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Allegations of child sexual abuse: An empirical analysis of published judgements from the Family Court of Australia 2012–2019

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Abstract

Allegations of child sexual abuse pose agonisingly difficult issues for families, family law professionals and the courts. We present data from the population (N=521) of Family Court of Australia judgements containing allegations of child sexual abuse published in the Australasian Legal Information Institute's Australian database. Our data cover all in-scope judgements published between mid-2012 and mid-2019, of which 71 dealt with cases that were uncontested. A further 70 were contested but the allegations were abandoned before the end of the trial. We classified the remaining 380 cases as "fully contested". Of this group: (a) in 14% of cases, judicial officers expressed a direct or clearly implied belief that the allegations of child sexual abuse were true; (b) risk of sexual harm to a child was found in 12% of judgements; (c) when no risk of sexual harm was found, judges were more than twice as likely to regard the allegations as genuine but mistaken rather than to have been deliberately misleading; (d) just under two-thirds of allegedly unsafe

*Retired.

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parents had the time they spent with their child(ren) increased by the court; and (e) in 17% of judgements, children's living arrangements were changed to the allegedly unsafe parent.

KEYWORDS
child sexual abuse, decision making, family law, social policy, social welfare

1 | INTRODUCTION

Allegations of child sexual abuse made after parental separation raise highly consequential and generally long-term issues for family members. In an atmosphere frequently plagued by uncertainty and with high stakes for all, anecdotes about outcomes in litigated cases prompt claims ranging from judicial objectivity and fairness to excessive judicial subjectivity and systemic bias. In this article, we analyse all published in-scope judgements heard in the Family Court of Australia over a recent seven-year period. By providing a contemporary empirical benchmark of court outcomes in this difficult area of decision making, our core aim is to stimulate much-needed discussion about children alleged to be at risk of sexual harm in the care of a separated parent.

We begin by noting that mainstream definitions of child sexual abuse continue to lack precision (Mathews & Collin-Vézina, 2019), ranging from the broad (e.g. Butchart Harvey, Mian, & Fürniss, 2006) to the more detailed and focused (e.g. Quadara, Nagy, Higgins & Seigel, 2015). We note too that there are cultural and legal variations in the literature with respect to issues such as what constitutes "childhood" and what defines a "sexual act". Notwithstanding these limitations, there is broad agreement in the literature that the key ingredients of child sexual abuse include children's lack of comprehension and consent alongside a profound betrayal of the trust placed in the perpetrator who, in the eyes of the child, typically holds a position of power and "prestige" (Commonwealth of Australia, 2017:12).

1.1 | Impact and frequency

Multiple reviews in the past two decades have demonstrated that child sexual abuse is associated with a plethora of negative emotional and physical outcomes (MacGinley, Breckenridge & Mowll, 2019).[1] Important but less extensive research points to factors associated with moderating these impacts (MacGinley et al., 2019).[2] In addition, the broader consequences of child sexual abuse have been shown to reach far into families and communities, with significant costs associated with primary and rehabilitative healthcare, education and welfare assistance, child protection and the justice system (Fang, Derek, Brown, Florence & Mercy, 2012).

Estimates of the extent of child sexual abuse have varied according to a range of factors, including the representativeness of data and the child sample's gender ratio, the country in which the sample was derived and within-country ethnic background of subsamples, how narrowly or broadly child sexual abuse is defined,[3] how the data were gathered (e.g. face-to-face interviews typically yield differing results to other survey methods), the nature and sequencing of questions (i.e. order effects) and reporter source (e.g. self-report vs carer) (e.g. see Peters, Wyatt & Finkelhor, 1986; Stoltenborgh, Van Ijzendoorn, Euser & Bakermans-Kranenburg, 2011; Wyatt & Peters, 1986). There is also persistent evidence that for a variety of complex reasons, child sexual abuse has been – and almost certainly remains – significantly under-reported by

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agencies, carers and other professionals, as well as by the victims themselves (London, Bruck, Ceci & Shuman, 2005).[4]

Considered on a spectrum – from exposure to unwanted touching, through to penetrative assault before the age of 18 years – a Cochrane meta-analysis of data collected from retrospective studies of adults in countries and cultures worldwide (Walsh, Zwi, Woolfenden & Shlonsky, 2015) reported evidence that 10% to 20% of female children, and 5% to 10% of male children, have experienced child sexual abuse.[5] Broadly consistent with the above estimates, a summary statement on child maltreatment published by the World Health Organization has included among its "key facts" that one in five women (i.e. 20%) and one in thirteen men (~8%) are reported to have been sexually abused between the ages of 1 and 17 years (World Health Organization, 2020).

Finally, it is now well-documented that childhood sexual abuse is most often perpetrated by individuals known to the child (e.g. Snyder, 2000).[6] It has also been suggested (e.g. Quadara et al., 2015) that the most common form of child sexual abuse alleged in post-separation parenting disputes – intra-familial abuse (formerly known as incest) – is associated with particularly severe outcomes. In addition, although – or perhaps *because* – incest has traditionally been the subject of long-standing and near-universal taboos (Nakashima & Zakus, 1979), it was generally assumed to be uncommon until well into the twentieth century.[7] Consistent with this belief, most paedophiles were thought of as especially deviant, even monstrous, individuals who exploited the vulnerability of children with whom they had little or no ongoing relationship. Besides its frequency, the shocking truth of child sexual abuse is that perpetrators are generally known to their victims and present not as monsters, but as ordinary, well-respected citizens.

1.2 | Legal responses: punishing the perpetrator; protecting the child

When allegations of child sexual abuse are heard in criminal justice systems, the primary focus is on the past behaviour of the alleged perpetrator. Convictions are uncommon under the "beyond reasonable doubt" standard of proof (e.g. Cashmore, Parkinson & Taylor, 2018).[8] Benefits to the victim/survivor are likely to be indirect at best. The low conviction rates, along with the emotional demands and systemic limitations of adversarial processes, also act as a disincentive with respect to making or following through with allegations in criminal jurisdictions (McLellan, 2017).[9]

By contrast, the primary focus of proceedings that fall outside of criminal law is future protection of the child. Proof of the occurrence of child sexual abuse is judged on the lower standard of the "balance of probabilities" (see Higgins & Kaspiew, 2008; Kelly & Fehlberg, 2002). In Australian State, jurisdictions charged with considering allegations of child abuse and neglect, those to whom care has been entrusted (typically a parent, stepparent or foster parent) are frequently the very persons alleged to be a danger to the child. If a threshold of abuse or neglect has been demonstrated, a court's task is to consider alternative care possibilities.

