

Child Sexual Abuse Allegations in the Family Court

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**A thesis submitted in fulfilment of the requirements for a degree of Doctor of
Philosophy in Social Work**

**University of Sydney
Faculty of Education and Social Work
December 2006**

Author's declaration

This is to certify that:

- I. This thesis comprises only my original work towards the degree of Doctor of Philosophy in social work.
- II. Due acknowledgement has been made in the text to all other material used.
- III The thesis does not exceed the word length for this degree.
- IV. No part of this work had been used for the award of another degree.
- V. This thesis meets the *University of Sydney's Human Research Ethics Committee (HREC) requirements for the conduct of research.*

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ABSTRACT

This research is concerned with decision-making in judgments made in the Family Court of Australia where there are allegations of child sexual abuse. The focus of the research is the identification of the concepts that are relied on in the assessment of these allegations by professionals providing evidence to the court and how judges determine what evidence should be given weight and relied on. This research was undertaken against a historical and current backdrop of scepticism about the veracity of child sexual abuse allegations in family law disputes, despite the heightened risk to children, and in particular to girls, after their parents separate and/or divorce. In this context the Family Court is also increasingly becoming a part of the child protection system as allegations of abuse are raised in hearings. This research has taken place in the period of time after the Reform Act (1995) and before new proposed legislation for 2006 was proclaimed.

This research is based on a detailed thematic analysis of 21 judgments of first instance trials between 1997 and 2001 that were selected for the presence of a child sexual abuse allegation and at least two professionals disputing some aspect of the allegation. Twenty-five family members, including 18 mothers and four maternal grandmothers, made allegations about 28 family members, 21 of whom were fathers. Professionals who gave evidence included 11 child protection officers and 20 court-ordered private assessors (including 17 child and family psychiatrists, three clinical psychologists and 11 court counsellors).

This research found that the context of the allegation, the family law litigation, had a dominant influence on how the allegations were assessed and interpreted: the impact of two influential paradigms, the separation and divorce and the legal/psychiatric paradigms, resulted in a reticence to test out the allegations of child sexual abuse made against fathers. Concepts from these paradigms were applied by court-ordered assessors and represented the sceptical conceptualisation of allegations of child sexual abuse as the product of the parental conflict, associated maternal anxiety and mental illness. In contrast, fathers were not scrutinised as closely against criteria for sex offending even when they made admissions relating to the allegations. Evidence from and about children was not central to the hearings and professionals who were in a position to present assessments of the child sexual abuse allegations to the court were discredited as a result of concerns about ‘contamination’ relating to criticisms of investigation and other methodological errors. In addition, allegations from children were frequently not fully examined or analysed by assessors or the judiciary.

There were glimpses of a child-focused approach in a small number of hearings and, while there was no specialist assessment of the child sexual abuse allegations, there was evidence of specialist knowledge pertaining to domestic violence in cases in which there was a high level of evidence relating to serious domestic violence.

This research has shown that there is a continuing influence of a sceptical paradigm in relation to the assessment of child sexual abuse allegations in the Family Court. It

suggests that the scope of assessments needs to go beyond the usual scope of parental competencies to include an assessment of the propensity for child sexual abuse perpetration and the dynamics and effects of incest.

ACKNOWLEDGEMENTS

First and foremost, I wish to express my gratitude to my supervisor, Dr Lesley Laing, and associate supervisor, Dr Francis Waugh, who have given generously of their time to assist me in completing this thesis. They have had the difficult task of supervising this research after the tragic death of my previous supervisor, Dr Marie Wilkinson. Thanks also go to the now retired Associate Professor Michael Horsburgh, who also provided supervisory assistance in the early stages of this project. I also acknowledge the generous support of the Helen Marchant scholarship.

I acknowledge the contributions made by my immediate family, Malcolm, Andrew and Charlotte, who have provided ongoing support and interest in this endeavour over a number of years. I have also been provided with ongoing encouragement from my parents, Maurice and Betty Foote, and a quiet place of respite to allow me to focus on the writing of this document.

A number of other family, friends and colleagues have provided me with editorial assistance and critical feedback. I gratefully acknowledge the help provided by, Megan Alfa, Megan McMahon, Karen Gabriel, Catherine Carney, Karen Barker and Lavinia Foote-Morid. Support from the Family Court in the provision of study leave and library assistance from Glenda Frew, is also gratefully acknowledged. Thanks also to Lyn Kemp who assisted with the application of NUD*ist software, and to Anna Gerdelan and Michael Wall for their help in formatting and editing.

This thesis is dedicated to the memories of Dr Marie Wilkinson, my former supervisor, and to my late father-in-law, Jack Davidson. I feel deep appreciation for the encouragement that I experienced from these two people who both gave generously of themselves in supporting my endeavours, but, sadly, are not here to celebrate its completion. It is also dedicated to my parents, who have both imbued in me a tenacity that has enabled me to complete this thesis.

