



Submission to the Legal and Constitutional Affairs Legislation Committee

Family Law Amendment Bill 2023

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The Eeny Meeny Miney Mo Foundation

The Eeny Meeny Miney Mo Foundation ('EMMM') is the only specialised organisation in Australia raising awareness of and providing education about parental alienating behaviours. EMMM campaigns for better education and services for families affected by these behaviours. EMMM is a non-profit charitable organisation that is gender neutral and child focused. It is our vision that children be free to love and spend time with both parents and for children to be free from child abuse and family violence, including parental alienating behaviours. EMMM supports 4,800 individuals who have been impacted (directly or indirectly) by family separation, parental alienating behaviours and have been involved in family law systems. We also have averaged 28,000-32,000 visitors to our webpage each month and over 14,000 following our Facebook page. The individuals we support include parents, adults whose parents separated when they were children and other extended family members. In our experience, the family law systems in Australia are not trauma informed, and all parties who enter the Family Court or Federal Circuit Court are traumatised by the experience, including the children who are caught in the middle. Suicidality is high among parents alienated from their children and who have been involved in family court proceedings (Lee-Maturana, Matthewson, & Dwan, 2022).

Parental Alienating Behaviours

Parental alienating behaviours are a complex cluster of actions used by one parent (alienating parent) to damage the relationship between the child and the child's other parent. Parental alienating behaviours include numerous coercive tactics. Parental alienating behaviours include, but are not limited to, preventing the child from seeing their other parent for no justifiable reason, denigrating the other parent in front of the child and/or directly to the child, and making false and deliberately misleading allegations of abuse against the other parent. (see Haines, Matthewson, & Turnbull, 2020 for a thorough, scientifically backed overview of parental alienation). It is estimated that false allegations of abuse account for 79% of cases during family court proceedings (Ross & Blush, 1990; Ferguson et al., 2018; Webb et al., 2021). False allegations of abuse are acts of aggression with the aim of permanently severing the parent-child relationship. Parental alienating behaviours are acts of coercive control and a serious form of child abuse (Harman & Matthewson, 2020). Children who are subjected to these abusive behaviours experience the same trauma reactions as those who have suffered other forms of abuse. This includes complex post-traumatic

stress reactions, substance use problems, self-harm behaviours, eating disorders, depression, anxiety, and suicidality (Verhaar & Matthewson, 2022).

There is much misinformation and disinformation about parental alienating behaviours and parental alienation. The misinformation and disinformation is silencing a large group of trauma victim/survivors and perpetuating this insidious form of family violence and child abuse. The scientific literature strongly supports the existence of parental alienating behaviours (see Harman, Warshak, Lorandos, & Florian, 2022). EMMM works with the University of Tasmania and other organisations nationally and internationally by advancing scientifically backed accurate information about parental alienating behaviours. Links to scientific literature can be found here: <https://emmm.org.au/academic-articles>.

Family Law Amendment Bill 2023

The proposed changes in the Family Law Amendment Bill 2023 are detailed and require more time than has been given for proper scrutiny, analysis and external consultation. Families who end up in the judicial system are there because they are unable, or one parent is unable to co-parent their children after family separation. Family violence and child abuse are often present in these custody disputes. Children who are innocently caught in custody disputes are already vulnerable. The decisions that are made today about family law will change the trajectory of many children's lives and this may have long-lasting traumatic consequences for children caught in parenting disputes. If the best interests of vulnerable children are truly at the heart of the Family Law Amendment Bill, more public consultation must be considered. The consultation period was too short for adequate public consultation and consideration of complex changes with significant impacts on children. Further, the Family Law Amendment Bill is recommending changes that are contrary to international scientific evidence on the best interests of children and shared parental responsibility. The scientific evidence must also be carefully considered when making changes that will impact on the life trajectories of children for many generations to come.