In post-separation parenting disputes involving allegations of child sexual abuse, the most common judicial outcome is that the child remains in the primary care of one of the parents. In assessing the level of risk to the child, the decision maker must make a call on the extent to which the allegations are likely to be true, or otherwise genuine but mistaken, or else deliberately misleading. Decision making is especially demanding because one or both of the following questions must frequently be addressed: "What, if any, occasional or ongoing relationship should the child have with (a) a parent who is alleged to be unsafe, or (b) with a parent who makes deliberately misleading allegations?".

O'Donohue, Cummings and Wills (2018) provide a recent, detailed review of the literature on the apparent frequency of false allegations of child sexual abuse. After careful consideration

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of sampling and methodological issues attached to multiple studies, they conclude that a large majority of allegations of child sexual abuse are likely to be true. Though they found that no study reported even a sizeable minority of claims that are likely to be false, O'Donohue and his colleagues acknowledge that allegations in adjudicated settings remain particularly challenging for decision makers.

This latter observation takes us to the heart of a critical tension between decisions in individual cases and results derived from research drawn from random samples or population-based data. On the one hand, individual decisions that rely too readily on aggregate data and statistical probability raise significant methodological, philosophical and ethical questions. On the other hand, careful consideration of context and evidence, the lifeblood of legal processes, cannot be entirely detached from consideration of established probabilities that an alleged event might have occurred.[10]

When allegations of child sexual abuse are made, judges in Australian family law courts follow a train of thought articulated by the High Court of Australia in a case known as *M & M*.[11] This case directs judges to assess the extent to which a parenting arrangement poses an "unacceptable risk". We now know, as noted above, that child sexual abuse in general and intra-familial sexual abuse in particular are considerably more common than was previously believed. In the context of parental separation, the best available literature also suggests that allegations are considerably more likely to be true than not true. A key question here is: What if any impact should this knowledge have on decision makers in *individual* cases?

In assessing "unacceptable risk", the decision maker's traditional tools are (a) astute observation of human behaviour and (b) a capacity to assess the credibility, consistency and logic of the arguments and evidence proffered by protagonists, witnesses, experts and lawyers. With respect to allegations of child sexual abuse, the tortuous process of determining "unacceptable risk" outlined in *M & M* has been the subject of considerable published commentary (e.g. Chisholm, 1989, 2011a,b; Fogarty, 2006; Parkinson, 1990a,b, 1999, 2014; Young, Dhillon & Groves, 2014). Of some relevance is that the earliest of these analyses (Chisholm, 1989), expressed concern from the very outset that the High Court's underpinning logic, might itself be fundamentally flawed.[12] Since then, further attempts at clarifying the High Court's intentions have been addressed in at least 12 subsequent judgements.[13]

The extensive academic and judicial commentary on the judgement in *M & M* points to the ongoing struggle to prioritise the safety of children at the same time as ensuring a just result for parents alleged to have perpetrated child sexual abuse. In addition, however, we would argue that besides being assessed against the criteria outlined by the High Court, the sum total of decisions must be assessed against the extent to which they are broadly commensurate with research-based findings about frequency of occurrence of child sexual abuse as well as the statistical likelihood that allegations are both genuine and correct.

As noted, the focus of the present research is on key outcomes from 521 FCoA judgements in cases containing allegations of child sexual abuse. The present study follows the other recent Australian AustLII-based investigation into a broad range of outcomes arising out of child sexual abuse allegations in 156 parenting disputes (Ferguson, Wright, Death, Burgess & Malouff, 2018). Of particular relevance to the present study were findings by Ferguson and her colleagues that allegations of child sexual abuse were substantiated by judges in 10% of decisions (n = 16) and unsubstantiated in 73% (n = 113). Of the 113 unsubstantiated cases, 7% (n = 10) were nonetheless suspected to be true, while 62% (n = 95) were disbelieved. No determination appears to have been made in another 16% of decisions (n = 25).

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1.3 | Aims and research questions

We sought to document the outcomes of 521 published judgements in which allegations of child sexual abuse were made in the Family Court of Australia over a seven-year period. In all such judgements, at least one child was alleged to be at risk of sexual harm while in the care of the other parent.

Though quantitative in nature, the data raise questions about what happens when judges wrestle with their primary obligation to protect children in such cases in juxtaposition with their other obligation to support ongoing meaningful parent–child relationships when it is appropriate to do so.

The following seven research questions (RQs) guided our analysis:

- RQ_1. How often did judges indicate a belief that allegations of child sexual abuse were true or likely to be true?[14]
- RQ_2. How often was a risk of sexual harm found in contested hearings?
- RQ_3. In cases in which a judge did not find that a risk of sexual harm existed, how often were the allegations found to be genuine but mistaken or deliberately misleading?
- RQ_4. How was parental responsibility allocated following contested hearings?
- RQ_5. How were parenting arrangements allocated following contested hearings?
- RQ_6. How often were restraining orders or warnings imposed on the parent making sexual abuse allegations?
- RQ_7. Were any allegations abandoned during a hearing, and what effect – if any – did this have on any of the above questions?

2 | METHODOLOGY

Court judgements are the definitive data source for exploring legal outcomes to allegations of child sexual abuse. The research presented below is based on analysis of court judgements published in the Australasian Legal Information Institute's (AustLII) Australian database of legal materials. AustLII allows access to the full population[15] of Family Court of Australia (FCoA) judgements on a wide range of family law topics. Analysis of AustLII data provides an ethically responsible method of exploring the especially sensitive and complex topic of child sexual abuse allegations.

2.1 | Selection of cases

Our study sought to analyse Family Court of Australia judgements in a substantial number of consecutive cases in which there were clearly defined allegations of child sexual abuse. We aimed for a statistically credible population size of at least 500 contemporary FCoA judgements.[16]

When the search term "sexual*" was applied, 1704 judgements for the period 7 June 2012 to 31 May 2019 were identified.[17] Preliminary analysis of these judgements suggested that 863 were unrelated to allegations of child sexual abuse – that is, they were not cases in which allegations of child sexual abuse could be identified and were thus out of scope. Of the remaining 841 judgements involving an allegation that a child was at risk of sexual harm in the care of one parent or the other, a further 320 were excluded because they involved one or more of the following characteristics:

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1. the allegation(s) were one of a multitude of criticisms of the other parent, serving to possibly minimise their seriousness and compromise their believability.
2. chaotic parenting for most of a child's life was evident, such as a history of involvement by child protection authorities, mental health issues, violence, abuse of alcohol or other drugs, on the part of both parents, sometimes in conjunction with allegations by *both* parents of sexual abuse in the care of the other parent;
3. interim hearings in which a judge's belief or non-belief as to the truth of the allegations could not be confidently determined;
4. interim hearings for which the judgement in the full hearing was also available (in which case only data from the full hearing were analysed). Exceptions to this rule were cases in which (a) the hearing was adjudicated by a different judge (in which case both judgements were considered); or (b) more than 2 years had passed since allegations were last heard (the presumption here was that circumstances were likely to have changed to such a degree that it was legitimate to consider both judgements).

