



Submission to the Australian Law Reform Commission

Review of the Family Law System

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Eeny Meeny Miney Mo Foundation

Parental Alienation Australia Ltd trading as the Eeny Meeny Miney Mo Foundation (‘EMMM’) is the peak body in Australia raising awareness about parental alienation and campaigning for better education and services for families affected by this condition. EMMM is a non-profit organisation, gender neutral and child focused.

Our vision

Children to feel free to love and spend time with both parents post separation.

Our mission

1. Reduce the prevalence and impact of parental alienation and related mental health disorders in the Australian community;
2. Increase the capacity of the Australian community, including governments, service providers, legal, business and community sectors, working together, to deal with parental alienation and related mental health disorders;
3. Develop promotion and prevention strategies to increase community awareness and understanding of parental alienation and related mental health disorders and reduce associated stigma and discrimination;
4. Raise public awareness and understanding of the nature and extent of parental alienation and its impact on mental health; and
5. Provide information and resources about parental alienation and related mental health disorders to parents, children and mental health workers, as well as other services that may provide such support, and legal practitioners.

You can find out more about us at www.emmm.org.au

What is parental alienation?

Parental alienation is a process of one parent (known as the alienating parent) influencing a child to turn against and reject their other parent (known as the targeted parent) without legitimate justification.

The alienating parent can also be a grandparent, a step parent and even a non-family member. Parental alienation can occur even when the relationship between the targeted child and targeted parent was once a very positive one.

A recent study¹ suggests that parental alienation affects approximately 19% of those children going through separation and divorce. In high conflict cases, studies suggest the figure is closer to 40%.

The impact of parental alienation can last for years or even a lifetime. It denies children a normal childhood and denies them a relationship with both parents. It can also prevent a child from having a relationship with the alienated parents family. Alienated children experience disrupted social-emotional development.

Alienated children experience a complex grief for the loss of a parent who is still alive. Because this loss is the result of manipulation, alienated children experience psychological difficulties associated with this type of emotional abuse. The long-term outcomes of parental alienation on children include social isolation, anger, self harm, depression and anxiety.

Targeted parents also experience complex grief for the loss of their child who is still alive which is compounded by being denigrated and vilified. Targeted parents experience financial and emotional costs trying to find a resolution in a legal system and mental health services

¹ Harman, Leder-Elder, Biringen (2016) Prevalence of parental alienation drawn from a representative poll

that do not have a proper understanding of parental alienation.

Research on Parental Alienation

There is now an abundance of scientific literature supporting the validity of parental alienation. A selection of the most prominent scientific articles:

- Clare Poustie, Mandy Matthewson and Sian Balmer (2018) *The forgotten parent: The targeted parent perspective of parental alienation*;
- Kate Templer, Mandy Matthewson, Janet Haines and Georgina Cox (2016) *Recommendations for best practice in response to parental alienation: Findings from a systematic review*;
- Amy Baker & Maria Verrocchio (2013) *Italian college student-reported childhood exposure to parental alienation: Correlates with well-being*;
- Amy Baker & Naomi Ben-Ami (2011) *To turn a child against a parent is to turn a child against himself: The direct and indirect effects of exposure to parental alienation strategies on self-esteem and well-being*; and
- Amy Baker & Jaclyn Chambers (2011) *Adult recall of childhood exposure to parental conflict: Unpacking the black box of parental alienation*.

Links to these and other academic resources on the topic can be found below:

- [Parental Alienation - Australian Institute of Family Studies](#)
- [Parental Alienation Study Group Database \(Vanderbilt University\)](#)
- [Eeny Meeny Miney Mo Foundation](#)

“Given the prevalence of childhood psychological abuse and the severity of harm to young victims, it should be at the forefront of mental health and social service training.”
- Joseph Spinazzola, Ph.D.

“In our effort to protect children from physical and sexual abuse, we cannot ignore the hidden suffering of children who are manipulated to take sides in their parents disputes.”
- Dr. Richard A. Warshak

Childhood emotional and psychological abuse is as harmful as sexual or physical abuse.

