some assistance / Dependant on carer
Grooming	No assistance / Some assistance / Dependant on carer
Making their bed	No assistance / Some assistance / Dependant on carer
Is your child toilet trained or incontinent	Yes / No
Other / Please expand:	
3. Eating – How much assistance does your child need with the following	
Preparing food or a drink	No help required / Some help required / Dependant on carer
Eating	No help required / Some help required / Dependant on carer
Drinking	No help required / Some help required / Dependant on carer

Supervision at meal times	No help required / Some help required / Dependant on carer
Food / snack choices	No help required / Some help required / Dependant on carer
Are they breast fed, tube fed or peg fed	Yes / No
Do they have any particular dietary or sensory issues with food	Yes / No
Other / Please expand:	

4. Safety – How safe is your child without supervision	
Does your child have issues regarding personal safety awareness	Yes / No
Is your child at risk of inadvertently causing harm to self or others	Yes / No
Would your child know how to remove themselves from danger	Yes / No
Does your child have escapism tendencies	Yes / No
Does your child understand 'Danger / Stranger'	Yes / No
Does your child understand 'appropriate / inappropriate touch'	Yes / No
Does your child understand 'Public / Private'	Yes / No
Does your child understand the dangers of Hot / Cold	Yes / No
Does your child have road safety awareness	Yes / No
Does your child have a tendency to put everything into their mouth	Yes / No
Can your child identify their name, address, phone number or school	Yes / No
What level of close supervision does your child require in public	Low / Medium / High
Other / Please expand:	

5. Medical / Health / Therapy	
Is your child on any medication (what is it for)	Yes / No
Can your child self- administer their medication	Yes / No
Does your child have any physical disabilities (describe)	Yes / No
Does your child have regular therapy, health or specialist appointments	Yes / No
Does your child require any medical equipment	Yes / No
Other / Please expand	

6. Mobility – How mobile is your child	
Does your child have any mobility issues	Yes / No
Does your child require physical assistance to move around	Yes / No
Does your child require any mobility aids / equipment to move around	Yes / No
Can your child move quickly	Yes / No
Does your child have any issues with fine or gross motor skills or dyspraxia (please identify)	Yes / No
Has your child's home been modified to accommodate their needs	Yes / No
Other / Please expand:	
7. Behavioural Issues / Stress / Anxiety	
Does your child have any behavioural issues of concern	Yes / No
Can your child identify their needs	Yes / No
Are there any specific triggers that affect your child's behaviour	Yes / No
Does your child cope with changes to routine	Yes / No

Does your child have any learning difficulties or require additional support at school	Yes / No
How does your child indicate they are stressed	
How do you manage any stress or anxiety in your child (what calms them)	
Other / Please expand	

Please add any additional idiosyncrasies about your child your lawyer needs to be aware of eg; fears / extended social networks etc

4. Lack of data and research

There are significant gaps in both data and research around children with a disability. This is a **contravention of Article 31 of the CRPD**. This is a significant issue where family violence exists.

Amazingly, there is currently **no data in existence** that identifies the number of cases of family violence where children with a disability are involved. There appears to be a worldwide failure to fully delineate and investigate the effect of being a child with a disability on the potential for child maltreatment according to a report written by **AIFS Child Maltreatment and disability 1996**²

I suspect this lack of data will also extend to the number of cases of IVO's, parenting plans and family law agreements where children with a disability are involved. It is concerning that until data such as this available, expert witnesses, ICL's and Judges etc are impeded in their ability to make appropriate rulings based upon research, relying on the 'balance of probabilities' and presenting evidence only.

Research is available that indicates a higher precedence of families separate or divorce when a child has a disability³, but there is no data that indicates how many of these cases also involve family violence.

Under Australia's obligations to the CRC, and the CRPD it is essential that adequate data is collected.

It is widely documented now that women and girls with a disability are twice as likely as women or girls without a disability to experience violence during their lives. The Victorian Disability Action Plan states Women with a disability are 40 % more likely to experience violence or abuse.

These are frightening statistics. Yet there are no statistics available WORLD WIDE that indicate the prevalence of violence or abuse – especially family violence against a CHILD WITH A DISABILITY.

² Child Maltreatment and disability – AIFS 1996

<https://aifs.gov.au/cfca/publications/child-maltreatment-and-disability>

³ Colman, H, & Kaestner, R. (1992) The effects of child health on marital status and family structure demography, 29, 389 – 408

Mauldon, J (1992) Childrens risks of experiencing divorce and remarriage: Do disabled children destabilize marriages? Population studies, 46, 349 – 362

Swaminathan, S., Alexander, G., Boulet, s. (2006) Delivering a very low birth weight infant and the subsequent risk of divorce and separation. Maternal and Child Health Journal, 10, 473 – 479

Reichman, N. E., Corman, H., & Noonan, K. (2004) Effects of child health on parents ' relationship status demography, 41, 569 – 584

The absence of data and therefore recognition also means appropriate trauma recovery supports are non-existent for this cohort as they are currently not recognised as a group requiring assistance. This too is a direct contravention of both **Articles 23 and 39 of the CRC**, and **Articles 4, 8, 13, 16 and 31 of the CRPD**.

At this stage because no data has been collected, or research undertaken, if a child with a disability who has been exposed to trauma reacts to a 'trigger' - it is considered they are 'having a bad day' or that 'it is part of their disability'.

This is clearly unacceptable and in the absence of any credible data or research an expert's ability to give an accurate assessment will be purely subjective and not objective and may be open to bias or ignorance and not on facts or data.

Required changes include:

Data and research needs collecting in the following areas:

- The prevalence of children with a disability being exposed to family violence
- The prevalence of children with a disability being involved in family court proceedings
- The number of child protection notifications made when family violence is involved
- The number of child protection notifications when family violence and a child with a disability is involved - including how many cases are actually investigated.
- The number of family court orders that are breached when a child has a disability.
- The number of police incidents of family violence where a child has a disability.
 - (This data should be further broken down to reflect the date of birth of the child, the sex of the child, the nature of their disability e.g.; Mental, emotional, physical and their possible cognitive age compared to their actual age.)
- How old a child with a disability was when abuse or violence commenced e.g.; In utero or upon diagnosis
- The relationship of the child to the perpetrator
- Research into the effect exposure to violence has on the development and behaviour of a child with a disability. This needs monitoring and outlining to professionals
- The number of single parents caring for a child with a disability who experienced family violence
-

- The Personal safety survey of the ABS needs to collect data that includes children with a disability and their exposure to family violence
- Therapeutic supports for children with a disability who have been exposed to family violence needs identifying, organising, funding and implementing immediately. This is a contravention of **Article 39 of the CRC, and Article 16 of the CRPD**
- Research needs undertaking regarding the effects of family violence on a developing foetus, especially if a prenatal diagnosis has been made about a disability. This is In-utero abuse.
- The identification of possible triggers for children with a disability needs collecting and suggested supportive strategies developed for schools, therapists, police and other professional involved in a child's life.