The final dataset thus comprised 521 Family Court of Australia judgements involving an allegation of child sexual abuse published in AustLII between 7 June 2012 and 31 May 2019.[18] These cases consisted of mainly contested hearings and a minority of uncontested hearings (86% vs 14%); and mainly hearings listed for final trials and a minority of interim hearings (70% vs 30%). Of the contested hearings, we also noted that in a minority (16%) of cases, the allegations were not pursued through to the end of the trial. Our reasons for including (a) uncontested cases; (b) interim and final hearings; and (c) judgements in which allegations of child sexual abuse were abandoned before the end of the trial were as follows.

2.1.1 | Contested and uncontested cases

Our initial hypothesis was that in uncontested cases, outcomes linked to variables such as unacceptable risk would be uniformly predictable. This did not prove to be the case, suggesting that even when matters were uncontested, judicial officers felt a continued sense of obligation to address questions of safety and fairness. For this reason, we decided to include uncontested cases, even though our focus is on hearings that are fully contested – that is, those in which allegations of child sexual abuse continued to be prosecuted and opposed throughout the length of the trial. These cases impose a particularly heavy burden on the judge to weigh the competing evidence and to make the best determination possible based on an assessment of the truth or otherwise of the relevant allegations.

2.1.2 | Interim and final hearings

For understandable reasons, judges are reluctant to rule on disputed facts or make final orders in interim hearings. It might therefore be argued that such cases should not be in our dataset. However, the judgements in this category not infrequently refer to previous interim cases in which judicial officers were acutely aware of a need to respond realistically, urgently, and in the best way they can when serious allegations are presented.[19] For this reason, we included interim hearings in our contested category of cases wherever there was sufficient material in the judgement to permit an analysis of judicial thinking. We also included these cases because from the point of view of the parent making the allegation, the outcome for the child rather than the process leading to the outcome is the critical issue.

Having distinguished between these interim hearings and final hearings, we examined differences in two key outcome variables of "risk of sexual harm" and "belief" in the allegation.

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As the differences between the two types of hearing were negligible, the present article does not address differences between interim and final hearings.

2.1.3 | Allegations that were abandoned during the course of the hearing

In the majority of the 450 contested cases in our sample (84%, $n = 380$), the allegations were pursued for the full length of the hearing – that is, "fully contested". Less frequently (16%, $n = 70$), allegations were abandoned at some point during the hearing. That is, they were either formally withdrawn or not pursued. These cases were included because inspection of their contents reveals a complex set of dynamics. They range from cases in which the alleging parent genuinely recognised that the allegation had been misguided, sometimes apologising for the distress caused to family members; to cases in which though the allegations were not pursued, the parent remained concerned that sexual abuse had occurred; to cases in which the evidence strongly suggested that the motivation behind the allegations had been mainly vindictive.

2.2 | Coding procedure

Twenty-eight variables of interest were chosen by the research team on a largely *a priori* basis. Each variable was then coded in each of the 521 judgements. The variables fell into one of five broad categories: (a) procedural ($n = 9$ variables); (b) allegations ($n = 4$ variables); (c) engagement of independent investigator ($n = 2$ variables); (d) judicial findings, or judicial sentiment (i.e. mental attitude or feeling) ($n = 5$ variables); and (e) court orders ($n = 8$ variables).

Each in-scope judgement was read and coded by the first author (Webb). The coding was then cross-validated by a group of law students ($n = 12$), working individually or in pairs to refine the exclusion or inclusion criteria, and add their comments to assist in subsequent reviews of coding decisions. Student cross-validation of the coding for each judgement, cell by cell, was compared with the findings of the lead author using the Excel VLOOKUP function.[20] The resultant comparison sheet was returned to the same student for review; the student was then paired with another student to discuss any discrepant codes.[21] Students were asked to come to consensus as a pair, and provide an agreed explanatory note for any remaining discrepant cells on either of their sheets.[22]

The final stage of the validation process once again involved using the Excel VLOOKUP function to compare findings (now agreed by two students) with those of the lead author. Each remaining mismatch was subject to further discussion between another two people until consensus was reached. This process was applied to ensure that (a) exclusions were only made according to the nominated criteria to validate the coded data for all in-scope judgements ($N = 521$) and (b) all coded data for each in-scope judgement had been agreed by at least two researchers.[23]

3 | RESULTS

Each of the tables below is disaggregated by three types of hearings: those that were (a) fully contested; (b) initially contested but the allegation(s) of child sexual abuse were abandoned during the course of the hearing; and (c) uncontested. The present study should be seen as a first step toward future work that would explore our findings in more detail – including bivariate and multivariate analyses, and contextually grounded qualitative analysis.

Tables 2–8 address the seven research questions noted above. Table 1 sets out the characteristics of the cases in the final 521 in-scope FCoA judgements delivered over a seven-year period.

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TABLE 1 Characteristics of Family Court of Australia judgements involving an allegation of child sexual abuse (2012–2019) published in AustLII: contested and uncontested hearings (N = 521)

	Contested (n = 450)					
	Fully contested (n = 380)		Contested but allegation(s) abandoned (n = 70)		Uncontested (n = 71)	
Attribute of Interest	***n***	**%**	***n***	**%**	***n***	**%**
Parent making allegation of child sexual abuse						
Mother	342	90	63	90	60	85
Father	38	10	7	10	11	15
Applicant parent vis-a-vis allegation direction						
Applicant parent made the allegation	147	39	25	36	45	63
Applicant parent had the allegation made against them	233	61	45	64	26	37
Legal representation						
Both parties legally represented	236	62	51	73	44	62
Both parties self-represented	24	6	3	4	2	3
Father only self-represented	68	18	7	10	16	23
Mother only self-represented	52	14	9	13	9	13
Engagement of independent children's lawyer (ICL)						
Yes	343	90	70	100	63	89
No	37	10	0	0	8	11
Gender of judge						
Male	232	61	36	51	38	54
Female	148	39	34	49	33	46
Stage of judicial determination						
Interim	124	33	13	19	12	17
Final (i.e. Trial)	256	67	57	81	59	83
Independent expert report[a]						
Yes	331	87	66	94	48	68
No	49	13	4	6	23	32
Judgement on Magellan list[b]						
Yes	108	28	19	27	31	44
No	272	72	51	73	40	56

Notes: % may not sum to 100 due to rounding.

[a]Independent expert reports were supplied by court-appointed professionals, internal and/or external to the court

[b]Magellan is a case management model implemented by the Family Court of Australia for responding to cases in which one or both parties have raised serious allegations of sexual abuse or physical abuse of children in a parenting dispute; Magellan was designed as a fast-track programme, involving protocols for receiving reports from State and Territory child protection authorities (see Higgins, 2007).

Source: AustLII in-scope judgements 2012–2019.