Emotional abuse does not leave physical injuries and its ongoing nature usually means there is no crisis which would precipitate its identification by the health, welfare or criminal justice systems. For that reason emotional abuse is the most hidden and underestimated form of child maltreatment.²

Children’s rights

According to human rights expert Lena Hellblom Sjogren, Ph.D., the Universal Declaration of Human Rights (Article 12), the European Convention of Human Rights (Article 8), and the UN Convention on the Rights of the Child (Article 16), a child has a right to family life. When a child is influenced to think of a parent, who has not harmed the child, as someone not worth seeing, or worse, as someone to be afraid of and to reject, then that child’s human rights have been violated. It is a child’s right to keep as close contact as possible with parents, siblings and extended family. In our view the best interests of the child include everyday contact with both parents, the right to identity, the right not to be

² Adam M. Tomison and Joe Tucci, Emotional abuse: The hidden form of maltreatment, AIFS (September 1997)
<<https://aifs.gov.au/cfca/publications/emotional-abuse-hidden-form-maltreatment>>

abused, and never to be forced to choose between parents.

Parental alienation and the law

The question of parental alienation first centered around the questions of its acceptance in social sciences and its status as syndrome. The Full Court in *Johnson*³ accepted that evidence of 'Parental Alienation Syndrome' fell within "a substantially established area of knowledge", while in *Summers & Nathan*,⁴ Ramsden JR found he was not 'persuaded immediately that "PAS" has been established irrevocably as being within a substantially established area of knowledge allowing for the receipt of expert evidence.' In doing so, Ramsden JR drew on the works of Johnston and Kelly.⁵

Over the past decade, the acceptance of Parental Alienation Syndrome has waned in the Australian legal context. However, the broader term of '*parental alienation*' is used increasingly⁶ and the number of cases in dealing with allegations of parental alienation has risen dramatically since 2006.⁷

More recently, there have been a number of cases which saw a change of residence against the preferred parent and in favour of the rejected parent following behaviors that would likely qualify as parental alienation. These include *Ralton and Ralton*⁸ *Lankester and Cribb*⁹ and a

recent case which was tested in the High Court - *Bondelmonte v Bondelmonte*.¹⁰ However, there are still many other cases which have followed the opposite path (particularly those which uphold the view espoused in Russell and Close¹¹ which considered as "an appropriate consideration [...] the custodial parent's belief that the [...] children have been sexually abused" even when that in fact is false). Contrast, for instance, the cases of Lankester and Cribb¹² with *Mandel v Blum*¹³ - in both cases the mother allegations of abuse against the father; the court found abuse did not take place; and court proceedings took seven years to complete - and yet in one case, the court orders a change of residence and in the other the court dismissed the ICL's application for a change of residence and instead ordered the rejected parent out of the children's life.

EMMM submits that this highlights a gap in understanding of issues affecting parenting alienation among certain judges. Furthermore, even among judges who understand parental alienation, there is a reticence in using the term.

The controversy surrounding parental alienation has created a diverse body of law which is incoherent and inconsistent. While the phenomenon of alienation is not disputed, its definition and terminology is very much at the core of the dispute, resulting in limited ability for the precedents to develop into a coherent set of practices. The result is that such cases lead to an unpredictable result, depending largely upon the judge's familiarity or avoidance of alienation and its issues. The same can be said for the social workers, family consultants and psychiatrists who prefer neutral terms to the label of alienation. It is suggested that parental

³ *In the Marriage of Johnson* (1997) 22 Fam LR 141

⁴ [2005] FamCA 1406

⁵ Kelly, J.B., & Johnston, J.R., 'The alienated child: A reformulation of parental alienation syndrome.' (2001) 39 *Family Court Review* 249-266; Johnston, J.R., 'Parental alignments and rejection: An empirical study of alienation in children of divorce.' (2003) 31 *Journal of American Academy of Psychiatry and the Law* 158-170

⁶ See *Udall & Oaks* [2010] FMCAfam 1482

⁷ Bala, N. 'Parental Alienation, Contact Problems and the Family Justice System' *Australian Institute of Family Studies* (20 Feb 2015: Melbourne); see *Rose v Rose* [2010] FamCA 935, Slater & Light [2013] FamCAFC 4

⁸ [2017] FamCAFC 182 (7 September 2017)

⁹ [2018] FamCAFC 60 (6 April 2018)

¹⁰ [2017] HCA 8

¹¹ *Russell & Close* (1993) FamCA 62

¹² [2018] FamCAFC 60 (6 April 2018)

¹³ *Mandel and Blum* [2014] FCWA 51; *Mandel and Blum* [2017] FCWA 42



alienation (minus 'syndrome') can be used to combine the case and scientific literature on the topic. When viewed from the child's perspective, there is an old label that remains apt: emotional child abuse.

Review of the Family Law System

EMMM welcomes the review of the family law system by the Australian Law reform Commission ('ALRC') and is hopeful that this process will result in overdue change to a system that is currently not working as intended.