Removal of the legal presumption of shared parental responsibility

EMMM disagrees with the removal of the legal presumption of shared parental responsibility. By default, parents should have protected by law their responsibility to have input into major decisions affecting their children. International research clearly shows that shared parenting is associated

with the best outcomes for children (see Neilson, 2011, 2013a & 2013b, 2014, 2018; Baude et al. 2016; Braver & Votruba, 2018; Poortman & van Gaalen, 2017; & Spruijt & Duindam, 2009). Some examples of the positive outcomes of shared parenting for children include: (1) healthier emotional and social development, (2) healthier behavioural adjustment, (3) positive parent-child relationships, (4) greater parental involvement, (5) healthier family dynamics, (6) larger and more stable social support network, (7) better academic performance through stability, (8) gender equality from seeing the importance of both parents being involved in child rearing, and (9) long term psychological well-being in adulthood.

Where there are legitimate concerns for the safety of children, such as exploitation, neglect or abuse, appropriate measures need to be taken to protect children from further harm. However, children learn essential life skills, unique qualities, different perspectives, social skills, knowledge and a greater variety of experiences when both parents contribute to their upbringing. Removing the legal presumption of shared parental responsibility could limit the active involvement of one parent and potentially hinder the child's development, sense of stability, sense of identity and opportunities in life. It could also lead to emotional and psychological challenges.

When children are denied access to a loving relationship with both parents, the psychosocial outcomes for these children are serious and negative (Bentley & Matthewson, 2020; Miralles, Godoy, & Hidalgo, 2021; Verhaar, Matthewson & Bentley, 2022). Removing the important legal presumption of shared parental responsibility is in direct violation of the best interests of children. It does nothing to preserve this important right and need for children.

The withdrawal of the legal presumption of shared parental responsibility is a significant decision to make and implement without a thorough investigation into the likely consequences for children. See Kruk (2005; 2012) for a detailed discussion of the importance of shared parental responsibility. The consequences of removing the legal presumption of parental responsibility include:

Perpetuation of family violence and child abuse

Removing the legal assumption of shared parental responsibility does nothing to protect children from perpetrators of child abuse and family violence. In fact, removing this legal presumption could allow a perpetrator of coercive control to take advantage of assuming primary parental responsibility

to maintain power and control over their children and their children's other parent by blocking the other parent from having input into major decisions affecting their children.

An increase in lengthy and contentious custody disputes

Parents who may be victim/survivors of family violence will be forced into an already overstretched court system to fight for their children's right to have a relationship with both parents and to be free from abuse. Victim/survivors may be forced to apply to the court to obtain orders to have input into major decisions affecting their children. This means parents will need to spend significant time and money to be involved in parenting their children when one parent is legally able to prevent them from doing this after family separation.

Legally sanctioned parental alienation

Under the UN Convention on the Rights of the Child [UNCRC] (1989), children have rights, and adults have the responsibilities to honour those rights. It is a child's right to have a meaningful relationship with both parents and have equal access to the care, love, and support of both parents. If the legal presumption of shared parental responsibility is removed and a parent engages in parental alienating behaviours (denying contact, coercively controlling, influencing and manipulating a child to reject their other parent, misrepresenting the other parent as a danger in the absence of evidence of risk of harm, preventing the other parent from parenting their child), the child will lose their right to have a meaningful relationship with the other parent and often family associated with that parent. UNCRC recognises the child's right to maintain regular contact with both parents, even if they are living in different countries.

Adverse consequences for children

International research shows that children in sole parental care after family separation experience more psychological distress than do children in joint physical custody and nuclear families. This research indicates that joint physical custody can act as a buffer against the adverse effects of family separation (Fransson et al., 2016). The psychological distress seen in children of separated families appears to continue into adulthood (Laumann-Billings & Emery, 2000).

Removing the legal presumption of shared parental responsibilities will make it easier for parents to use parental alienating behaviours. Alienating parents will be legally able to withhold children from the child's other parent and prevent that parent from being involved in major decisions affecting their children. The impacts on children alienated from a loving parent and exposed to other parental alienating behaviours are significant. They include serious psychopathology in adulthood such as depression, anxiety and suicidality, low self-esteem and self-sufficiency, alcohol and drug use rates, ongoing feelings of grief, loss and abandonment, and repetition of parental alienation from their own children (Bentley & Matthewson, 2020; Harman, Matthewson & Baker, 2022; Miralles, Godoy, & Hidalgo, 2021; Verhaar, Matthewson, & Bentley, 2022). These difficulties can last a lifetime and even after the adult alienated child reunifies with the parent they were alienated from. The voluntary reunification process following parental alienation is complex, psychologically and emotionally challenging, and is not guaranteed to be successful (Matthewson, Bowring, Hickey, Ward, Diercke, & Van Nierker, under review). Parental alienating behaviours damage children and families for generations. Preventing a parent from having input into major decisions affecting their children after family separation will adversely affect children and families for generations.