It includes the gender distribution of judges which, it should be noted, closely resembles that of the gender distribution of all FCoA judges in 2018–2019 (see Family Court of Australia, 2019).

Table 1 shows that (a) most of the judgements arose from hearings in which the allegations were "fully contested" (73%, n = 380), while the remaining judgements arose from initially contested hearings in which the allegation(s) were either abandoned (13%; n = 70) or were not

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TABLE 2 Judicial belief in the veracity of the allegations in contested and uncontested hearings in the Family Court of Australia: Frequency and percentage (N = 521)

	Contested (n=450)					
	Fully contested (n=380)		Initially contested but allegation abandoned (n=70)		Uncontested (n=71)	
Outcome	***N***	**%**	***n***	**%**	***n***	**%**
Belief in truth of allegations noted[a]	55	14	1	1	52	73
No indication of belief in truth of allegations	325	86	69	99	19	27
Total	380	100	70	100	71	100

Note: % may not sum to 100 due to rounding.

[a]In assessing matters on the balance of probabilities, judges in this study frequently cited Dixon J (as His Honour then was) in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 at 362. "The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of mere mechanical comparison of probabilities independently of any belief in its reality". In Murphy & Curtis [2016] FamCA 474 (20 June 2016) at par 69, Faulks J noted that in order to properly find that the father sexually abused the child, "I must feel an actual persuasion that the sexual abuse occurred".

Source: AustLII in-scope judgements 2012–2019.

TABLE 3 Risk of sexual harm to a child found in contested and uncontested hearings in the Family Court of Australia: Frequency and percentage (N = 521)

	Contested (n = 450)					
	Fully contested (n = 380)		Initially contested but allegation abandoned (n = 70)		Uncontested (n = 71)	
Outcome	***n***	**%**	***n***	**%**	***N***	**%**
Judge found risk of sexual harm[a]						
Yes	47	12	0	0	46	65
No	333	88	70	100	25	35
Total	380	100	70	100	71	100

Note: % may not sum to 100 due to rounding.

[a]Included 16 interim hearings which did not permit findings to be made but in which the risk of sexual harm was clearly recognised and acknowledged by the judge. This applied in 9 (2%) and 7 (10%) of judgements arising from contested and uncontested hearings, respectively.

Source: AustLII in-scope judgements 2012–2019.

contested (14%; n = 71); (b) most allegations of child sexual abuse were raised by the mother in both types of contested hearings and in uncontested hearings (90% and 85%, respectively); (c) the applicant in both categories of contested hearings tended to be the parent against whom an allegation was made (61% and 64%, hereafter referred to as the "allegedly unsafe parent") – whereas the applicant in uncontested hearings tended to be the parent who had alleged the child to be at risk of sexual harm (63%, hereafter referred to as "allegedly protective parent"); (d) both parties were legally represented in a majority of contested hearings (62% and 73% respectively) and uncontested hearings (62%); (e) male judges substantially outnumbered female judges in fully contested hearings (61% vs 39%), but the differences were small in both "contested-but-allegations-abandoned" and uncontested cases (51% vs 49% and 54% vs 46%, respectively); (f) the majority of hearings were final judgements (67% of fully contested, 81%

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TABLE 4 Whether the judge regarded the allegations as genuine but mistaken or deliberately misleading in contested and uncontested hearings in the Family Court of Australia when no risk of sexual harm was found: Frequency and percentage ($N = 428$)

Allegations regarded by judge as:	Contested ($n = 403$)					
	Fully contested ($n = 333$)		Initially contested but allegation abandoned ($n = 70$)		Uncontested ($n = 25$)	
	n	%	*n*	%	*n*	%
Genuine but mistaken[a]	163	49	22	31	10	–
Deliberately misleading[b]	76	23	26	37	2	–
Unable to be determined[c]	94	28	22	31	13	–
Total	333	100	70	100	25	–

Note: Excluded cases (i.e. those in which risk of sexual harm was found) = 93 (47 fully contested hearings, 46 uncontested hearings); % may not sum to 100 due to rounding.

[a]Judges made their views clear in all these cases though not always as an explicit finding.

[b]Judge's view in all these cases was an explicit finding.

[c]There was no explicit finding and the judge's view could not be determined.

Source: AustLII in-scope judgements 2012–2019.

TABLE 5 Allocation of shared parental responsibility in judgements containing an allegation of child sexual abuse in contested and uncontested hearings in the Family Court of Australia: Frequency and percentage ($N = 486$)

Outcome	Contested ($n = 417$)					
	Fully contested ($n = 349$)		Initially contested but allegation abandoned ($n = 68$)		Uncontested ($n = 69$)	
	n	%	*n*	%	*n*	%
Parental responsibility orders						
Shared parental responsibility[a]	121	35	36	53	3	4
Sole parental responsibility to allegedly protective parent	149	43	11	16	64	93
Sole parental responsibility to allegedly unsafe parent	79	23	21	31	2	3
Total	349	100	68	100	69	100

Note: Indeterminate cases = 35 (31 fully contested hearings, 2 uncontested hearings, 2 hearings in which allegation abandoned); % may not sum to 100 due to rounding.

[a]Most but not all "shared responsibility orders" were equal shared responsibility. Our data distinguish between a parent being given sole responsibility and orders requiring the parents to share parental responsibility.

Source: AustLII in-scope judgements 2012–2019.

of "contested but abandoned", 83% of uncontested hearings); and (g) hearings involved an Independent Children's Lawyer (ICL) in 89–90% of fully contested hearings and uncontested hearings, and in all cases in which allegations were contested but abandoned (70%).

Further analysis revealed that allegations of child sexual abuse were more likely to be abandoned where there was an expert report (15%) than without an expert report (5%) and also more

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TABLE 6 Change vs no change to parenting time, and direction of any change, in judgements containing an allegation of child sexual abuse in contested and uncontested hearings in the Family Court of Australia: Frequency and percentage (N = 506)

	Contested (n = 437)					
	Fully contested (n = 368)		Initially contested but allegation abandoned (n = 69)		Uncontested (n = 69)	
Outcome	***n***	**%**	***n***	**%**	***n***	**%**
Orders increasing parenting time with:						
Allegedly protective parent	60	16	4	6	46	67
Allegedly unsafe parent	233	63	56	81	8	12
No change to parenting time	75	20	9	13	15	22
Total	368	100	69	100	69	100

Note: Indeterminate cases = 15 (12 fully contested hearings, 2 uncontested hearings, 1 hearing in which allegation abandoned); % may not sum to 100 due to rounding.

Source: AustLII in-scope judgements 2012–2019.