EMMM submits that the Terms of Reference were fundamentally lacking in failing to provide an overriding objective highlighting that wherever possible, the maintenance of a healthy relationship between a child and both their parents is of paramount significance, consistent with the *Family Law Act* 1975 (Cth) (the 'Act', 'FLA') which cites 'the benefit to the child of having a meaningful relationship with both of the child's parents' as a primary consideration.

The fact that this objective was not mentioned once in the terms of reference we find highly concerning.

Founded on a large body of literature pertaining to the social-emotional development of children, EMMM is of the view that children benefit from having a strong and healthy relationship with both their parents following family separation. In order to benefit from a strong healthy relationship with both parents, children need to spend substantial time with each parent. Currently, less than 50% of children of separated and divorced parents have weekly contact with one of their parents.¹⁴ Many of these children are unjustly separated from a parent who is willing and capable of providing a loving and supportive relationship. By allowing this situation to continue, too many children will suffer the potentially devastating consequences of missing out on having both parents in their lives.

¹⁴Australian Bureau of Statistics report "Family Characteristics and Transitions, Australia 2012-13"

It is essential that the *Family Law Act* acknowledge the phenomenon of parental alienation and provide for appropriate legal remedies.

Q1 - Objectives

What should be the role and objectives of the modern family law system?

A modern *Family Law Act* should recognise the rights of parents to have a relationship with the children alongside the existing recognition of the child's rights to that relationship.

A modern *Family Law Act* would define what the "the best interest of the child" are with a definition that is grounded in scientific evidence.

A modern family law system should support separating families transition the process of separation as efficiently as possible. This includes time efficiency and cost effectiveness..

A modern family law system should ensure separating couples are incentivised to cooperate and disincentivized from engaging in unnecessary conflict.

A modern family law system should only make decisions for families when it is clear that they are unable to make decisions for themselves.

A modern family law system should divert cases away from the courtroom by promoting mediation, arbitration and counselling as alternatives wherever appropriate.

A modern family law system should make proper use of appropriately qualified experts who can assist the court to identify pathogenic parenting practices.

A modern family law system would ensure that the outcomes of its decisions were followed up and monitored (for at least 12 months post-judgment) to

ensure that future judgments following case law precedents do not eventuate in perpetuating poor or negative outcomes for families.

Question 2

What principles should guide any redevelopment of the family law system?

- The guiding principles should be to do what is in the best interest of the child and to do no harm. Of course, what is best for the child must be clearly defined and any such definition should be grounded in scientific literature;
- Nothing in this reform should diminish the benefit to the child of having a meaningful relationship with both of the child's parents;
- The need to protect the child from both physical and psychological harm and from being subjected to abuse, neglect or family violence (in its broader sense) must remain paramount;
- When considering the best interests of the child, the court considers long-term interest over short-term impacts;
- Objective facts to be given greater consideration than subjective beliefs. It is unnecessary to explore the causes of abusive behaviour other than examining its impact on the child; and
- Courts must reward truth over falsehood and must set incentives accordingly. Where a court can make a positive finding that one of the parties lied or made false allegations, costs should be ordered and the matter should be referred by the bench to the relevant Department of Public Prosecution.

Q14 - Best Outcomes for Children

What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?

The issues around parental alienation under whatever term is ascribed to them directly affect the factors to be considered by the court in determining the best interest of the child under s60CC of the Act.

There is no need for broad amendments to accommodate parental alienation in the Act. However, inconsistent treatment of parental alienation by the judiciary has led to inconsistency in case law.

Further education among judicial and court related staff is required to ensure that the law is properly applied in such cases. In the absence of clear guidance on the topic from the full court in this field, the development of authoritative case law with clearer guidelines on the topic would be of public benefit.

*The benefit to the child of having a meaningful relationship with both of the child's parents*¹⁵

In cases of alienation, it is generally true that the non-custodial parent is more capable of promoting a meaningful relationship with both parents than the custodial parent who typically seeks the child have no or minimal contact with the other parent. Accordingly, considering the benefit of maintaining a long term relationship with both parents, this factor may favour the non-custodial parent. Further, it has also been argued that a close but 'enmeshed'¹⁶ relationship the child may have with their custodial parent cannot be

¹⁵ FLA s 60CC(2)(a)

¹⁶ Enmeshment is when a parent cannot tell the difference between their own feelings and those of the child. Enmeshment is the reason why a child is afraid to detach from a parent when it is time to see the other.

said to be beneficial and is therefore not 'meaningful' in the legal sense of the word.¹⁷

*The need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence*¹⁸

This factor is relevant in two ways. First, many cases alleging alienation by the custodial parent are cases that deal with allegations of abuse or violence against the non-custodial parent. The court must urgently determine whether the non-custodial parent presents an unacceptable risk of harm and whether there is any basis for the allegation of abuse.¹⁹ Where it makes positive findings of abuse or harm, the child's relationship with the non-custodial parent is better defined as reasonable 'estrangement' rather than alienation. Where the court has established that the non-custodial parent presents no unacceptable risk of harm, the question then arises whether the custodial parent's conduct of alienation, should it be found to be present, amounts to psychological or emotional harm or, in the alternative, child abuse.