In 2012, the WHO Department of Violence and Injury Prevention and Disability, based in Geneva, Switzerland commissioned a research team from the Centre for Public Health, Liverpool John Moores University, Liver pool, UK to investigate the prevalence and risk of violence against children with disabilities.

The review involved an international search being undertaken to gather data from 12 electronic data bases over a 20 year period Jan 1 1990 - Aug 17 2010 relating to children with a disability and violence. The purpose was to investigate the prevalence of violence against children with disabilities or their risk of being victims of violence being compared to children without disabilities.

27 studies were selected from 10,663 references. 16 studies provided data suitable for meta-analysis of prevalence, and 11 studies for risk.

The results of the systemic review indicated that up to a quarter of children with a disability will experience violence during their lifetime, and that children with a disability were three to four times more likely to be victims of violence than their non- disabled peer.

The paper concluded that children with a disability in all settings needed to be viewed as a high risk group, and needed to be treated as a priority.

The paper further concluded that while the results of the review indicated awareness of the risks of violence against children with a disability, robust EVIDENCE WAS SCARCE OR LACKING

Whilst now five years old, this is still the most current information about children with a disability and violence available internationally.⁴

The most current information regarding children with a disability and family violence published in Australia is now over ten (10 years) old and was published in the **Australian Social Work journal**.⁵ The research article referred to in the introduction also only studied records up to 2010.

In Australia there is currently no national data on the proportion of child protection notifications that relate to family and domestic violence.

⁴ Prevalence and risk of violence against children with disabilities: a systemic review and meta-analysis of observational studies: Jones, Bellis, Wood, Hughes, McCoy, Eckley, Bates, Mikton, Shakespear and Officer. www.thelancet.com July 12 2012, [http://dx.doi.org/10.1016/50140-6736\(12\)60692-8](http://dx.doi.org/10.1016/50140-6736(12)60692-8)

⁵ Domestic Violence and Children with Disabilities: Working towards enhancing social work practice; Baldry, Bratel and Breckenridge. Australian Social Work Vol 59, No 2, June 2006 pp.185 - 197
<http://dx.doi.org/10.1080/03124070600651895>

5. Government oversights regarding children with disability

In the Family Law Council Report: The Attorney General Senator Brandis stipulated that in the terms of reference underpinning the questions is

‘A concern to enhance the capacity of the family law system to address safety concerns for children associated with issues of family violence, substance abuse, neglect and /or mental illness’

However there is no mention of the **additional vulnerabilities** involved when a child has a disability.

This oversight needs correcting to bring it in line with the **Articles 7,8,13,15,16, and 17 of CRPD and Articles 19, 23, 33, 34, 39 of CRC**

The Child Protection Australia 2014 – 15 Report⁶ makes no mention at all of children with a disability full stop. It’s as though this cohort simply doesn’t exist. It is estimated however, that family and domestic violence is present in 55% of physical abuses and 40% of sexual abuses against children according to the **Australian Institute of Criminology** ⁷

When base line facts were collected regarding children and family and domestic violence; **the AIFS** stated that:

*Children from vulnerable or marginalised groups such as those from culturally or linguistically diverse backgrounds, **children with a disability**, children who are gay, lesbian, bisexual, transgender and intersex, and children living in rural and remote areas of Australia were disproportionately represented. However data is either not collected or publically available in all states or jurisdictions.*

The Australian Institute of Criminology (AIC)⁸ released a report during 2015 on the characteristics of family and domestic homicides for the 10 year period 2002 – 2012. Its data showed that children comprised the second most frequent group of victims of family and domestic homicides (21%) after intimate partner homicides. Their findings and figures collected from the ABS Personal safety survey

⁶The child Protection Australia 2014 – 15 Report
<http://aihw.gov.au/publication-detail/?id=60129554728>

⁷ Australian Institute of Criminology 2011 2: Children’s exposure to domestic violence in Australia. Trends and issues in Crime and Criminal Justice; Richards. K
<http://aic.gov.au/publications/current%20series/tandi/401-420/tandi419.html>

⁸ Australian Institute of Criminology 2015: The characteristics of family and domestic homicides 2002 – 2012
<http://aic.gov.au/publications/current%20series/rip/21-40/rip38.html>

are further broken down the 'The Children's rights Report 2015' Appendices 8 and 9. **However again children with a disability are not mentioned.**

Currently, the **ABS Personal safety survey, the Police and AIFS records** simply record a child was involved, without indicating if any of those children had a disability or special needs. In some cases the collection of data does not even extend to noting a child was involved and collects the data as a victim thereby clubbing an adult along with a child. Suitable support networks cannot be established until this information is gathered. Moving forward the ABS is requesting that police jurisdictions provide information on the dates of birth of victims, **but does not extend this request to include children with a disability.**

This is a very dangerous oversight and a further contravention of **article 31 of the CRPD**. For example a 14 year old non- verbal autistic child is possibly more vulnerable than a 'typically developing' 8 year old without special needs who can understand how to run or hide, and identify themselves, yet if two 000 calls were received simultaneously – without this information it would be fair to assume the 8 year old would be the most vulnerable.

In October 2014, a **parliamentary research paper⁹ was published discussing 'Domestic, family and sexual violence in Australia'**. It stated that the 2012 Personal Safety Survey indicated under reporting of a child's exposure to violence was prevalent due to parental fear of the potential loss of custody, however it found that 54% of women who had experienced violence by a current partner had children in their care at the time. This is as far as the report goes.

S60CC2a of **The Family Law Reform Review 2012¹⁰** clearly stipulates the best interests of the child should be given greater precedence over the rights of both parents to have a meaningful relationship with the child.

In the complex family cases where there are concerns regarding drug or alcohol abuse or mental health issues and family violence AND the child has a disability or special needs, this clause should be given stronger consideration.

At this stage there does not appear to be any special consideration when a child with special needs is involved. While the family law reform indicates additional weight needs to be placed on s60CC2a, the considerations need to go further.