TABLE 7 Continuity and change to "live with" orders in judgements containing an allegation of child sexual abuse in contested and uncontested hearings in the Family Court of Australia: Frequency and percentage (N = 514)

	Contested (n = 444)					
	Fully contested (n = 375)		Initially contested but allegation abandoned (n = 69)		Uncontested (n = 70)	
Outcome	***n***	**%**	***n***	**%**	***n***	**%**
Residence ("live with") orders						
Continued living with allegedly protective parent	260	69	37	54	62	89
Continued living with allegedly unsafe parent	34	9	8	12	3	4
Changed from allegedly unsafe to allegedly protective parent	6	2	0	0	5	7
Changed from allegedly protective parent to allegedly unsafe parent	63	17	20	29	0	0
Equal care orders remained in place	8	2	3	4	0	0
Changed to equal care	4	1	1	1	0	0
Total	375	100	69	100	70	100

Note: Indeterminate cases = 7 (5 fully contested hearings, 1 uncontested hearing, 1 hearing in which allegation abandoned); % may not sum to 100 due to rounding.

Source: AustLII in-scope judgements 2012–2019.

likely in a final hearing (15%) than an interim hearing (8%), whereas being on the Magellan list had virtually no effect (13% Magellan vs. 14% not Magellan) (data not shown).

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TABLE 8 Presence of restraining orders or warnings made against the allegedly protective parent in contested and uncontested hearings in the Family Court of Australia: Frequency and percentage (N = 513)

	Contested (n = 443)					
	Fully contested (n = 375)		Initially contested but allegation abandoned (n = 68)		Uncontested (n = 70)	
Outcome	***n***	**%**	***n***	**%**	***n***	**%**
Restraining order/warning against allegedly protective parent						
Yes	93	25	21	31	2	3
No	282	75	47	69	68	97
Total	375	100	68	100	70	100

Note: Indeterminate cases = 8 (5 fully contested hearings, 1 uncontested hearing, 2 hearings in which allegation abandoned); the coders noted five restraining orders imposed on the allegedly protective parent in judgements which the judge nonetheless believed the allegations to be true.

Source: AustLII in-scope judgements 2012–2019.

3.1 | Extent to which judges expressed belief in the truth of the allegations

How often did judges find that allegations of child sexual abuse were true or likely to be true (RQ_1, RQ_7)? Table 2 addresses this question.

Almost three-quarters (73%) of judges in uncontested hearings expressed a belief in the truth or likely truth of the allegations. This compared with 14% in fully contested hearings and only one case (1%) in hearings in which the allegations were initially contested but abandoned.[24,25]

Our coding for this variable was binary. That is, we did not explore meanings underpinning "no indication of belief". However, our results suggest a clear association between determination of belief/likely belief in the truth of the allegations on the one hand and findings of risk of sexual harm on the other. Where risk of sexual harm was not found, we noted that judges regarded the allegations as "genuine but mistaken" or "deliberately misleading" or made no determination either way (see Table 4). The findings in Table 4 are likely to be a close proxy for judicial expressions of belief in the veracity or otherwise of allegations as well as for the sizeable percentage of cases in which no determination was made.

3.2 | Risk of sexual harm

How often was a risk of sexual harm found by a judge (RQ_2, RQ_7)? The data in Table 3 address this question.

Judges found there was a risk of sexual harm to a child in 12% of all fully contested hearings compared with almost two-thirds (65%) of uncontested hearings (Table 3). No risk of harm was found in cases in which allegations were abandoned.

3.3 | "Deliberately misleading" and "genuine but mistaken" allegations

There is a persistent perception in some quarters that a substantial number of allegations of child sexual abuse are made by vindictive mothers determined to remove fathers from the day-to-day lives of their children.[26] In order to cast some light on the extent to which this assumption might be reflected in family court judgements, we asked the following research question: in cases in which a judge did not find that a risk of sexual harm existed, how often were the

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allegations judged to be deliberately misleading rather than genuine but mistaken ($RQ_{3,}$ RQ_{7}). Table 4 addresses this question.

Allegations were regarded by judges as genuine but mistaken in about half (49%) of fully contested hearings compared with almost one-third (31%) of hearings in which the allegations were initially contested but abandoned (Table 4). This pattern is reversed in relation to allegations regarded as deliberately misleading (fully contested = 23% vs initially contested but abandoned = 37%). A sizeable proportion of judgements – over one quarter (28%) of fully contested hearings and just under one-third (31%) of hearings in which an allegation was initially contested but subsequently abandoned – could not be coded on this variable.

3.4 | Basis on which parental responsibility was allocated

How was parental responsibility[27] allocated following contested hearings in which an allegation of child sexual abuse was raised ($RQ_{4,}$ RQ_{7})? Table 5 addresses this question.

Table 5 shows that in the 417 judgements arising from contested hearings for which parental responsibility was able to be coded, an order for shared parental responsibility was more likely in contested hearings where the allegations had been abandoned than if they had been fully pursued (53% vs 35%). Sole parental responsibility was almost always awarded to the allegedly protective parent where allegations were uncontested (93%), while it was awarded to less than half of the fully contested cases (43%) and only a small minority of contested cases where the allegations were abandoned (16%).

3.5 | Changes in parenting arrangements in the context of alleged child sexual abuse

How were parenting arrangements allocated following contested hearings in which an allegation of child sexual abuse was raised ($RQ_{5,}$ RQ_{7})? Tables 6 and 7 address this question.

At the time of the court hearings, a large majority (85%) of children in these cases lived with the parent making the allegations (data not shown). Table 6 indicates that in the 506 judgements which were able to be coded, parenting time with the allegedly unsafe parent was increased in 81% of the contested cases in which allegations had been abandoned, in 63% of the fully contested cases and in 12% of the uncontested cases. Time was increased with the allegedly protective parent in: only 6% of contested cases in which allegations were abandoned; in 16% of fully contested cases; and in 67% of uncontested hearings.

Table 7 shows the proportions of various types of living arrangements that either continued or changed as a result of parenting orders in the contested and uncontested cases. In total, 514 "live with" orders were able to be coded (including 444 of all the contested cases).

Table 7 shows that in the majority of cases, court orders were for children to continue living primarily with the allegedly protective parent – especially in uncontested hearings. Specifically, such orders occurred in almost 9 out of 10 uncontested hearings (89%), around 2 out of 3 fully contested hearings (69%) and a little over one half of cases where the allegations had been abandoned (54%).

In contested cases, children's living arrangements were more likely to be changed in favour of the allegedly unsafe parent when allegations were abandoned than when they were fully contested (29% vs 17%); no such change occurred for any of the uncontested cases. In no case where allegations had been abandoned was children's residence changed from the allegedly unsafe to the allegedly protective parent. This change occurred in only 2% (n = 6) of fully contested cases and in only 7% (n = 5) of uncontested cases.