In a qualitative study of 40 adult survivors of alienation, Baker²⁰ found that the environment of an alienated household resembles that of a cult in three core areas. Firstly, the alienating parent requires excessive devotion. Secondly, emotional manipulation techniques were used to heighten dependency.²¹ Thirdly, these acts

are done for the benefit of the alienating parent with little regard to the emotional cost to the children.²² The expanded definition of 'child psychological abuse' in DSM-V would be appropriate in cases of alienation. Accordingly, the court must determine whether the children's ongoing living arrangements or contact with the preferred parent are in their best interest or whether a change in residence is required.

Interventions for parental alienation should include both a legal and psychotherapeutic response to facilitate restoration of family functioning when parental alienation is evident. Where a child/children may be resisting or refusing contact with a parent in the context of parental alienation, a family approach in therapy with inclusion of all members, alongside legal interventions is recommended.²³

Rejecting court directions that are aimed at improving the child's circumstances should be met with clearly defined and consistently implemented sanctions. This is based on the notion that it is better for the child to live with the targeted parent and have limited contact with the alienating parent than to remain with an alienating parent unwilling to make genuine effort in achieving therapeutic goals.²⁴

*Any views expressed by the child and any factors that the court thinks are relevant to the weight it should give to the child's views*²⁵

¹⁷ *McCall v Clark* (2009) 41 Fam LR 483 [122]

¹⁸ *FLA s 60CC(2)(b)*

¹⁹ *M and M* (1988) 166 CLR 69 at 76; *B and B* (1993) FLC 92-357 at 79

²⁰ Baker, Amy JL. 'Adult children of parental alienation syndrome' (2007) 42 (5) *PSYKOLOGIA* 394.

²¹ These included bad mouthing of the other parent thereby reducing their value; creating the impression that the targeted parent did or would hurt the child; minimizing the other parents affection so as to create psychological distance; withdrawing love if the child indicated affection for the targeted parent; and erasing the other parent from the life of the child by minimizing contact.

²² The benefit to the alienating parent can be in the form of convenience of not having to deal with the compromises of share custody or a form of revenge for perceived or experienced harm or rejection by the other parent or as a form of narcissistic satisfaction of being the most important person in their child's life.

²³ Templer, et al (2016) 'Recommendations for best practice in response to parental alienation: findings from a systematic review', *Journal of Family Therapy*

²⁴ *Ibid*

²⁵ *FLA s 60CC(3)(a)*

The views expressed by a child who is subject to pressures of alignment or alienation will likely reflect the views of the alienating parent with some variance depending on whether the alienation is described as mild, moderate or severe. Any view expressed will likely therefore be favorable to the alienating parent and most likely seek little or no contact with the non-custodial parent. However, in determining what weight the court must give these wishes, the court must first determine whether they are validly held and uninfluenced. If they are, the court will then be required to determine whether or not the views align with the child's best interest.²⁶ In cases of alienation, the test is likely to fail on both these criteria. First, the child's view is highly influenced and does not represent their independent viewpoint. Second, even if it does, it is unlikely to be in the child's best interest for the status quo to remain unchallenged. This is especially so in cases where children have falsely come to believe they are victims of abuse.²⁷

A full discussion of this topic is found in our response to questions 34-40.

*The nature of the relationship of the child with each of the child's parents*²⁸

In cases of alienation, the court is likely to find that a limited, or no relationship exists with the non-custodial parent despite a positive history, adequate parenting skills and a desire to spend time with the child, while the custodial parent is likely to have a very close relationship which borders on pathological enmeshment and exhibiting extreme gatekeeping behaviours.

²⁶ *R&R: Children's Wishes* [2000] FamCA 43; *Harrison and Woollard* [1995] 18 Fam LR 788

²⁷ Altobelli T, 'When a Child Rejects a Parent', Paper delivered 14 August 2010 at *College of Law, Advanced Family Law CLE*

²⁸ *FLA s 60CC(3)(b)*

In order to alienate a child it is necessary to break a child's attachment to a parent by:

- Creating fear and uncertainty in the child of the once loved figure; and
- Achieving the removal of the child from the normal attachment to that parent.

