



Overcoming Parental Alienation

Reconciling Parents and Children

Dialogue in Growth (D.i.G) Pty. Ltd ABN: 83 151 471 742

"Reconcile with Your Children, Reconcile with Yourself if you Cannot"

CONFIDENTIAL

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**Response to: Exposure Draft - Family Law Amendment Bill 2023 Consultation Paper
January 2023**

1. Conclusions

Amending the Family Law Act in the manner proposed does not reflect social and community expectations about the role of family relationships in protecting and nurturing children regardless of the family configuration. Such changes would reduce the scope of the children's best interest only to protection from gendered forms of family violence acceptable to the stakeholders informing the proposal. Stakeholders advising the proposal appear to ignore research and evidence that does not support their presumption that family violence only impacts women and children.

These changes propose repealing sections of the Family Law Act 1975 that protect women and children from types of family violence to which Family Law is already ill-equipped to respond. These forms of family violence are similar to the cancel culture featured in social media. They represent contemporary threats to children's relationships with all family members regardless of gender.

A law that excludes certain members of society from remedies to protect themselves and their children is unjust. A law that removes considerations about the benefit of the family and family relationships with all family members is not a Family Law. It socially engineers the family and its relationships out of social and legal recourse. It is an oppressive law because it imposes ideas about the role of family that are incongruent with the social expectations of people who may engage with it.

Parents may not want to engage with an unjust system that does not reflect their values and beliefs and where the Family Court does not enforce its Orders. Indeed, as members of society, they may think they are under no compulsion to obey unfair or oppressive laws that will harm them and their children. It is, therefore, likely that the amendments may cause more of the same issues they claim to address if enacted¹.

¹ Fisher, L. D. A. (2017). 'Sally Mcmanus Has Nothing to Apologise For'. Retrieved from <https://thenewdaily.com.au/finance/work/2017/03/16/sally-mcmanus-unjust-law/>

Walton, K. (2017). Is Breaking the Law Ever Justifiable? Retrieved from <https://www.sydney.edu.au/news-opinion/news/2017/03/17/is-breaking-the-law-ever-justifiable-.html>

The proposed amendments to the Family Law Act of 1975 do not reflect consultation with parent and caregiver bodies or practitioner groups whom the amendments will affect. These groups and bodies could speak to the impact of repealing sections of the Act critical to the presentations they experience.

Family Law requires a structural overhaul to better respond to contemporary cancel-culture-like threats against children and their family relationships. Such an overhaul should include triaging cases for urgent time-limited intervention before the situation degrades to the point where a contested trial is required. The Family Court should adopt a therapeutic jurisprudence model. It should enforce its orders where a judicial determination is necessary, as compliance is selective under the current system.

2. Summary Response

- a. The proposed amendments do not acknowledge the significant proportion of family, violence and child sexual abuse claims that are deliberately misleading. It is a form of family violence from which Family Law should protect children.
- b. The rationale for the proposed amendments does not support family and family relationships as the vehicle for fulfilling children's best interests.
- c. The proposed amendments propose to respond to the United Nations Charter of the Rights of The Child (UNCRC) selectively. They do not respond to Article 5 of the UNCRC requiring state support for parents to fulfil their responsibilities.
- d. Repealing the presumption of shared care removes the family and its relationships from Family Law. If enacted, the Family Law Act will have nothing to do with families or the Law.
- e. Repealing Section 4AB of the Family Law Act 1975 removes a form of family violence equally affecting both mothers and fathers and their children. It is a contemporary form of family violence presenting as a cancel culture within families that ruptures children's relationships with a parent or caregiver. It means that the women and children the amendments claim to protect may have no recourse through Family Law. It also results in the discriminatory exclusion of men from access to legal remediations of such forms of family violence against them and their children.
- f. A Family Law Act reflecting the proposed amendments would no longer reflect social and community expectations about the role of family and family relationships. The Family Law Act would contain no aspirations for parents, children or families they would recognise.
- g. If enacted, the proposed amendments would result in legislation that is even less able to respond to contemporary cancel culture threats. These threats manifest in parenting behaviours that rupture children's relationships with parents, caregivers and family members.