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Further examination (data not shown) revealed that in those instances in which residence was changed away from the allegedly protective parent, deliberately misleading allegations were cited as a reason 41% of the time. In a further 42% of judgements in this category, reasons given for the change included a judicial assessment of the alleging parent's "unshakeable" or "entrenched" belief in the truth of her or his allegations despite the Court having made a contrary finding. In the remaining 18% of cases in this category, the judge determined that the alleging parent was unwilling or unable to support the child(ren)'s relationship with the other parent.

3.6 | Restraining orders or warnings associated with child sexual abuse allegations

How often were restraining orders or warnings imposed on the parent making sexual abuse allegations (RQ_6, RQ_7)? Table 8 examines this question.

In total, 513 judgements could be coded for the presence or absence of a restraining order or warning directed at the allegedly protective parent. Warnings or restraining orders were imposed in almost one-third (31%) of cases in which allegations were abandoned, one quarter of judgements arising from fully contested hearings and only 3% ($n = 2$) uncontested cases (Table 8).

The most common restraining order was one that prohibited the parent who made child abuse allegations from taking a child to sexual abuse counselling. Some of these orders allowed for such counselling with prior written permission from the other parent. Another common restraining order prohibited any further allegations of this nature being made except to the Family Court or the Independent Children's Lawyer. In some cases, the allegedly protective parent was warned that any further making of such allegations would result in having her or his children removed.

The extent to which there is a causal relationship between warnings or restraining orders directed at the protective parent and abandoning the allegation of child sexual abuse is unclear.

4 | DISCUSSION

Allegations of child sexual abuse pose agonisingly difficult issues for families, family law professionals and the courts. The present study sought to document the outcomes of judgements published in AustLII in which allegations of child sexual abuse were litigated in the Family Court of Australia. Over a seven-year period between mid-2012 and mid-2019, 521 judgements met our inclusion criteria, of which 450 (86%) arose from contested hearings. Our central aim was to provide new data at a time when the social and political context, as well as the legally informed methodology for determining the believability of allegations of child sexual abuse, has come into sharp focus.

4.1 | Limitations

Before summarising our key findings, several study limitations warrant mention. First, while we adopted a primarily qualitative context-sensitive approach to coding, our results have been largely reduced to quantitative data – the counting of bald numbers. This somewhat positivist reductionist approach could be seen as a crude way to treat such important, rich and complex data. We believe, however, that there is merit in exploring higher-order patterns in judgements in specified areas of litigation such as child sexual abuse cases. It is important, we contend, to

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consider the extent to which these aggregate data "fit" with what is known about the prevalence and dynamics of child sexual abuse, and what is known about genuine but mistaken or deliberately false allegations in the context of family law parenting disputes. That said, we recognise that intensive qualitative examination of the thinking behind the outcomes in these cases would shed additional light on how such allegations are considered. The cases we examined are on the public record and we are happy to share our list of cases and coding frame with other researchers.

A second limitation is that while our method of coding called for independent assessments, cross-validation through inter-rater agreement and the resolution of potential ambiguities through intensive discussions, there were inevitable elements of subjectivity in the process – especially with respect to variables such as indication of judicial belief in the truth of the allegation, and whether the allegation was genuine but mistaken or deliberately misleading. We worked to minimise such uncertainties and, again, would welcome replication by others using our inclusion and exclusion criteria.

The impact of likely selection effects within a specialised court population creates a third issue deserving of consideration. For instance, our sample did not include families who appeared to be chaotic and dysfunctional. Though we are confident that we have captured a population of cases that met our selection criteria, there are likely to be important differences between specialised court samples and national random samples in which allegations of child sexual abuse had been made. Our brief review of prevalence and incidence figures serves as a reminder that child sexual abuse is unfortunately all too common. But we are unable to make formal links between this observation and expectations of incidence in a particular setting such as the Family Court. Overviews such as that of O'Donohue et al (2018) would suggest that allegations of child sexual abuse in this setting are more likely to be true than otherwise. But we are also aware that powerful competing narratives persist regarding the juxtaposition of parental separation and such allegations.

Finally, the data presented speak to a population of judgements made over a seven-year period up until May 2019. Since that time there has been continued refinement of public and research-based understandings of the circumstances in which child sexual abuse occurs and of its impact. The present analysis does not address any developments that might have occurred within the Family Court of Australia from mid–2019 onwards.

It is important therefore that our analysis should not be regarded as definitive. Its contribution is that of an early response to an increasing level of interest in the believability of sexual abuse claims in the context of parenting disputes and the impact of making such claims on behalf of children.

4.2 | Key findings

In the majority of judgements examined, children lived primarily with their mother at the beginning of the hearing (85%) and most allegations of child sexual abuse were raised by mothers. The applicant in contested hearings tended to be the father against whom an allegation of child sexual abuse was made. Typically, in these cases the applicant father alleged a breach of parenting orders because the mother was withholding the child/ren on the basis that the child was being sexually abused while in the father's care.

Among all judgements arising from fully contested hearings: (a) judicial officers expressed belief that allegations of child sexual abuse were true in 14% of the cases; (b) risk of sexual harm to a child was found in 12% of judgements; (c) when no risk of sexual harm was found and a judicial view could be determined, judges were more than twice as likely to regard the allegations as genuine but mistaken rather than to have been deliberately misleading; (d) just under two-thirds of allegedly unsafe parents had the time they spent with their child(ren) increased

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by the court; and (e) in 17% of judgements, residence arrangements were changed to the allegedly unsafe parent.

When considered against uncontested hearings, judges expressed belief in 73% of judgements, while risk of sexual harm was found in 65% of judgements. A risk of sexual harm was not found in any of the judgements in which the allegations were abandoned during the hearing although, in one such case, the allegations were believed. Allegations were more likely to be abandoned where there was an expert report rather than when no such report existed, and during a trial rather than an interim hearing. Being on the Magellan list, on the other hand, made no difference to whether allegations were abandoned.

4.3 | Triangulation of findings

Our findings are broadly in line with those reported by Ferguson et al. (2018) in Australia and more recently by Meier (2021) in the United States. As noted, Ferguson et al found that only 10% of the allegations of child sexual abuse made in the Family Court of Australia were "substantiated". They found that 73% were "unsubstantiated" and 16% resulted in no determination. Of the "unsubstantiated" cases, 84% were coded as disbelieved.

Meier (2021) reported on 2,189 judgements resulting from mothers' allegations of family violence and child maltreatment made to a wide range of courts in the United States. With respect to allegations of child sexual abuse, Meier (2021) found, among other things, that mothers were believed in 19% of the judgments.

Like the present study, the data from Ferguson and her colleagues were derived from a population of AustLII judgements. Their population of 156 judgements was considerably smaller than ours, and many of the coding categories differed. However, two key outcomes – a low percentage of findings of unacceptable risk, and a low percentage of cases in which judges indicated belief in the truth of the allegations – are consistent with our own.