Attachment system suppression evidenced by the rejection by a child of a normal-range parent is a key indicator of parental alienation.

Attachment is a key component of healthy relationships and a child whose attachment with a parent has been destroyed will suffer the impacts not only in that relationship but in others too. When those attachments are threatened by repetitive messages not to love but to fear, and not to accept love but distort it as something harmful, the child enters into a process of psychological splitting.

Tactics used by alienating parents include, but are not limited to:

- Damaging the loving connection between the child and targeted parent;
- Unreasonably interfering with time the child spends with the targeted parent;
- Eradicating the targeted parent from their child's life;
- Purposefully withholding information about the child from the targeted parent;
- Making decisions about the child without consulting the targeted parent;
- Denigrating the targeted parent;
- Making false allegations of abuse against the targeted parent;
- Utilising support services to facilitate their campaign of denigration and false allegations of abuse;
- Emotionally manipulating the child;

- Demanding the child chooses a side in the custody dispute;
- Encouraging the child to have an unhealthy dependence on them;
- Inappropriately disclosing adult information about the targeted parent and custody dispute to the child; and
- Encouraging the child to be defiant towards the targeted parent.

The most common potential effects of brainwashing in children include²⁹: Loneliness, conflict with parents, depression, sleep problems, substance abuse, speech problems, sexual promiscuity, poor body image, poor eating habits, eating disorders, weight loss/weight gain, dishevelled living space, poor execution function (disorganisation), diminished activity, psychosomatic distortions, feelings of isolation, increased use of technology as an escape, lack of friends, sibling conflict (including violence), heightened fantasy life, diminished attention span, social identity problem, regressive behaviours, anxiety, conflicts in peer relationships, school disfunction, and memory loss.

Separation anxiety disorder is also common in alienated children, often because the child feels they have lost one parent and are terrified of losing the other.

*The likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from either of his or her parents*³⁰

Current literature shows that changing custody or residency arrangements in favour of the targeted parent can reduce and even ameliorate parental alienation. The available evidence suggests that the degree of change required may depend on the severity of the alienation. Awarding primary parental responsibility to the targeted

²⁹ S. Clawar and B. Rivlin, (2013) "Children held hostage: Identifying brainwashed children, presenting a case, and crafting solutions."

³⁰ FLA s 60CC(3)(d)

parent when parental alienation is severe is an important step in ameliorating parental alienation. Research findings indicate that removing the targeted child from the care of their preferred parent does not harm them, even if transient distress is experienced. Indeed, removing the targeted child from the alienating parent will protect the child from further harm. It will also allow for an improvement in the targeted parent-child relationship without further interference from the alienating parent.³¹

Inevitably, changing custody or residency arrangements will require adjustment for all the family members involved. Therefore, therapeutic support during this transition is important. Specialized family therapy needs to be court ordered and noncompliance with court orders needs to be sanctioned. Such sanctions will provide alienating parents with an incentive to engage in therapy and, thus, make therapeutic change. Ultimately, the aim of family therapy is to achieve and maintain healthy parent-child relationships and to facilitate a new family environment that allows parents to maintain a healthy distance from each other with cordial communication on an "as needed" basis.³²

Order less likely to lead to further proceedings

In severe alienation and high conflict cases, co-parenting and shared living arrangements are unlikely to be successful in reducing further proceedings. To satisfy this factor, the court will either award sole parental responsibility and residence to the alienating parent or order a change of residence to the targeted parent. Academic research supports reversing residence

³¹ Templer, et al (2016) 'Recommendations for best practice in response to parental alienation: findings from a systematic review', *Journal of Family Therapy*

³² Ibid.

of the child/ren in these cases.³³ Of course either parent is entitled to appeal a judicial decision.

Q15 - Family Violence

What changes could be made to the definition of family violence, or other provisions regarding family violence, in the Family Law Act to better support decision making about the safety of children and their families?

The Act defines 'family violence' to mean "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful."³⁴

Parental alienation is a form of coercive and controlling behaviour, and children living under that influence are fearful of expressing themselves, and often even made to be fearful of their other parent.