⁹ Domestic, Family and sexual violence in Australia: an overview of the issues: Phillips & Vandenbroek. Parliamentary library research paper series, 2014/15

¹⁰ The Family Law reform Review 2012
<https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>

Children with a disability or special needs are extremely vulnerable to the exposure or experience of violence more so than their peers. These children are generally highly sensitive. Their primary care giver, is acutely aware of their additional challenges, and is even less likely to report exposure to violence or violent and abusive treatment for fear of the repercussions - from either their partner if family violence exists or from child protection for fear of losing their child.

Many families' first interactions with the Child protection system is due to a report that a child is at risk of either neglect or abuse. This can be terrifying for a mother, who is unlikely to forward any information in fear of risking losing care of their child. While they quite possibly do need support, maybe Child First could be the initial point of contact. This could also relieve the Child Protection system of some pressures so they can investigate the cases where a higher risk has been identified. Would it be appropriate for professionals to notify Child First of any suspected or notified disclosures of violence or abuse, starting from a pregnant mother?

The **Senate Enquiry into Family Violence released in August 2014**¹¹, was another authority who overlooked children with a disability in their study. The closest that inquiry came was a submission from The National Cross-Disability Disabled Peoples Organisation who stated

"To date there have been no national studies or research conducted to establish the prevalence, extent, nature, causes or impact of violence against people with a disability in different settings. There is no systemic data collection in Australia on violence against people with a disability including domestic violence"

The Office of the Public Advocate (Victoria) provided research to the Senate enquiry that demonstrated women with disabilities are at greater risk of experiencing family and sexual violence compared with both men with disabilities and women without disabilities, and the group representing Women with a disability were able to submit a report to the current Victorian Royal Commission for consideration.

However once again the **CHILD WITH A DISABILITY WAS OVERLOOKED** in each case.

The Children's Rights Report 2015¹² released November 2015 whilst extensive about the voice and rights of the child, had scant inclusion highlighting the additional vulnerabilities of a child with a disability.

However Commissioner Mitchell does concur in her report that

¹¹ Senate enquiry into Family Violence 2014

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence/Submissions

¹² The Children's Rights Report 2015: Mitchell. Australian Human Rights Commission.

<https://www.humanrights.gov.au/news/stories/all-i-want-life-free-violence-children-s-rights-report-2015>

*“The impact of family and domestic violence on some groups of children is further compounded by experiences of discrimination and marginalisation. In this context, groups of children and young people who are particularly vulnerable include Aboriginal and Torres Strait Islander children, **children with a disability**, children from culturally or linguistically diverse backgrounds and children who are lesbian, gay, bisexual, transgender and intersex.”*

Whilst the Children’s Commissioner did make recommendations that a breakdown of the age of children exposed to violence be collected by the ABS via police jurisdiction, noting the developmental stages of a child aged 2yrs was substantially different to those of a 7yr old, she did not go as far as to consider the developmental and cognitive abilities of a child with a disability would throw the full relevance of these statistics out. As 7 year old child with a disability may have the function and cognitive ability of a 2 year old.

This information, along with the nature of the disability is VITALLY IMPORTANT to be considered by Courts when deciding what is in the best interests of the child. The Special Needs Assessment Template would be an excellent starting point for lawyers and judges to use when considering the vulnerabilities and needs of the child and the parental capacity for both parents to meet those needs.

As it currently stands, if a child without a disability is exposed to violence and responds spontaneously later to an unknown / unseen ‘trigger’, they MAY be able to receive support. However if their peer with a disability responds in a similar fashion to the same ‘trigger’, their reaction is likely to be merely classed as them ‘having a bad day’ or pathologised as ‘part of their disability’.

Consequently they are not receiving the specialised support they require, both in the classroom, during physical / occupational or other therapy sessions, or in the home environment and are being left vulnerable to potential further exposure of abuse by the judicial system not having the awareness or taking their additional vulnerabilities into account in their rulings. This is a VERY SIGNIFICANT CHILD PROTECTION ISSUE and a **contravention of both the CRC and the CRPD**.

The UN Committee calls for comprehensive and integrated protective measures to address family and domestic violence including measures for prevention, identification, reporting, referral, investigation, treatment, follow-up, judicial involvement and effective procedures to make sure there is enforcement, quality, relevance, accessibility, impact and efficiency.

Australia; through Commissioner Megan Mitchel, Federal Children’s Commissioner is due to report to the UN in November 2018, on how Australia is currently meeting or not meeting these obligations.

Required Changes include:

- The development and implementation of trauma recovery support for children with a disability
- Comprehensive ongoing MANDATORY training for ALL officers involved in the Family Law System regarding disabilities
- Greater weight being afforded to the protective parent / primary carers voice
- Children with a disability to be placed in a 'high risk category' for all family intervention and family law system processes
- The introduction on Form 4's regarding disabilities, stating if a child has a disability and the nature of it.

6. The Effects of trauma on a child exposed to or experiencing violence

The NSW Government, The Australian Psychological Society and the Royal Australian and New Zealand College of Psychiatrists suggested to Commissioner Mitchell in The Children's Rights Report 2015, the effects of exposure to violence may manifest differently depending upon the development stages of a child.

However once again this did NOT take into account the needs and development of a child with a disability whose cognitive, physical or developmental abilities do not neatly fit into any of the below groupings.

Infants and toddlers

- Delayed language
- Delayed toilet training
- Sleep disturbances
- Emotional distress and a fear of being left alone
- Disrupted attachment

Pre-school children

- Aggressive behaviour
- Temper tantrums
- Sleep disturbances
- Anxiety
- Despondency
- Poorer verbal abilities

School aged children

- Conduct disorders
- Quiet and withdrawn or
- Loud and aggressive

Adolescents

- Mental health diagnosis
- Delinquency
- Anger to peers or parents
- Depression
- Fear, sadness and loneliness, including suicidal feelings

Professor Louise Newman and Doctor Robyn Millar both gave testimonies regarding the impact of exposure to violence on the developing foetus to the Victorian Royal Commission into Family Violence 2016/17. However once again representation of a child with a disability was overlooked.

Professor Louise Newman, Director of the Centre for Women's Mental Health at the Royal Women's Hospital, said

“Women who were traumatised while they were pregnant were more likely to give birth early. Their children were also more likely to suffer poor physical health as a result of stress, as well as growth problems in their nervous system and brain, and be born small. This makes them vulnerable to developmental problems.