In addition, among the 73% of judgements in which allegations were categorised as unsubstantiated, Ferguson et al. (2018) found that almost one in four were thought by the judge to contain elements of "parental alienation";[28] and among the 16% of judgements in which no determination was made, one in five judges nonetheless identified parental alienation as a factor to be considered.

The present study did not code for suggestions of "parental alienation" but did code for an overlapping variable: that the allegedly protective parent did not hold a genuine belief in the truth of his or her allegations (i.e. the parent made allegations that the judge regarded as deliberately misleading). Of those judgements arising from a contested hearing in which the judge's view could be discerned, 25%[29] contained a formal finding that the allegations were deliberately misleading. This figure is consistent with the parental alienation data coded by Ferguson and her colleagues. It is also consistent with the findings that restraining orders or warnings were directed toward the allegedly protective parent in 25% of the fully contested hearings.

4.4 | Two contextual observations

Before concluding, two contextual observations warrant brief mention. The first speaks to reflections by Meier (2021), whose key findings have been noted above. The second speaks to reflections by Middleton et al. (2014) on the "dynamics of silence".[30]

Meier (2021:33) asks the question, "Why are mothers' claims of abuse so widely denied in court?". Meier is clearly of the view that many such denials are ill-founded. As she puts it, "[s]ocial media and professional reports abound in which clear evidence of almost certain abuse is ignored, minimized and sidestepped, or its existence denied" (Meier, 2021:44). Meier's

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(2021:44) belief is that "human brains are hard-wired with defenses against awareness of horrific realities, especially those inflicted by humans against others". She suggests that "simply inferring that too many judges are ignorant or biased is both questionable and unfair to the many conscientious judges doing their best to achieve what they believe is right for children" (Meier, 2021:44).

Our reading of the judgements, many of which go to considerable lengths to carefully weigh the evidence presented, is consistent with this suggestion. It may also be, as Meier believes, that we have inherited a neurological tendency or perhaps an ongoing social disposition to minimise both the impact of child sexual abuse and the frequency with which it occurs. A competing hypothesis, however, is that we have indeed become increasingly aware of the key issues around child sexual abuse but that our adversarially informed decision-making processes are failing families and require revision, reform or replacement (see, e.g. Cossins, 2020).

Finally, we note the views of Middleton et al. (2014). Like Meier (2021), these authors believe that the existence of child sexual abuse continues to be denied or minimised but link the primary problem to more global issues of gender and power. Theirs is a darker perspective, which suggests continued widespread ignorance about what they see as deliberate attempts to silence victims of child sexual abuse.

> Whether it is the controlling incestuous father, the politically connected pedophile ring, or a hierarchical church that actively avoids the reporting of life-destroying crimes to law enforcement authorities, the mechanisms for ensuring silence are very similar. These are, threat and the manipulation of shame, discrediting the victim's testimony, isolating, rejecting and dispossessing those who try to speak out, the 'buying of silence', misuse of legal powers to intimidate, death threats, and in some cases, attempted murder (including pressure to suicide) or even actual murder … [P]erpetrators – irrespective of their social standing and economic status – generally use every means at their disposal to ensure that the veil of silence continues
>
> (Middleton et al. 2014:582).

Readers will no doubt make up their own minds about the value of these two perspectives. We have seen our main task not as providing commentary but as that of extracting and reporting on the data. In a spirit of allowing the data to "do the talking", we conclude by asking fourteen questions. Though not exhaustive, we hope these questions might help shape future engagement with this important issue. We would welcome responses from readers – particularly those on the frontline of child protection and decision making about children.

4.5 | Some questions arising from the data

1. To what extent are the findings from the present study surprising, unsurprising, or both? Why?
2. Which patterns and assumptions in our data require further investigation? Ideally, what would that research strategy, related method(s) and analytic approach look like?
3. How adequate are current litigation processes for responding to, and making determinations about allegations of child sexual abuse made in the context of post-separation parenting disputes? Should alternatives to adversarial processes be explored?
4. How affordable, accessible and adequate are current investigative processes in child sexual abuse cases? What level of assistance do they provide to courts?
5. Should all cases in which child sexual abuse is alleged be referred to the Family Law Courts' Lighthouse Project and/or considered as candidates for the Evatt list or the Magellan list?[31]

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6. In the light of what is known about the impact of child sexual abuse, to what extent are judges, barristers, solicitors and Court staff, as well as independent experts employed within and outside the Court aware of and trained in trauma-informed practice?
7. To what extent is equal shared parental responsibility feasible and viable in cases in which child sexual abuse is suspected or alleged?
8. How workable are the presumptions, limitations and internal logic inherent in the "unacceptable risk" test set out in the 1988 High Court Judgment in *M & M*?
9. Why do so few child sexual abuse cases result in a finding of unacceptable risk?
10. Why do so few child sexual abuse cases attract a formal statement of belief in the allegations?
11. Should parents expect an indication from judges as to whether allegations of child sexual abuse are credible or otherwise?
12. Why do some parents who allege child sexual abuse abandon their allegations during contested court proceedings? Are there lessons to be learned from a close examination of these cases?
13. Should lawyers consider aligning advice to parents wishing to make allegations of child sexual abuse with findings from the present study? Would it be prudent to await evidence from further studies? Or do such studies fall outside the ambit of individual advice?
14. Across all jurisdictions concerned with the protection of children, how can child sexual abuse investigations be better coordinated?

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ENDNOTES

[1] In their recent review, MacGinley et al. (2019) reported that impacts included significantly higher risks of medical, psychological, behavioural, interpersonal and social difficulties. In particular, child sexual abuse has been found to be a risk factor for depression, anxiety, feelings of shame, post-traumatic stress disorder, sexual exploitation, intimate partner violence, suicidality, substance abuse and educational difficulties.

[2] According to MacGinley et al. (2019), reviews have demonstrated a range of psychosocial protective factors that can help reduce risk, including family and social supports, personal attributes, active coping style, a sense of personal influence and externalising blame for the abuse (see also Higgins et al., 2019).

[3] For example, some definitions include the experience of exposure of genitals; some do not.

[4] London et al. (2005) concluded at the time that two-thirds of individuals never disclose their victimisation.

[5] There are limitations inherent in the retrospective nature of the many studies that rely on adult memories (see, e.g. Sanci 2019). On the other hand, like many others (e.g. London et al., 2005) these researchers regard the figures as an underestimate.

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[6] Snyder's (2000) study of nearly 120,000 cases of sexual assault reported to U.S. law enforcement agencies concluded that 84% of sexual victimisation of children under age 12 occurred in a residence, typically that of the victim or the perpetrator.