The Act specifies examples of family violence to include 'preventing the family member from making or keeping connections with his or her family.'³⁵ Parents who alienate children from their loving parents clearly fall into this category. Furthermore, the research on the topic shows that children living in such conditions are deprived of their autonomy and as such are effectively deprived of their liberty.³⁶

Notwithstanding the clear acknowledgment in the Act for these elements of parental alienation as family violence, the courts have been ambiguous in the response to consideration of parental alienation as family violence. This is due to:

- A lack of understanding by the judiciary about the controlling and abusive behaviours that lead parental alienations;

³³ Ibid

³⁴ FLA s 4AB(1)

³⁵ FLA s4AB(2)(i)

³⁶ FLA s4AB(2)(j)

- Lawyers and professionals avoid using the term 'parental alienation' due to the controversial nature of the term and whether or not it was a valid psychological 'syndrome' – leaving the law to evolve through submissions by unqualified Self-Represented Litigants;
- The courts over-reliance on reports written by single experts, often social workers who have no substantial training in child psychology or understanding of parental alienation dynamics; and
- The National Domestic and Family Violence Benchbook used to train judges is underpinned by gender biased ideology (the Duluth model) and selective research rather than an evidence-based best practice in the interests of the child. We wholly support the submission made by For Kids Sake on this topic³⁷ calling for evidence-based approach to family violence.

Severe cases of alienation should be considered by the court as nothing short of child abuse. The Act³⁸ defines psychological abuse as 'causing the child to suffer serious psychological harm, including (but not limited to) when that harm is caused by the child being subjected to, or exposed to, family violence.'

There is little doubt that parental alienation can lead to 'severe psychological harm.' To ensure consistency in interpretation, the Act should cite the following as examples:

³⁷ ForKidsSake, 'Protecting Children: Towards an evidence-based approach to family violence', submission to the Social Policy and Legal Affairs Committee, Parliamentary inquiry into a better family law system to support and protect those affected by family violence (May 2017)

³⁸ FLA s4('Abuse')(c)

- Promoting an unhealthy relationship of ‘enmeshment’ that is void of individual autonomy;
- Allowing a child to believe a false narrative of abuse and victimhood; and
- Persistent maligning of the other parent to the detriment of the child’s relationships with them..

In assessing the impact of psychological abuse or family violence via alienation, the court should:

- Treat psychological and emotional abuse with the same seriousness as it treats physical and sexual abuse;
- Measure the impact of conduct on the child and ignore the state of mind of the perpetrator. The parent’s state of mind and “genuinely-held beliefs” is beyond the mandate of a court that ought to be concerned first and foremost with the best interests of the child;
- Be ready to accept short-term pain for a long term gain. This includes, if necessary, an order for a change of residence (as the court has done in *Ralton & Ralton*³⁹ and similar cases);
- Send a clear signal that the court will not tolerate psychological abuse and alienating behaviours.

EMMM recommends that:

1. The courts must consistently treat cases involving parental alienation as cases of ‘family violence’ and as a form of emotional and psychological child abuse;
2. Section 4AB should be amended to unambiguously include a definition of parental alienation as ‘family violence’;
3. The word ‘unlawfully’ to be removed from s4AB(2)(j) so as to allow a broader reading of

the deprivation of liberty by the judiciary. This is consistent with a child-focused approach where the *mens rea* or lack thereof of a perpetrator is irrelevant;

4. The National Domestic and Family Violence Bench Book should not be relied upon in its current format by the Family Court.
5. The definition of psychological abuse in Section 4 (‘Abuse’) should be clearly articulated to include the characteristics of severe parental alienation.

Q25 - Misuse of Process

How should the family law system address misuse of process as a form of abuse in family law matters?

Many parents seeking to separate their children from a loving parent do so under the guise of protective parenting. There is no easier way to gain sole custody of a child than to claim the other parent is abusive, and to thereby become a sole parental influence on children’s thinking, likes and dislikes.

As a result of the above, there is a strong correlation between cases of alienation and cases in which physical and/or sexual abuse is claimed. Conversely, there would be cases where alienation is falsely claimed where legitimate abuse has actually taken place.

The court often has difficulty in distinguishing between the two. However, experts educated in alienation dynamics can typically tell the difference between true and false claims of abuse, as there are distinct characteristics which tell the two apart (for instance, a lack of ambivalence). With proper training, judicial officers can also acquire this knowledge and be in a better position to distinguish true and false claims of abuse, to address the misuse of the court system and to

³⁹ [2016] FCCA 1832.

recognise the role of alienating parents as an abuser, both of the child and the system.