3. The context for This Response

- a. This author provides assessment and remediation services for the Family Court of Australia for family violence presentations described in Section 4AB (2) (i) of the Family Law Act 1975². These services address the children's best interests in having a relationship with both parents. The Family Court orders these services where they find one of their parents unreasonably and without cause prevents the child from having a relationship with family members.
- b. The services may require the reversal of parental care and responsibility to a parent whom the child's residential parent has coerced them to reject or resist. In such cases, a judicial determination finds no due cause for rejection or resistance.
- c. A unique feature of this presentation is the crossclaims of different forms of family violence. Each parent claims that the other has perpetrated emotional abuse, family violence, or sexual abuse. Their respective claims either justify their child rejecting or resisting a relationship with a parent or family member or justifies re-establishing the child's relationship with them.
- d. Typically, a judicial determination is required to resolve which version of events, especially which narrative about family violence and child abuse, is more authentic and genuine than the other. It is a judicial determination of which form of family violence has occurred and, by definition, which one has not. The nature of the evidence is narrative and relies on the parents' credibility. There are usually few findings of fact and little or no forensic evidence.
- e. Such cases involving family violence portrayed in Section 4AB (2) (i) may implicate Family Law in perpetuating child abuse by validating bad parenting in the child's best interest³. The judicial determination may leave children in the care of a parent who will continue to harm them. The limited understanding of the child's best interests, resources available to the Family Court, the inability to appreciate the permanent

² Haines, J, Matthewson, M & Turnbull, M 2019 Understanding and managing parental alienation: a guide to assessment and intervention, Routledge, United Kingdom.

Harman, JJ, Kruk, E & Hines, DA 2018, 'Parental alienating behaviors: an unacknowledged form of family violence', Psychological Bulletin, vol. 144, no. 12, pp. 1275-99

Kuehnle, KF & Drozd, LM (eds) 2012, Parenting Plan Evaluations: Applied Research for the Family Court, Oxford University Press, New York

³ "It is a sad fact in the family law jurisdiction that a determination which is most consistent with the best interests of the children can appear to reward bad behaviour on the part of one parent and work in apparent injustice for the well motivated and best performing parent". P.16

Wang & Dennison (No. 2) [2009] Famca 1251 (18 December 2009), Family Law Act 1975, (2009).

harm such violence causes children and constraints in enforcing decisions may inform such determinations.

- f. This author was involved in a recent example⁴ of family violence portrayed in Section 4AB (2) (i) against a mother and her children. The case highlights the current limitations of Family Law and the inability of the amendments to address them. In this case, a father engaged older adult children to coerce their younger siblings to reject their mother based on frivolous claims. Such claims included a child rejecting their mother because, according to them, she had packed a lunch they didn't like. They claimed their mother was trying to poison them. The father supported such claims. The Family Court decided to leave all the younger children in the father's care even though the expert reports assessed that these children would be left in a harmful, abusive environment.
- g. This case exemplifies structural flaws in the current system that the proposed amendments should address. These flaws lead the Family Court to justify leaving the children in an abusive and harmful environment as being in their best interest to do so. This case is a stark example of validating harmful parenting in the children's best interests. Judicial officers are well aware that the best interests parameters for their determinations and rigid interpretations about family violence force them into stark choices⁵ which harm the children. This author has more examples that are non-gendered, where children are always impacted and coerced into rejecting their mothers, fathers and other family members without cause.

⁴ Details have been changed to preserve anonymity and confidentiality.

⁵ MILTON and MILTON [2020] FCWA 152 (2 September 2020)

4. Response to Exposure Draft - Family Law Amendment Bill 2023 Consultation Paper January 2023

- a. Section 4AB (2) (i) provides a functional description of an egregious form of family violence described in paragraph 3.f not contemplated in the proposed amendments. International research⁶ finds that mothers and fathers perpetuate and suffer from this form of family violence equally. It involves the emotional abuse of a child and a parent.
- b. The Australian Bureau of Statistics⁷ reports that in Australia, of the 1 in 4 women and 1 in 6 men who experienced some form of emotional abuse from a current or former partner, 8.9% of men and 4.6% of women had their partner threatened to take their children away from them. Further, 38.5% of men and 25.1% of women who experienced emotional abuse from a previous partner had their previous partner lie to their children with the intent of turning the children against them. This issue of emotional abuse exploiting a child against a parent affects parents and caregivers of all genders.
- c. The case described in paragraph 3.f involves emotional abuse against a parent and a child. In such cases, a parent or caregiver may mislead the Family Court with a claim of family violence against them and the child to prevent the child from having a relationship with the other family member. Such parents attempt to mislead the Family Court using a false claim that they are, in effect, the protective parent. It is open to the Family Court to find that such a parent has perpetuated family violence as portrayed in Section 4AB (2) (i). The proposed amendments to repeal Section 4AB will not address the form of family violence described in paragraph 3.f.
- d. Australian and international research⁸ finds up to 25% of claims of family violence and child sexual abuse may be deliberately misleading. The effect of the proposed amendments is to presume that all such claims are ipso facto valid. Research does not support this presumption.