From birth to three years are the most significant period of development across the whole lifespan. This is the time when they develop their attachments to their primary carers, which is often their mother. For a child to witness an attack, or the potential loss of their attachment figure, was a very terrifying experience.”

Add in the increased sensitivity and vulnerability of a child with special needs, their nervous, muscular / skeletal and endocrine systems and their cognitive development and the issue is magnified.

The parliamentary research paper series 2014 – 15 indicated exposure to family violence could lead some children to experience:

- Mood problems including depression
- Anxiety
- Trauma symptoms
- Temperament problems
- Low self esteem
- The prevalence of pervasive fear
- Loneliness
- School difficulties
- Peer conflict
- Increased aggression
- Antisocial behaviour
- Lower social competence
- Impaired cognitive functioning and
- Increased likelihood of substance abuse

The Kids Helpline provided the Children’s Commissioner with some thoughts and feelings gathered from children who had experienced family violence. These included:

- **Fear for their own safety, the safety of their siblings** and for the victims of the abuse
- Anxiety
- Isolation and loneliness
- Anger towards both the perpetrator and victim
- Sympathy for the victim and sometimes the perpetrator
- Confused feelings towards the perpetrator (both anger and love for a violent father)
- Guilt over having ‘bad thoughts’ about the perpetrator (wishing they would die etc)
- **Feelings of responsibility to protect the family** or take action to stop the violence.

Whilst the assumption is that this information is mostly likely gathered from children who don't have a disability, it does highlight the feelings of responsibility and fear children can feel for their siblings. Once again it is likely this is heightened towards their sibling with a disability.

Siblings are also affected by the increased pressure of having a child with a disability as a brother or sister, putting them also under additional strain. They too can face isolation and miss out on other opportunities or activities their peers can participate in. The writer's own teenage step daughter often put her own safety in jeopardy to protect the writer during the latter stages of the writer's pregnancy, and also in the firing line to protect her baby sister once born who has Down syndrome. Siblings' feelings of responsibility need to be taken into consideration when parenting plans, custody or access arrangements are being made.

Due to the current lack of data or research available there is currently no consideration for the unseen 'triggers' a child with a disability may have - that they may not be able to verbalise but may act out through behaviour.

I wonder how many children are identified as displaying inappropriate behaviour, sensory issues, sleep or eating disorders or ASD tendencies that are instead responding to unidentified 'triggers' or have developed as a result of trauma. Therapeutic intervention to trauma may indeed help alleviate or reduce some of these issues.

Professor Louise Newman further states

"Trauma can be indicated in a variety of manners. This can include developmental regression, muscle tension, sadness, depression or anger, emotion, memory problems, shivering or sweating, withdrawal or silence. Physical illness in the form of elevated heart beat or blood pressure, gastrointestinal issues, fatigue or greater startle responses. Sleep disturbances, nightmares, eating issues, behavioural responses and distress or emotional outbursts."

Researchers, Fehlberg, Kaspiew, Kelly and Behrens point out that:

*"A growing field of neurodevelopmental research shows that exposure to family violence may have permanent effects on the development of the brain in young children, especially in the absence of therapeutic intervention"*¹³

This would be especially relevant to consider for children with a disability, whose brain development and function may already be impaired.

¹³ Attachment 2.1 to Australian Human Rights Commission, National Children's Commissioners examination into children affected by family and domestic violence: Fehlberg, Barbara 696

The problem we face for children with special needs is identifying that their behaviour is as a result of trauma and not simply considered part of their disability. It is highly probable that they will also experience random 'triggers' that remind them of frightening or distressing experiences. They may or may not be able to understand or articulate these, but could include for example a smell, a sound, a TV show, an item of clothing, footsteps, a car, an inanimate object or item of food. All can cause an involuntary reaction.

It is vital that this is taken into account by teachers, therapists and workers. Everyone who is involved in some therapeutic manner needs to be made aware that the child has been exposed to abuse or violence and may experience 'triggers' so that consideration can be given and supports are put in place to help them.

Independent children's lawyers (ICL's) and Family Consultants need to be ensure a comprehensive evaluation is made and extensive reports gathered by all therapists or professionals involved in a child's life if they have a disability prior to presenting their recommendations to a court.

Training also needs to be made available to all family violence service providers, support workers, teachers, therapists etc involved in a child's life regarding the effects of trauma and the most appropriate ways to respond to 'triggers'

7. Additional vulnerabilities of children with a disability

Children with a disability may be far less able to voice their fears, or their experiences or even comprehend what is happening in a family violence setting.

They may not understand the need to run for safety or hide or have the physical capacity to do so. They may not have the cognitive ability to understand a simple instruction causing them to be subjected to violence or abuse by not following it.

Alternatively, their receptive skills may be well adept to understanding the words, but their expressive communication skills may be challenged leaving them 'stuck' in a cycle of fear, distress and anger and not able to communicate their feelings or fears.

Their growth and development can be substantially hindered or stalled due to fear or trauma. Their nervous system can be adversely affected affecting their general health.

Their behaviour will likely demonstrate their trauma, but unless this is highlighted, researched by expert behavioural analysts and consequently measured, they are potentially left - alone and vulnerable to accept whatever is going on.

If court orders allowing access or intervention (protective) orders are granted - without including the child's name and taking into account the additional vulnerabilities of that child, it is simply a matter of time, before we record another homicide, and one from one of our most vulnerable groups in society.

The NSW Government stated in its submission to The Children's Rights Report 2015

"In abusive relationships, domestic and family violence does not end with separation and in fact can escalate to lethal violence. Children may be subjected to increased exposure to domestic and family violence after separation, since this may be the only context in which the violent partner has access to his victim. As such it is vital that the family law system identifies and responds appropriately to domestic and family violence to ensure the safety and wellbeing of women and children"

Once again go back to the statistic early in this submission that stated children with a disability were three to four times MORE likely to experience violence than their non-disabled peer.

On a practical level, Courts are currently not taking into account the additional pressures a mother often the primary carer is under caring for a child with special needs as a single parent. For example:

if a child has been affected by trauma due to their exposure or experience of abuse or violence, or has high maintenance needs, it is not always appropriate to leave them in the care of a respite worker or friend who may or may not have a suitable relationship or understanding of caring for the child, although this is at times the only option a carer has.