In many instances, the time frames of legal proceedings in family law facilitate parental alienation dynamics. For instance, an alienating parent can withhold ordered contact with a targeted parent until that parent can bring a contravention application before the court, which can in some instances take up to 12-months, by which time significant damage can be done to the parent/child relationship. Legal Aid is not available for the prosecution of contravention applications which are notoriously difficult to run for a self-represented litigant. Any adjournment or procedural delay works to the advantage of the alienating parent. Courts are reluctant to place children in the care of parents with whom they have not had any relationship for long periods of time, which may well not be the fault of the targeted parent seeking to spend time, or even to simply communicate, with their children.

To eliminate the risk arising from misuse of the process, the court must create strong disincentives against false allegations. We make the following recommendation in this regard:

1. Applications seeking no contact for one parent on the basis of allegations of abuse must be treated cautiously and dealt with urgently. In these instances a properly trained expert in family violence and parental alienation dynamics should be consulted to determine risks to the child from either parent;
2. Courts should not, as a matter of course, drastically restrict contact in interim proceedings unless and until it is satisfied, based on real evidence, that there is a clear and present risk posed to the child from ongoing contact with a parent;

3. Orders for supervised visitation should only be used where necessary for the safety of the children, not to pander to unreasonable anxieties. The principle in *Russell and Close* should be overturned through legislation;
4. Section 117AB ought to be reintroduced as it affected only those who “knowingly made a false allegation.” Where the court finds on the balance of probability that a parent has purposely lied under oath..

Q34-40 - Children’s perspectives

The Act states that additional considerations in determining children’s matters are ‘any views expressed by the child and any factors (such as the child’s maturity or level of understanding) that the court thinks are relevant to the weight it should give to the child’s views’

While the involvement of children in choosing their own destiny may sound idealistic in theory, it is not without its shortcomings when applied to cases of high conflict or alienation.

First, the views expressed by alienated children will generally show strong allegiance to one parent and a rejection of the other. These views are invariably ‘unsound, founded on improper considerations or influenced by others’⁴⁰ and should therefore be given little weight.

Second, the court must make its determination of the best interests of the child notwithstanding their wishes and that may in some circumstances involve the rejection of the stated wishes of that child.⁴¹

⁴⁰ Doyle and Doyle (1992)92-286 at 79,128

⁴¹ Harrison and Woollard [1995] FamCA 30; (1995) 18 Fam LR 788, R&R - Children’s Wishes [2000] FamCA 43

EMMM voices the concerns raised by Magistrate Altobelli in a paper entitled “When a Child Rejects a Parent”⁴² discussing the dangers of seeking the wishes of children in alienation cases. He concludes that ‘ascertaining the views of the child [...] becomes, for the alienated child, potential vehicles for harm.’

Johnston and her colleagues⁴³ warn that in an adversarial litigation process, powerful professionals are seen as allies or enemies. “The risk is that giving an alienated child a voice allows them to “buy in” to this potentially harmful process, or to “take sides”, and to engage in the “tribal warfare” [sic] that so typically occurs in these cases. The great risk of giving a voice to the alienated child is that it consolidates and validates in their own minds their own negative convictions, and gives them a platform.” Even when the views of the alienated child are ascertained, their inaccurate reasoning and loose logic is hardly the sort of view that is credible, or would be given weight to.

For the above, the probative value of children’s wishes evidence is of no value to the court, yet the trauma this process inflicts on the child has a lifelong cost. To put a child in the position where they are being asked to reject a parent, is paramount to ask a child to reject half of themselves. Similarly, asking children to choose between their parents is no less psychologically abusive than asking parents to choose between two of their children.

In high-conflict and suspected-alienation cases, the court should not seek to involve children. The children are probably over-involved in proceedings already. In cases where the children have been in the sole care and influence of the preferred parent for some time, the views of the children are inherently unsound, founded

on improper considerations or influenced by others - hence the probative value of their evidence is naught.

EMMM recommends the following in relation to children’s wishes:

1. The court must shelter children from exposure to family court proceedings;
2. Children should never be made to choose between two loving parents;
3. If a court deems it necessary to determine the expression of the views of the child, it should first determine that it is satisfied that the views are sound, founded on proper considerations and free of influence;
4. Where a child has been denied contact with one parent, a presumption should apply that views expressed against the non-resident parents are unsound, founded on improper considerations and influenced by others and should be given little weight..

Q41-44 - Professional skills and wellbeing

Critical to the identification of cases where parental alienation dynamics exist is the appropriate training and core competencies for all single expert witnesses and family report writers. EMMM considers that the minimum key areas of expertise required include:

- Attachment systems;
- Personality disorders;
- Anxieties, fears and phobias;
- Family systems; and
- Complex trauma.