[7] In 1955, Weinberg cited estimates of incest – based on popular belief rather than data – as one in a million. Freud's initial acceptance of his patients' accounts of incest later turned to incredulity. More recently, Freud's reformulation of these accounts as fantasies has been widely criticised: see, for example, Masson (1984) and Wolff (1995). Early researchers into sexual behaviour, such as Kinsey et al. (1948), estimated prevalence of child sexual abuse to be about 5000 cases in a million – far short of what we now know to be the case.

[8] Numerous studies have demonstrated a substantial gap between rates of notification of child sexual abuse and eventual conviction (see, e.g. Cashmore et al., 2018).

[9] The Hon Justice McLellan (2017), who provides an excellent summary of these limitations, also cites evidence indicating that notwithstanding greater recognition of the dynamics and prevalence of child sexual abuse in recent years, the gap between rates of notification and rates of conviction has increased.

[10] For example, the Crimes Act (Victoria) 1958 – Sect 37B was amended by the Crimes (Sexual Offences) Act 2005 to include the following guiding principles. It is the intention of Parliament that in interpreting and applying Subdivisions (8A) to (8G), courts are to have regard to the fact that: (a) there is a high incidence of sexual violence within society; (b) sexual offences are significantly under-reported; (c) a significant number of sexual offences are committed against women, children and other vulnerable persons including persons with a cognitive impairment or mental illness; (d) sexual offenders are commonly known to their victims; and (e) sexual offences often occur in circumstances where there is unlikely to be any physical signs of an offence having occurred.

[11] *M & M* (1988) 166 CLR 69.

[12] The standard of "unacceptable risk" to be followed according to the High Court's judgement in *M & M* is one which may prompt the lay reader to ask what constitutes an *acceptable* risk of sexual harm. This apparent non-sequitur was addressed by Chisholm (1989:9) in his early view that the High Court's judgement might possibly be reduced to a tautology, which he interpreted as, "[T]he court should not order custody or access where the risk of abuse is such that the court should not order custody or access". Chisholm also noted that the judgement could be "… one of those formulas that the late Julius Stone might have called, 'a category of illusory reference'".

[13] *Marriage of B & B* (1993) FLC 92–357; *N & S & Separate Representative* (1996) FLC 92–655; *WK v SR* (1997) FLC 92–655; *A v A* (1998) FLC 92–800; *Re W & W Abuse allegations*; *expert evidence* (2001) FLC 93–085; *Re W (Sex abuse*: *standard of proof)* (2004) FLC 93–192: *W v W (Abuse allegations*; *unacceptable risk)* 2005 FLC 93–235; *Napier & Hepburn* (2006) FLC 93–303; *Potter & Potter* (2007) FLC 93–326; *Johnson v Page* (2007) FLC 93–344; *Partington v Cade (no 2)* (2009) FLC 93–422; *Nikoladis v Nikoladis* [2010] FamCAFC 52.

[14] Coders were asked to read the judgements carefully and make a determination with respect to whether or not judges indicated a belief that the allegations were true or likely to be true. Among cases that did not reach this threshold, judges either clearly indicated they did not believe the allegations or remained silent on the issue. Based on an absence of any indication by a judge of the likely truth of the allegations, these cases were also placed in the "no indication of belief category (see in addition, note 25 below)". Our results suggest a strong co-relation between coding a determination of belief or likely belief in the truth of the allegations and a risk of sexual harm found by judges.

[15] The FCoA effectively makes all of its judgements available to AustLII once they have been made non-identifiable.

[16] We began our analysis of judgements delivered in May 2019 and worked backwards. By 7 June 2012, (the month in which *Family Law Legislation and Amendment (Family Violence and Other Measures) Act 2011* – commonly known as the "safety reforms" – came into effect), we had identified 521 judgements. We identified a further 525 earlier in-scope judgements from that point back to May 2006. These data remain available for further scrutiny; but the focus of the present analysis is on the 521 post-"safety reform" judgements.

[17] One of the authors (Webb) did this for the first 200 judgements, after which all remaining judgements with the term, "sexual*" were randomly assigned to and cross-checked by six University of Wollongong Law students.

[18] The final list of extracted judgements and our coding frame is available on request.

[19] Rhoades et al (2000) identified interim hearings as an especially problematic area for judges attempting to balance applications for a continued relationship with children against applications to reduce or terminate involvement on the grounds of alleged violence or abuse. Rhoades et al (2000:76) cite one judge's description of decision-making processes at the interim stage as more like "artful dodging" than a judicial exercise.

[20] The VLOOKUP function in Excel was used to identify cell mismatches between different Workbooks that had been consistently formatted.

[21] The student supervisor's (Webb) case comments were provided to students at this point in the review process.

[22] The cross-validation material is available on request.

[23] The total 521 judgements included four *post*-trial interim hearings for which no trial was listed on the AustLII data-

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base for the research period of interest, but trial data were obtained from the interim judgement.

[24] Our coding for this variable (see note 14) was informed by our assumption that litigants might expect both an outcome and an indication of belief or otherwise regarding the veracity of the key allegation(s). We subsequently came to appreciate that family lawyers' views on the circumstances in which a judge might or should declare such a belief are far from unanimous.

[25] In some cases (data not shown), allegations were believed but no risk of sexual harm was found. The reasons for this varied. For example, a judge might regard the child as no longer at risk because the new court orders were thought to provide sufficient protection; or the allegedly unsafe parent was in jail or otherwise not a current threat to the child.

[26] The most widely cited literature promoting this concept derives from the work of Gardner (e.g. Gardner 1990; 1998) who coined the highly contested phrase *The Parental Alienation Syndrome*. As a default explanation for resistance to children's contact with the "other" parent – especially when linked to allegations of child sexual abuse – Gardner's largely self-published work continues to attract widespread criticism in scholarly journals (e.g. Lubit, 2019; Rathus 2020).

[27] Under Australian family law, there is a presumption that both parents will have a role in making decisions about major long-term issues (e.g. where a child goes to school or major health issues) – that is "shared parental responsibility". This presumption, however, does not apply if it is not in the best interests of the child (e.g. where a parent has engaged in abuse of the child or family violence).

[28] See above note 26.

[29] 25% can be derived from Table 4 as follows: *n* in fully contested hearings = 76 + *n* in abandoned hearings = 26 = 102; group totals = 333 + 70 = 403; thus 102/403 = 25%.

[30] Middleton and his colleagues are psychiatrists and related professionals who work with child sexual abuse and its consequences across a range of countries.

[31] The Lighthouse Project is a recent innovation in Australia's family law courts. It aims to provide early screening of cases, identification and management of safety concerns, assessment and triage, and referral of high-risk cases to a court list known as the Evatt list. "The Evatt List is an initiative of the Court. A highly qualified team of judges, Registrars, Family Consultants and Court staff are allocated to help progress a case considered to be high risk. There are various Court events that take place for these cases, with a final trial taking place as quickly as possible" (http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications/family-law/evatt-guide-parties). See Table 1 notes for an explanation of the Magellan list.

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