I would suggest the Inquiry considers that funding for trained respite support services be made more available so suitable care can be organised so the mother or primary carer can attend court. I understand some courts now have on-site child care facilities however, once again it is highly unlikely that these services would be able to safely cater for children who have a disability due to lack of staff training. Access to funding to pay for a respite service if required would assist some families.

It can be especially traumatic for both the mother (primary carer) and child to be placed in a situation where the child is left with a stranger, heightening the stress and tension for the mother while at court, and then having to deal with any resulting 'fall out' of behaviour or distress of their child afterwards.

In comparison, the non-primary carer or perpetrator meanwhile has time to collect their thoughts, plan their case and present to court in a relaxed manner. Mental / emotional presentation on the day of both parents can be very misleading and this also needs taking into account. To put some of the additional challenges into perspective in very simple terms, sometimes merely getting a child up, fed, dressed and out the front door for school is a huge challenge and highly exhausting in itself – without the added fear and stress of court.

Families required to attend court who have children **without a disability** would not have to consider hiring a babysitter or carer for a 16 year old who didn't have a disability. This is just one additional pressure a carer faces.

8. Judicial issues and oversights creating barriers for families

Multiple articles of both Conventions of the Rights of persons with a Disability and Rights of the Child need immediate implementations as follows:

Articles 2, 4, 5, 6, 12, 13, 16, 23, 25 & 28 of the CRPD and **Articles 19 and 23 of the CRC**. In the absence of these **children with a disability are - and will continue to be indirectly discriminated against in family law systems.**

The current Australian Family Law review suggested that the family law system should be child centred and trauma informed. However Australia is currently contravening **Article 39 of the CRC, and Article 16 of the CRPD** as no recovery from trauma currently exists for children with a disability.

The level of understanding of disability held by the judicial officers and legal practitioners and other professionals working in the family law system may also act as a barrier to access to justice

ALL personnel involved in all levels of the judicial system need to ensure they are adequately trained regarding disabilities especially the additional vulnerabilities of children with a disability when making parenting agreements, writing reports or making rulings regarding access and custody arrangements.

Training on these vulnerabilities for children with a disability needs to be MANDATORY for all levels of the judicial system.

This would also bring Australia in line with the CRPD articles 4, 5, 6, 7, 8, 13, 16, 21, and 28.

Implementation of the Special Needs Assessment Template would be a significant step in assisting this process.

Independent Children's lawyers, and court appointed family consultants need to be fully aware of the increased vulnerabilities and restrictions of a child with a disability when making parental assessments and reports for court especially considering the suitability and parental capacity of a perpetrator to adequately care for a child with a disability.

- How much does each parent acknowledge the existence of a child's disability or additional needs
- How much do they understand the particular needs and idiosyncrasies of their child?
- How actively have they been participating in their child's therapy or daily routine?

- How aware of the impact of their behaviour on their child are they?
- How engaged in the child's life are they planning to be?

Currently, in the absence of mandatory training independent Children's Lawyers are ill equipped to ascertain a child's wishes if they are unable to communicate, However all behaviour is a form of communication therefore other professionals involved in the care of the child e.g.: school teachers, paediatricians or specialists should be included in the consultation process and **greater weight should be given to the primary care givers advocate voice, along with the implementation of the Special Needs Assessment Template.**

The Guidelines for Independent Children's Lawyers 2013¹⁴, section 6.2 states,

"It is expected the ICL will meet the child unless the child is under school age, or there are exceptional circumstances e.g.; an ongoing investigation into sexual abuse and the child is at risk of systems abuse"

Children with a disability can be particularly sensitive, therefore careful consideration needs to be given to each individual child and the appropriate communication assistance provided. This is in line with **articles 7, 13, 16, 21 of the CRPD.**

Section 6.3 states:

"A family consultant may be in a position to provide information to the ICL of the following if they have been involved in a court event – whether the child should be involved in further counselling and / or whether therapy is indicated"

I raise this statement in particular - as **therapy for children with a disability who have experienced trauma is currently non-existent.** This includes training for therapists, or teachers involved in the child's day to day care, who along with the primary carer have to deal with any resulting fallout due to trauma. This is a direct contravention of both **Article 39 of the CRC and Article 16 of the CRPD.**

However, should ICL's be suitably trained this COULD indicate that a child with a disability could possibly be at an advantage of going through the Family Law System in the future if the suggested changes are implemented just to access this acknowledgement and support – but only if a consultant was suitably trained and trauma recovery therapy was available.

This would also address **Articles 4, 5, 12, and 13 of the CRPD.**

¹⁴ Guidelines for Independent Children's Lawyer 2013

<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/policies-and-procedures/guidelines-independent-childrens-lawyer>

The CRC requires Australia to use a child's rights based approach to address family and domestic violence so that

1. Vulnerable and marginalised groups of children are protected
2. The best interests of children are prioritised
3. The views of children are respected and
4. Measures consider the impact of family and domestic violence in terms of the child's development.

An Evaluation of the **Family violence amendments 2012 was recently undertaken by the AFIS¹⁵**. This review indicated that approximately **only 15% of 'Notice of Risk' forms submitted to child protection were investigated.**

An interim report released by the family law council in August 2015 indicated that;

"The family law courts have no capacity to compel a child protection department to intervene in a family law case or to investigate the family courts concerns, and the family law system has no independent investigative body akin to a child protection department that can provide the courts with a forensic assessment of child risk issues. "

This needs to change. Children with a disability are a recognised marginalised group that need far greater protection to ensure they are given priority as a high risk group and subject to investigations by child protection.

I suggest children with a disability as a vulnerable and marginalised group need to be placed into a HIGH RISK CATEGORY for all judicial matters concerning family law and family violence.

The evaluation discussed the need for greater weight to be placed on the 'protection from harm principle' when decisions were in conflict regarding 'a child's rights to have a meaningful relationships with both parents'. Uncertainty about the interpretation and application of s60CC2a of the Family Law Act by lawyers and judges emerged in expert analysis of the review.

Due to lack of awareness or understanding of the additional challenges a family faces and the additional vulnerabilities of children with a disability, Judges and Magistrates are not necessarily adding the required weight to a child's vulnerabilities in making decisions about access or custody.

¹⁵ AFIS Evaluation of the Family Violence Amendments 2012
<https://aifs.gov.au/publications/evaluation-2012-family-violence-amendments>

This is especially likely if the child is not being ‘flagged’ as particularly vulnerable by child protection when Form 4 - Notice of Risk forms are lodged.