The International Council on Shared Parenting (ICSP) is the world leading organisation comprising leading academics and practitioners focused on the best interests of children after family separation. ICSP aims to advance scientific knowledge on the needs and best interests of children whose parents are living apart, and to formulate evidence-based recommendations about the legal, judicial and practical implementation of shared parenting. Following their 6th annual conference this year that consisted of world leading experts from 34 countries, ICSP made nine policy recommendations.

The ICSP recommendations can be read in detail here: <https://www.twohomes.org/conclusions-of-the-sixth-international-conference-on-shared-parenting/> and summaries of the recommendations are:

1. Sole custody or primary residence orders are not serving the needs of children and families of divorce.
2. Shared parenting must encompass both shared parental decision-making and shared parental responsibility for the day-to-day upbringing and welfare of children, between parents, in keeping with children's age and stage of development. Importantly, shared parenting should be enshrined in law.

3. On the basis of vast and robust scientific evidence, social scientists can confidently recommend presumptive shared parenting to policy makers.
4. The UN Committee on the Rights of the Child, governments and professional associations must identify shared parenting as a fundamental right of the child.
5. Strong accountability structures need to be established for all institutions responsible for the welfare of children and families.
6. Parents and professionals are responsible for being aware of acting to prevent the intergenerational transmission of trauma.
7. Shared parenting is a viable post-divorce parenting arrangement that is optimal to child development and well-being for most families following family separation.
8. Addressing the issue of family violence in family separation and addressing parental alienation are not mutually exclusive endeavours. Recognition of parental alienation as a form of family violence is part of our collective responsibility to address family violence in all its forms. Failing to do so puts children at risk of further harm.
9. Formal and informal social support is vital for the separating family.

Protecting sensitive information

EMMM is extremely concerned that the court's ability to make decisions about parenting capacity, properly assess family violence and child abuse risk, and make accurate determinations about the best interests of children. This will be seriously hampered if the court cannot have reasonable access to the collateral evidence it needs to make fully informed decisions.

Restricting this type of evidence that can be used in the court will effectively leave the judiciary in a situation where they will be making blindfolded decisions that will impact the entire course of a child's life. Gathering background information such as medical and mental health records is an essential part of case conceptualisation by mental health practitioners conducting psychological and family assessments for child custody reports for the Family Court. Without this information, the practitioner is unable to assess other factors that might be relevant to the case, such as mental health conditions, past traumatic events, intergenerational cycles of abuse, medications, whether they are undergoing treatments or therapy, whether the individual has insight into their behaviours; all of which can help inform a comprehensive understanding of the individual's presenting problems or planning for the future.

Independent Children's Lawyers

Independent children's lawyers (ICL) have an important role to play protecting children's legal rights in complex and contentious custody disputes. EMMM is concerned about the roles independent children's lawyers (ICL) will be required to assume under the Family Law Amendment Bill. Lawyers are trained in their law; they are not trained in psychological processes, children's development and family violence and child abuse risk assessment. The proposed changes will see ICLs acting outside their training and competence areas. The impacts of this could be serious and detrimental to children.

We urge any Family Law Amendment Bill to legally ensure that a properly trained psychologist is appointed in all custody disputes that enter the judicial system. This psychologist must be knowledgeable and competent in working with children, assessing family violence and child abuse risk, and has the capacity to accurately determine if parental alienating behaviours are present. These psychologists must be properly trained and accredited to do this work. Failing to protect a child's psychological well-being during custody proceedings is failing to ensure the best interests of the child and their future psychosocial functioning.