⁶ Harman, JJ, Kruk, E & Hines, DA 2018, 'Parental alienating behaviors: an unacknowledged form of family violence', *Psychological Bulletin*, vol. 144, no. 12, pp. 1275-99

Kuehnle, KF & Drozd, LM (eds) 2012, *Parenting Plan Evaluations: Applied Research for the Family Court*, Oxford University Press, New York

⁷ Australian Bureau of Statistics (ABS) 2016, 4906.0—Personal safety, Australia, 2016,

⁸ Mackay, T. (2014). False Allegations of Child Abuse in Contested Family Law Cases: The Implications for Psychological Practice. *Educational and Child Psychology*, 31(3), 85-96.

Webb, N., Moloney, L. J., Smyth, B. M., & Murphy, R. L. (2021). Allegations of Child Sexual Abuse: An Empirical Analysis of Published Judgements from the Family Court of Australia 2012–2019. *The Australian journal of social issues*, 56(3), 322-343. doi:10.1002/ajs4.171

- e. The rationale for the proposed amendments does not acknowledge the significant proportion of claims of family violence and child sexual abuse that is deliberately misleading. Such claims are designed to manipulate legal processes against an innocent parent using a child as the means to do so. The proposed amendments do not protect children from such manipulative claims.
- f. Family Law should also implement Article 5 of UNCRC⁹ if it intends to give effect to the UNCRC. The existing Family Law Act, let alone its amendments, cannot fulfil the children’s best interests unless the State respects “the responsibility, rights and duties of parents” or caregivers. One way for the State via Family Law to fulfil this section of the UNCRC is to act as a “parent of last resort”. The “parent of last resort” resolves what is in the children’s best interests, according to acceptable social values reflected in Family Law. For example, section 60B contains a minimum set of principles about parenting and families with which most families in Australia would identify. They should remain aspirational principles so that Family Law may assist parents and families in fulfilling their responsibilities.
- g. Regarding the children’s best interests, the existing objects in Part VII of Section 60B, emphasising the importance of both parents playing an active role in their children's lives, should not be repealed. These goals should remain an aspiration in Family Law to the extent that it remains in the children’s best interest. As the “parent of last resort, " the State stands for that interest.
- h. Family Law currently emphasises, as a paramount consideration, the child's safety from family violence, abuse, neglect or other harm. This author contends the issue lies in the assessment and validation of all claims rather than even more emphasis on children's safety. More focus on children’s safety and protection from family violence, neglect and abuse risks Family Law making harmful decisions in the face of unsubstantiated, false and deliberately misleading allegations of family violence and child sexual abuse¹⁰.

⁹ Article 5 “States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention”.

¹⁰ Webb, N., Moloney, L. J., Smyth, B. M., & Murphy, R. L. (2021). Allegations of Child Sexual Abuse: An Empirical Analysis of Published Judgements from the Family Court of Australia 2012–2019. *The Australian journal of social issues*, 56(3), 322-343. doi:10.1002/ajs4.171

- i. The amendments propose broad definitions of family violence, neglect or abuse. Such broad definitions should include cancel culture forms of family violence that seek to exclude a child from a relationship with a parent, caregiver, or extended family. Section 4AB portrays an example of the latter. As previously stated, broad definitions of family, violence, neglect, and abuse must include false allegations designed to coerce a child into cancelling a parent's identity.
- j. The Australian Law Reform Commission (ALRC) argues there is a clear need to emphasise safety over maintaining a dangerous relationship with a parent. This consideration is especially relevant to family violence, envisaged in Section 4AB (2) (i). This section envisages that a parent may use psychologically and socially abusive behaviours to exclude a child from family relationships. Such behaviours include but are not limited to false and deliberately misleading allegations of family violence, neglect, and abuse to coerce children into an unjustified sense of danger about family members, parents or caregivers. The proposed amendments are silent on addressing these behaviours.
- k. False allegations and other coercive parental behaviours are analogues of cancel culture affecting the family. They induce the child to cancel a parent's identity based on the other parent's deliberately misleading claim. The emphasis on child safety and the current state of knowledge in Family Law does not adequately differentiate between valid allegations of family violence, neglect and abuse and deliberately misleading claims. Family Law should protect a child from both instances. Yet, the proposed amendments do not address this issue.
- l. There is no indication of consultations with stakeholders whom the proposed amendments will directly affect. Stakeholders informing the proposed amendments appear to ignore information and research that do not support their interpretations of family violence, only including women and children. Such an approach ignores forms of family violence affecting all family members regardless of gender.
- m. The current state of Family Law is not ideal, especially in enforcing its orders. Nevertheless, it at least envisages a social and legal response to the example of family violence in Section 4AB (2) (i). It also aspires to a social goal of shared parenting. Most parents would identify the proposed amendments repealing the presumption of shared care as extreme. Repealing the presumption of shared care effectively repeals a social expectation most Australian parents hold. They expect that the Family Law to which they turn for assistance upholds their idea that family relationships and their children's welfare are inseparable.
- n. The amendments remove the family, family relationships and children's relationships with family members as the focus of Family Law. Most parents and caregivers also expect the Law to reflect their expectation that their children will maintain a relationship with both parents if it is safe. They also hope Family Law supports them in ensuring that their children are not exposed to family relationships that are harmful to them.