I suggest a section regarding any disabilities be included on Form 4’s along with the mandatory completion of the Special Needs Assessment Template.

The Family Violence Best Practise Principles 2016¹⁶ suggests under section C - Family and Expert Reports

“Family and other expert reports can provide the court with an independent forensic assessment of particular issues. It may include the emotional and psychological effects of exposure to family violence, the effect upon a child or partner victim of contact with the perpetrator and whether therapeutic intervention may assist a perpetrator to live without violence. The expert appointed should HAVE SPECIALISED KNOWLEDGE BASED ON HIS OR HER TRAINING, STUDY OR EXPERIENCE.”

This specialised knowledge needs to include an understanding of disabilities and the effects of family violence on a child with a disability as a MANDATORY component to avoid children with a disability being indirectly discriminated against. This would address Article 8 of the CRPD.

Section C further suggests;

“In considering the appointment of an expert witness to prepare a family report or other report, The court may wish to satisfy itself that the expert witness has appropriate qualifications and experience to assess the impact and effects (both short and long term) of family violence or abuse, or of being exposed to the risk of family violence or abuse, on the children, and any party to the proceedings”

Section F of this report – The Final Hearing states;

“Of critical importance to decision makers are considerations of how children have been affected by exposure to family violence and what measures can be taken to ensure their future safety by any order that the court makes”

Once again the complete absence of any data or research for children with a disability, this is impossible for decisions makers to do – especially with any national consistency.

¹⁶ Family Violence Best Practise Principles – December 2016
<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/family-violence-best-practice-principles>

In the absence of this, the advocate voice of the protective parent therefore needs far more weight.

The principles further states;

“The brain is at its most plastic (that is developmentally receptive to environmental input via neural pathways) in early childhood. Thus the younger the child the more likely the child is to suffer residual and pervasive problems following traumatic experiences such as witnessing family violence or being abused or neglected. Exposure to such experiences can alter a developing child’s brain in ways that can result in a range of inter-related psychological, emotional and social problems including depression and anxiety, post-traumatic stress disorder, problems with emotional regulation, substance misuse, relationship difficulties and physical problems including cardiovascular disease, diabetes and stroke”

A child with a disability may already be experiencing cognitive impairment, and damaged neural pathways, therefore the impact of exposure to family violence or abuse may possibly make any challenges they experience more enhanced. Research into this is needs undertaking. Damaged neural pathways can stem from exposure to in-utero abuse.

As mentioned earlier Professor Louise Newman, one of Australia’s leading authorities of Childhood Trauma and Dr Robyn Miller both gave witness statements at the Victorian Royal Commission into Family Violence 2015-16 detailing the effect abuse had on the developing foetus and early development of a baby. Their input into research about the effects on the brains development for a child with a disability could be a useful place to start.

Section G of the report – Matters to consider where findings of family violence or abuse, or an unacceptable risk of family violence or abuse have been made indicates;

‘It is important for decision makers and service providers to stay informed of current research and information about the impact of family violence’. Courts may be assisted by evidence about current research from fields of psychology, psychiatry and social work in determining the likely impact of family violence on child development, child health and parental capacity’

This clearly adds weight to the urgent need for research to be undertaken and data collected regarding both the precedence of family violence involving a child with a disability AND the impact this exposure has upon their health and development.

The Children’s Rights Report 2015¹⁷ indicated that only 15% of reported cases to Child Protection actually get investigated. Due to their increased vulnerabilities, greater weight should be placed on

¹⁷ The Children’s Rights Report 2015; Mitchell - Meaghan
https://www.humanrights.gov.au/sites/default/files/AHRC_ChildrensRights_Report_2015_0.pdf

prioritising children with a disability. It also indicated that Children with a disability should be considered a high risk group.

According to **The Family Violence Plan 2014-16: Family Court of Australia and Federal Circuit Court of Australia**¹⁸, the overarching purpose of the plan is to protect the most vulnerable members of our community – children – and their families from the harm associated with experiencing or being exposed to family violence. **Children with a disability or additional needs** are even more vulnerable than a ‘typically developing child’ therefore additional training and screening specific to these issues needs immediate implementation.

Identification of children with a disability exposed to family violence should be made consistently, from initial input with police, through to final orders. Police should be notified by the call centres if a child with a disability is involved in a family violence situation and data collected to this effect. This is the start of the legal process in many cases.

Families where there is a child with a disability face many additional barriers, challenges, additional mental, emotional, physical and financial strains on both the parents and the entire family. Considerations for these need to be taken into account as these additional issues often create a far more complex situation. This is before any evidence of drug or alcohol issues, family violence or parental mental health is considered.

An article published in the **Matern Child Health Journal 2008**¹⁹ written by Nancy Reichman, Hope Corman and Kelly Noonan discusses in more detail **The Impact of Child Disability on the Family**, which would be a valuable resource summary for the committee.

It discusses the general logistical complexities associated with raising a child with a disability – before family violence is even considered.

As previously mentioned the Victoria Human Rights Commission produced a report titled: **‘Desperate Measures – The relinquishment of children with a disability into State care in Victoria.’**²⁰ This report clearly identifies the additional challenges, and stress placed on families, the primary carer, and the siblings of a child with a disability. This report does not go as far as to discuss

¹⁸ The Family Violence Plan 2014-16: Family Court of Australia and Federal Circuit Court of Australia
<http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/policies-and-procedures/fv-plan>

¹⁹ Impact of Child Disability on the Family
http://www.medscape.com/viewarticle/581577_2

²⁰ Desperate Measures – The relinquishment of children into state care. The Victorian Equal Opportunity and Human Rights Commission, May 2012
<https://aifs.gov.au/cfca/pacra/desperate-measures-relinquishment-children-disability-state-care-victoria>

family violence as a factor for relinquishing care of a child, however it does highlight that stress and isolation for parents was a strong theme among key informants and case study families, including where this has led to significant health problems, mental health, and high rates of depression and anxiety exacerbated by exhaustion.

These features could easily be describing a woman's experiences living in a family violence situation, therefore by considering the 2 factors together of carer burn out and possible family violence, it demonstrates how compounded the stress and difficulties are for a woman or primary carer of a child with a disability in a family violence situation.

The report further discusses the role and responsibility that siblings have towards their brother or sister with special needs, and the feelings of isolation or risk they experience.