Recommendations

We recommend that a modern Family Law Act and family law system should:

- Recognise the rights of children to have a relationship with both parents and protect this by law. The only exception to this should be in cases of family violence and child abuse where shared parental responsibility and shared care poses a risk of harm to children that cannot be prevented through effective, scientifically backed therapeutic intervention programs.
- Define what "the best interests of the child" are with a definition that is grounded in scientific evidence.
- Define parental alienating behaviours in law. The definition must be consistent with current scientific literature. Over 33, 000 people support this recommendation. See our petition here: <https://bit.ly/3IKmma1>

- Support separating families' transition through the process of separation in a trauma informed and efficient manner. This support must take a trauma informed approach. Such an approach must recognise all forms of trauma, including exposure to parental alienating behaviours.
- Separating families must be supported through scientifically sound therapeutic intervention programs with appropriate court orders to encourage active participation in instances of intractable conflict.
- Divert cases away from the courtroom by promoting mediation, arbitration and therapy as alternatives wherever appropriate. Such alternatives must be scientifically sound and be facilitated by properly trained practitioners.
- Only make decisions for families when it is clear that they are unable to make decisions for themselves.
- Children should never be made to choose between two loving parents when parents are unable to effectively co-parent.
- 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 are free from influence. The views of the child should be obtained using a psychologist who is properly trained to determine if the child's views are indeed their own and have not been coerced.
- Make proper use of appropriately qualified experts who can assist the Court to identify family violence and child abuse including parental alienating behaviours.
- There needs to be stronger collaboration and integration between the Court and therapeutic intervention programs.
- All families entering the family law system need to be followed up by appropriately qualified and trained practitioners during and after their involvement in the family law system to ensure that each family's needs are being met and that outcomes have not resulted in adverse consequences for children.
- Ensure that the outcomes of its decisions are followed up and monitored (for at least 12 months post-judgment) to ensure that judgments do not result in perpetuating poor or negative outcomes for families.

- When the Court determines that an expert or a Family Court Consultant needs to conduct a family assessment, such practitioner needs to be experts in:
 - Child development
 - Trauma informed practice
 - Family violence and child abuse risk assessment
 - Family systems
 - Attachment systems
 - Assessment and diagnosis of mental illness
 - Complex trauma

- Similarly, if the Court determines that a family needs therapeutic support and intervention, the practitioner must also be experts in the above areas.
- All Court appointed experts, including therapists and Family Court Consultants should be registered with AHPRA to ensure a level of accountability and standard of practice.
- All practitioners involved in family law matters need to know what parental alienating behaviours are, how to identify them and how to respond.
- All practitioners involved in family law matters need to be up to date with the latest peer reviewed research and evidence based practice, and use current evidence based, valid and reliable assessment tools, frameworks and, if providing therapeutic intervention, use only intervention programs that are based on scientifically sound principles, have an evidence base and are trauma informed.
- Research from UTAS has revealed that most therapeutic practitioners working with alienated families who completed a survey of their practices, did not use current research, existing therapeutic frameworks or relevant theoretical models to guide their work. These findings indicate that there is no consistency in the therapeutic intervention's courts are ordering families to engage in and these therapeutic interventions may not be evidence based or effective (Huxley, 2023). Therefore, practitioners providing therapeutic interventions to families engaged in family law disputes must be properly trained and accredited to do the work the Court requires them to do. Their work must be monitored and regulated in some way to ensure that families are receiving safe, effective, trauma informed and scientifically sound therapeutic intervention programs.
- Such training for accreditation to do this work must be provided by established tertiary education providers and not by self-appointed private entities looking after their own business interests.

- Training and accreditation programs must be conducted by appropriately qualified and experienced educators who are also knowledgeable in child development, trauma informed practice, family violence and child abuse risk assessment, family systems, attachment systems, assessment and diagnosis of mental illness, complex trauma, parental alienating behaviours, and evidence based interventions for families engaged in family law disputes. The curriculum of these programs must also be consistent with the current science and promote trauma informed inclusive practice.
- Finally, therapeutic and legal practitioners working with families involved in family law disputes are often exposed to their clients' conflict and trauma. Sometimes, practitioners are the target of family members' aggression and vicarious trauma reactions are common amongst practitioners. A modern family law system better supports the wellbeing of practitioners by providing mental health support, regular ongoing professional supervision of practitioners and mental health literacy campaigns for practitioners so they are more informed about their own wellbeing and where they can obtain confidential support when needed.