- o. The proposed amendments take apart family and family relationships as societal entities reflected in Law. Family Law without an emphasis on the family and its place in society is not Family Law. Such a Law has nothing to do with children because it does not recognise how critical family relationships are to their best interests. The amendments ignore research about types of family violence that affect everyone and every gender.

5. A Way Forward

- a. A complete structural review of Family Law may move it forward to respond to contemporary threats to families, children, and their family relationships not envisaged in 1975. The 1975 version of the Family Law Act responded to seismic structural changes in the relationship between genders to better reflect equality and fundamental changes in the structure of families. Subsequent amendments addressed shifting expectations of parental involvement in children's lives and changing gender roles. The Act 48 years later does not respond to the contemporary threats from harmful family narratives that make children "cancel" family relationships.
- b. A therapeutic jurisprudence model¹¹ would institute corrective measures and enforce orders. This model would address the current issues with compliance and enforcement. Such a model requires triaging and diverting cases to interventions with the understanding that parents continuing harmful behaviours will quickly lead to a judicial determination. This approach may address circumstances where one parent faces ruinous expenses to recover a child from a misleading and false family violence claim. In contrast, the alleging parent may receive legal aid.
- c. Amendments should address threats to children's safety in having a relationship with both parents without divisive victim-perpetrator dynamics. Public education about the significance of shared and safe family relationships to children is required. This latter approach is more significant than it appears. Parents perpetuate behaviours inimical to shared parenting because there is no social sanction against such behaviour. Public education sets social expectations about values and beliefs and removes social incentives to act as described in Section 4AB.
- d. A review of Family Law should consider enshrining:
 - i) The principle that both parents bear full responsibility for their child's upbringing and development, regardless of separation or divorce.
 - ii) That the State supports and enables parents and caregivers to fulfil their responsibilities.
 - iii) The child's need for suitable time and contact with both parents, according to the child's specific needs and safety.
 - iv) Spending time may occur in many forms, including but not limited to the physical time spent with a parent or caregiver.

¹¹ Marcus, P. (2019). Parental Alienation: Legal Responses. *International Family Law, Policy and Practice*, 8, 12-16.

Marcus, P. (2020). Innovative Programs in Israel for Prevention & Responding to Parental Alienation: Education, Early Identification and Timely, Effective Intervention. *Family Court Review*, 58(2), 544–559.

- v) The emphasis should be on the child having physical time with both parents equally as possible without resorting to accountancy about child support and time spent with each parent or caregiver.
 - vi) The principle that Family Law is the “parent of last resort”. It stands for the child and assists and enforces, if necessary, parents or caregivers, placing the child’s best interests first.
 - vii) Therapeutic jurisprudence as discussed in paragraph 5 (b). Such a model would assess and triage cases and provide mediation, therapeutic remediation, and parenting coordination with powers to make decisions if the parents fail to do so. Therapeutic jurisprudence sets an expectation that matters may progress to a swift legal determination if harmful behaviour persists.
 - viii) Investigation of all claims of family violence, abuse or other threat to children’s family relationships before pre-emptive action.
 - ix) Restorative and reparative practices for family violence and abuse cases, where it is safe.
 - x) State enforcement of Family Court Orders.
 - xi) Child Support and Family Law operate together where Child Support does not validate breaches of agreed parenting plans or Court Orders.
 - xii) Appropriate funding models to address inequity in access to remediation and restoration.
- e. The Family Law Act dates back to 1975. It introduced laws addressing a profound social change in the family from a solid structure to a fluid relationship configuration. The family, a fluid, dynamic relationship network unconstrained by time and place, is here and now. Yet, the Family Law Act 1975 is unfit for the contemporary issues facing families and children. Its proposed amendments will make it even less effective. They will make it especially powerless against the emotionally abusive forms of family violence that normalise the cancel culture exploiting a child to vilify a parent.

Yours faithfully

Stan Korosi

Dr Stan Korosi PhD (Soc. UniSC), M.Couns. HS, (Latrobe)
 Principal Consultant
 Chair of The Change For the Children (TCFtC, <https://www.thechangeforchildren.com>)
 Society and Ethics Working Group