‘Experts’ who are appointed but not appropriately trained in these specific fields are not appropriately qualified to diagnose the psychological control of a child found in parental alienation dynamics.

⁴² College of Law, Advanced Family Law CLE, 14 August 2010

⁴³ Johnston, Roseby and Kuehnle, ‘In the name of the child’ at p.367

An understanding of personality disorders is also important as it is found in a high percentage of instances of parental alienation dynamics. Personality types with Narcissistic Personality Disorder or Borderline Personality Disorder are vulnerable to rejection and abandonment and to triangulation of children into family conflict. This can include trauma reenactment leading to a false narrative and victimisation of the child/ren.

One emerging area that is of growing concern is that of Trauma-Informed Therapy. This concept, cited approvingly in the issues paper, is unsupported by any psychological research on the topic. Other therapies such as Cognitive Behavioural Therapy have far better evidence to support their practice. Furthermore, there is a danger of applying an approach that assumes trauma in cases where the court has yet to establish that trauma has occurred, thus reinforcing false beliefs.

Similarly, the suggestion that service providers move 'from a caretaker to a collaborator role'⁴⁴ is dangerous in a parental alienation context. In one case involving social workers from the Child Protection Unit at Princess Margaret Hospital⁴⁵ the court found that 'the therapists provided therapy on the premise that the children had been abused by the father' where abuse was never substantiated. The court concluded 'it is highly likely the approach of the therapists and their discussions with the children reinforced the children's beliefs.' In that case, the ICL submitted that the therapy provided was abusive of the children. The therapy used was Trauma-Informed Therapy.

EMMM believes the courts and appointed experts and therapists should also consider the welfare, and

specifically the mental health, of the parents involved in these disputes and that orders should be made for appropriate psychological therapies and interventions where needed in instances where parents are going to be removed or have restricted involvement in the lives of their children, and/or when they are found to have a personality disorder and/or delusional beliefs. The negative consequences to children who have a parent commit suicide as a result of family law proceedings should not be taken lightly.

EMMM recommends the following in relation to professional skills and wellbeing:

1. Experts need to know what parental alienation is, how to identify it and how to respond to it;
2. Education and training in these dynamics should be made available for Independent Children's Lawyers and members of judiciary;
3. Further funding and research must be made available to advance reunification therapy in cases of parental alienation;
4. Children should be provided with their own therapist in high conflict cases, potentially instead of an ICL;
5. Courts must consider the mental welfare of parents and children going through its system and work in conjunction with the health system;
6. Trauma-Informed Therapy should be rejected in all cases where allegations of abuse are made and are yet to be substantiated by the court;
7. All experts providing reports and expertise to the court on children's matters must be regulated by AHPRA; and
8. Court-employed family consultants should enjoy no greater immunity in cases of

⁴⁴ Mental Health Coordinating Council
<<http://www.mhcc.org.au/sector-development/recovery-and-practice-approaches/trauma-informed-care-and-practice.aspx>>

⁴⁵ Mandel and Blum [2014] FCWA 51

professional negligence or incompetence than externally appointed consultants.

Independent Children's Lawyer to ensure that any report writer appointed be appropriately trained in these areas.

Conclusion

EMMM recognises that the phenomenon of parental alienation is best addressed in the field of psychology, rather than law, and acknowledges the difficulties encountered by legal practitioners and judicial officers in defining, identifying and resolving family law matters in which parental alienation is occurring.

Indeed, we question whether the courtroom is the appropriate place for resolving cases of parental alienation, as there are very strong arguments that a drawn out adversarial system actually facilitates alienators. There can be no question that the current delays and waits for hearings inherent in the family law system are damaging to the children and families involved.

It is our view that the best outcomes for families experiencing parental alienation are going to be guided by current psychological and academic research into appropriate responses to and therapy for parental alienation, rather than by legislation or legal rules, processes and precedents.

It is our view that it is imperative that parental alienation must be included in the definition of family violence and that it be identified as early as possible in matters where it is found to be occurring so that appropriate interventions can take place to protect the affected children.

It is our view that any experts engaged by the courts to evaluate cases involving alienation must be appropriately trained in the fields of attachment systems, personality pathology, family systems therapy and complex trauma. It should be the role of the

We trust that this submission will be helpful in assisting the Australian Law Reform Commission better understand the phenomenon of parental alienation in a legal context, and that our recommendations can be taken on board in the context of reframing the Family Law Act to better protect children from this insidious form of emotional and psychological child abuse.