Research Recommendations

Currently, there is no robust research on the long term psychosocial outcomes for children at the center of parenting disputes in the family law system in Australia. Little is known about the outcomes of families who complete family dispute resolution and do not commence family law proceedings, and little is known about the long term outcomes for children who are associated with family court orders in Australia. We also need to ascertain the prevalence of the use of parental alienating behaviours in Australia. EMMM and UTAS are well placed to conduct this research because we are already conducting research into these important issues, and we are independent of the family law process.

Through the research EMMM and UTAS are conducting, and from supporting victim/survivors, we hear firsthand the emotional, psychological, and practical challenges victim/survivors of parental alienating behaviours face. We also hear about the additional trauma they experience during family law proceedings. Their experiences provide valuable insights into the impact of the family law system and parental alienating behaviours on their well-being, relationships, finances and their many tragic losses.

By collecting data from victim/survivors, practitioners and judiciary members, we can gain a deeper understanding of separated families' unique needs, concerns, and experiences. Such information will contribute to developing effective legal and therapeutic interventions and trauma informed environments for reunification, rekindling relationships, healing and recovery.

A robust research program can provide practical insights into complex family dynamics, challenges, and potential solutions to the problems separated families face. Having a robust research program alongside family law proceedings will bridge the gap between theoretical research and real-world application. EMMM and UTAS can ensure that solutions are practical, feasible, and responsive to the diverse needs of families.

Such research can inform the development of evidence-based approaches and best practices. Consequently, practitioners will be able to access a broader pool of knowledge and expertise to identify effective strategies by consulting with leading researchers who already deeply understand the complexities. Stakeholders can leverage their collective knowledge and expertise by bringing together different perspectives. Collaboration encourages innovative thinking, sharing best practices, and the development of comprehensive solutions that address the multidimensional aspects of family separation and family violence, including parental alienating behaviours.

We understand the Australian Institute of Family Studies (AIFS) aims to conduct research into the well-being of Australian families and make evidence-based practice recommendations in the family services sector. It is our view that the research conducted by AIFS on the family systems is not enough. The only data they report in relation to the outcomes for children following family court outcomes is from parent reporting alone. There are significant limitations to relying on parent reports alone to ascertain the long term impacts of parenting disputes on all family members involved. Individual reporting can be influenced by personal beliefs, perspectives, motivations and biases. The research program we are recommending is action research collecting data from multiple sources and informants at multiple time points following each family's journey through the family law system and for at least 12 months after they leave the system. Action research allows for simultaneously collecting research data while providing recommendations back to the family law system to make adjustments when it becomes evident that the system is not working in the best interests of children. This would make the family law system truly evidenced based and a world leader in supporting families and children going through the trauma of family separation.

EMMM welcomes the opportunity to discuss our recommendations further.

Conclusion

“Let’s hope this is the beginning of it... this is the beginning of us, as a society starting to realise... that no matter what happens between parents, that children are not weapons that can be used against the other.”

(Quote from an adult alienated child in Verhaar et al., 2022).

Authors

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Dr Mandy Matthewson is an experienced clinical psychologist and senior lecturer in psychology at the University of Tasmania. She has published extensively on parental alienating behaviours. She is experienced in providing therapeutic intervention to families engaged in family law disputes and provides therapeutic support to children who have been exposed to parental alienating behaviours. Dr Matthewson is a Director of the Eeny Meeny Miney Mo Foundation, the Parental Alienation Study Group, and a delegate of Global Action Research Integrity in Parental Alienation.

Ms Amanda Sillars

Ms Amanda Sillars is the founding director of the Eeny Meeny Miney Mo Foundation. She has lived experience of being exposed to parental alienating behaviours, both as a child and a targeted parent, now reunified with her children. Through the Eeny Meeny Miney Mo Foundation, Ms Sillars supports, educates and guides families and individuals exposed to parental alienating behaviours. She also presents workshops for alienated families and practitioners working with alienated families. Ms Sillars has almost completed a Bachelor of Psychological Science at Griffith University after a long career in accounting.

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