Even after leaving a perpetrator, it is unlikely an adequate support system will be in place for the carer to tend to court matters while simultaneously caring for their child. Therefore the recommendation in **The Victorian Disability Act 2006**²¹, Section 5 (3) k. Disability service providers should:

"Where possible strengthen and build capacity for families who are supporting persons with a disability"

This is very pertinent in considering how to support families, and to provide flexibility for court appearances and extensions for meeting deadlines.

Issues regarding court security

Roaming security guards are required in court waiting areas - as being trapped at the opposite end of a court building to the guards who are all congregating by the front entrance is just creating a disaster when people are at court for cases of family violence.

²¹ The Victorian Disability Act 2006

http://www.dhs.vic.gov.au/_data/assets/pdf_file/0004/598711/disabilityact2006_guideforserviceproviders.pdf 081106.pdf

The writer personally found herself on one occasion in a court room facing a violent ex considering the Judge's chambers as the only possible safety zone in the event of an attack therefore mentally included this in part of her mental safety plan. This is clearly not a viable option, but demonstrates the need and vulnerability of some people regarding their fear and security needs.

A supervised area available for children to play is desirable for the occasions children are taken to a court, and also a space for nursing mothers.

Required Changes include:

- The introduction of roaming security guards
- Exits available at more than one point
- A supervised area for children
- A space for nursing mothers
- Specific disability access and provisions

9. Additional challenges for families with a child who has a disability

Further additional challenges that need consideration regarding children with a disability include:

Physical / Practical challenges:

- The child may have a substantial amount of physical aids, supports or medications to assist them.
- The house or car may have been modified or adapted to meet their needs with wheel chair access, sling supports above the bed or bath, hand rails, ramps etc.
- There may be a substantial amount of medical aids or supports. These can be costly and require a lot of space.
- It is also incredibly difficult for a carer to get into the private rental market, especially if modifications are required to help the child. This is often the only option for a lot of woman fleeing family violence due to the huge waiting lists for public housing.
- Once again these are all issues that need considering when financial settlements are being drawn up.
- A child may not be able to move without assistance or aids / equipment, or may move incredibly slowly – at a time when danger is approaching, this can be extremely dangerous.
- Is it appropriate for a child to stay overnight with the non- primary carer if their home has not had any required modifications?
- Now the NDIS is being rolled out therapy appointments and equipment may be provided through this source only. This funding is unlikely to be split between two homes and access to additional funding could be used as a reason to seek custody or shared custody by a perpetrator. So NDIS support arrangements also need to be considered when custody / access arrangements are being discussed.

Mental / emotional challenges and the need for consistency and routines

- A child may have a developmental delay or cognitive impairment and not understand the instructions to move, hide, get help, get in the car in the event of danger etc.

- They are also likely to feel distressed, overwhelmed or disorientated at changes to routines or aggression between both parents. This can have the effect of them hiding, become highly emotional or have a 'melt-down', physical reaction or to freeze in fear.
- Depending upon their disability many children require a very structured life with solid routines and consistency. Any changes to this – including the departure of a violent or abusive parent can have a massive impact on the child and their behaviour.
- Routines are critical for children with special needs. Leaving their home to stay temporarily in a refuge or with friends can upset them for months, stalling or even regressing their development. They may not understand why they can't be at home, in their own bed, following their routine e.g.; having their milo in a particular cup watching a particular TV show and having a bath all at a set time in a set order - and this can affect their personal feelings of safety.
- A shared custody arrangement, while logical on paper can have a catastrophic effect on the development and coping skills of a child with special needs. It can also play havoc with the child receiving consistent therapeutic support to aid their development.
- Dealing with a child's reaction and / or possible melt down before or after an access visit - in addition to the feelings of fear and worry the mother already feels can often be overwhelming and debilitating for her.
- There are occasions when a parent refuses to acknowledge their child has a disability or special needs and refuses to allow or arrange an assessment. This can restrict access to essential support for the child or family and can be used by an abusive parent to suggest a child's behaviour is a result of parental incapacity of the mother and not because they have special needs.
- There are also multiple children with a disability – who do not have a formal diagnosis adding to the complexity of the situation.
- It is difficult enough for a mother to leave an abusive environment and having to factor in their child's personal idiosyncrasies and routines / requirements to avoid a meltdown can often be enough for her to continue to put up with an abusive situation.
- Moving to a new area, setting up a new set of support services takes a lot of time and energy. This is particularly difficult to organise when most of a mother's time is taken up in trying to support and reassure the child.

Safety challenges and issues

- Children with special needs can be particularly sensitive, and while they may or may not be able to articulate or understand what they are seeing and hearing, they are highly likely to

pick up on the atmosphere. They can feel the tension in the room, sense the tone of the voices and the fear being felt.

- A child could be made a scape goat for any ongoing tensions and feel they are being blamed, because of their disability or additional needs. (The writer's former partner used to refer to our daughter as 'it', 'that deformed thing', 'it's a thing' degrading and dehumanising her existence and right to experience a fulfilling happy healthy life) Inappropriate words have a devastating effect on a child's sense of value, self-esteem and confidence.
- Physically a child with a disability may be restricted and not have the ability to move to safety, to move out of the way of violence. They may feel helpless at their restriction, watching their care giver being assaulted or abused, and being unable to help. This can add to a feeling of being trapped and unsafe. Depending upon the nature of their disability, this physical restriction can also be due to needing equipment to move about, or being physically incapacitated.
- An act of abuse may be to move or hide a child's required equipment preventing them from moving, or denying them medication. Perpetrators are bullies, and children with a disability are an easy target to vent their anger on especially if that child is physically or verbally incapacitated to move to safety, verbalise what is happening or fight back.
- Being yelled at is intimidating and frightening, it has a devastating effect on a person's confidence, nervous system and morale. Children with a disability may already have challenges with their nervous system depending upon their disability, and this can stall or delay their development and health.
- Children with a disability can be easily groomed – including for sexual abuse. They may have limited understanding of 'appropriate and inappropriate touch'. They may not be able to verbalise or demonstrate what has taken place, or may be groomed into saying or thinking something that isn't true.
- They could unwittingly be used to 'spy and report back to a perpetrator the conversations, plan or actions of their primary carer' potentially putting them all in danger, especially if a house move for safety is being considered..
- Children with a disability may already have safety issues regarding escapism tendencies, be non-verbal, hide and not answer to their name. In the event a child becomes overwhelmed with the abuse or violence they are experiencing and runs off in fear, there are then potentially 2 issues for the police to simultaneously deal with.
- Under stress children will go into a fight, flight or freeze response. All three situations make them more vulnerable.

Financial challenges

In the cases where a child with a disability is involved, and a family is separating or an IVO being issued denying access to a perpetrator, strong consideration needs applying on both the appropriate distribution of assets and spousal maintenance if one person is required to be the primary carer and therefore unable to work due to their child's disabilities.

It is not uncommon for persons with a disability and their carers to exist in poverty due to their lack of ability to seek employment, yet their medical and other expenses are disproportionately higher to other families. **Article 28 of The CRPD, and Article 27 of the CRC** address this.

The impact on the family budget when caring for a child with a disability is often significant. Additional costs often incurred and absorbed by carers can include but are not limited to:

- Additional petrol, car maintenance and parking costs to attend the many appointments.
- Increased medical costs for medications, health aids, glasses, hearing aids, medical appointments and other medical supports they require or may require in the future.
- Membership costs for various supportive disability associations, who provide training and advice.
- Respite services to attend the many court / legal hearings.
- General utility bills are higher, as it is important to maintain an appropriate level of warmth or cooling in the house to help stabilize a child's body temperature depending upon their disability.
- There are increased laundry costs, and water usage due to soiled clothing, waterproof sheets / mattress, and the need to use a dryer during winter
- The child may have skin sensitivity resulting in increased costs as a result of the additional wipes / increased water usage and soap, creams to prevent or treat any skin infections due to possibly being at risk of having impaired skin integrity
- If the child has any bowel problems there could be an increased financial burden due to having to purchase suppositories, enemas or other medications.
- Increased costs in nappies and wipes for children under the age of 5 yrs.' who are not toilet trained (at 5yrs old some assistance can be provided towards continence aids)
- There are often increased phone calls to make to schedule appointments, seek advice and organise events.

- Access to the internet is essential for communication and research purposes
- Increased education and developmental activities such as the swimming, playgroups, after school programs are often required for the socialisation, integration, development, confidence, and health of a child with special needs and their siblings. These are often provided by private organisations.
- Depending upon their disability the child may require specialised footwear or orthotics. Specialised shoes can cost \$600 a pair.
- There is a constant need for ongoing education of the carer to assist in the child's health and development. This can include attending workshops or conferences, buying relevant publications, attending first aid training, key word sign workshops or, disability specialised parenting programs.
- Where the mother is the full time carer of a child with a disability her capacity to take up employment is grossly restricted. This can leave the family living in poverty and in many cases reliant upon government benefits or child support which may or may not be paid.
- The need for private health care due to ongoing health issues of both the child and the primary carer whose health often deteriorates significantly
- Increased costs due to possible food aversions / intolerances / texture avoidance, specialised diet. Specialised cutlery / plate guards / sippy cups etc.
- Some children have innate escapism tendencies. This requires the family to purchase additional locks on doors, gates, alarms / sensor mats, safety gates, and Houdini straps etc. adding additional financial stress.
- There is an increased financial burden due to having to purchase bed rails / bed wedges, night lights and the resulting increased electricity costs.
- Increased car maintenance and additional transport costs – It is VITAL to have a safe, well-functioning, regularly serviced reliable car available to transport the child to their many medical, educational and developmental appointments. The car may also have been or need modifying to suit the needs of the child.
- Specialized chairs, wheel chairs, car seats, or walking devices.

Article 28 of the CRPD state persons with a disability have the right to an adequate standard of living, yet most live in poverty.

- **It would be easy to falsely assume these expenses would be covered by the NDIS. However it is highly unlikely the majority of the items identified above would be**

considered, and instead fall on the shoulders of the primary carer. Therefore the existence of these additional expenses should be factored in when financial settlements are being negotiated.

- Often financial abuse is involved in cases of family violence, and in addition to having to provide for all the regular costs of raising a family, it often falls on the mother or primary carer to also meet the additional medical and other expenses of her child.
- The mandatory payment of child support is another area that needs to be included in family law hearings as this is another method abusive partners can continue the abuse. However due to the exemption offered to mothers fleeing family violence by Centrelink and CSA, many are too afraid to seek CSA payments from the perpetrator. They are not necessarily encouraged to do so and are not made aware that claims will not be back dated. Payments should be backdated to the date of separation as a matter of course.
- The issue of child support payments or property division is also likely to be a primary reason for a litigant to be pursuing legal action through the family law system and nothing to do with the care or needs of a child.
- NDIS arrangements and supports should also be considered in parenting plans.

Required Changes include:

- Consideration for any additional expenses that are incurred for a child with a disability needs factoring into all property and financial settlements.
- Spousal maintenance needs strongly considering for a primary carer of a child with a disability. Being a full time carer can impede a person's ability to gain employment, leaving a family living in poverty.
- Child support payments needs incorporating into existing family law systems.
- NDIS arrangements Inc. supports need to be factored in regarding access with both parents

A police representative in a particular jurisdiction informed the Children's Commissioner during the gathering of The Children's Rights Report 2015 that all the teenage suicides that had taken place in his particular region had the common theme of coming from a family violence situation. This is the impact exposure to family violence can have.

In 2012, the Chief Justice of the Family Court and the Chief Judge of the Federal Circuit Court established a joint Children's Committee. One of the factors behind the establishment of such a committee was to explore the issue of whether the voice of the child was being heard appropriately in parenting cases.

In 1998 the 'Magellan Program' was created. At present this program only includes children who have experienced 'serious physical abuse or sexual abuse' only. Magellan cases undergo special case management, managed by a judge, a registrar, and a family consultant. An independent children's lawyer is also appointed for which legal aid is uncapped.

I suggest the criteria for entry into the Magellan program be reviewed to include complex family situations **where a child with a disability is involved** and there are additional factors including family violence, drug, alcohol or mental health issues of a parent. Given the complexity of issues potentially surrounding a child with a disability they require special consideration.

I would further suggest that the fee for court reports or specialist reports are capped, and litigants who are prolonging the legal process as a form of abuse are warned of being listed as a vexatious litigant and also instructed they may end up covering the costs of some of the other parent's legal fees.

Required Changes include:

- The expansion of the Magellan Program for complex cases where a child has a disability
- Setting recommended fees for reports or capping the amount that can be charged
- The warning and implementation of ramifications for vexatious litigants and unprofessional legal representatives

This submission is compiled based on personal study, the lived experience of severe family violence, of several years of legal abuse and of being a full time carer of a child with multiple disabilities.

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Children of Disability Australia

June 2018

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