

Parental alienation and family law in Australia

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Protracted and bitter family law disputes can add to the overall stress of separation and divorce. Unfortunately, sometimes children are exposed to their parents' conflict. Most children with separated parents will maintain good and positive relationships with both parents. There is, however, a percentage of children who become estranged from one parent. In extreme cases, a parent might attempt to form a wedge in the relationship between their child and the other parent. This is known as 'parental alienation'.

In this blog, we will explore what is parental alienation, its impacts on the Australian family law system, what you can do if you have been alienated, and how we can help.

What is 'parental alienation'?

There is disagreement amongst the social sciences discipline about the definition, prevalence and impact of parental alienation. Regardless of this, the term is regularly used in the family law system. Parents involved in family law disputes often raise that their child's behaviour has changed or that their child has been turned against them.

In this blog, we define 'parental alienation' as circumstances where a parent deliberately acts to disrupt and prevent a child's ongoing relationship with the other parent.

Parental alienation can be enacted by a mother or father but is typically directed towards the parent who spends less time with the child. Some examples of alienating behaviours include:

belittling or regularly criticising the other parent in front of the child;

talking with the child unnecessarily about details of the family law dispute;

aggressive interrogations of the child about what the other parent is doing/who they have around etc.;

withholding the child from seeing the other parent; and

falsely claiming the other parent is dangerous or a risk to the child.

An issue or concern to be aware of with the concept of parental alienation is that it's often used as a red herring in cases of child abuse, child sexual abuse, and/or family violence. It is important to acknowledge circumstances where a child may 'reject' a parent based on their own experiences of that parent. Where there is a history or a presence of family violence, it is not unusual that a child might be resistant to seeing their abusive parent.

Is parental alienation recognised in the Australian family law system?

Currently, parental alienation is not recognised or referred to in the Family Law Act 1975 ("the Act"). This doesn't mean that children don't suffer a great deal of distress when their parent attempts any alienating practice.

Parental alienation has been recognised in the Courts but is sometimes referred to as psychological abuse, estrangement, or preferred alignment. While the Court might call it something else, the behaviour is intended for the same purpose.

For any parenting matter before the Federal Circuit and Family Court of Australia, the primary consideration is always the best interests of the child. This is determined considering:

the benefit of having a meaningful relationship with both parents; and

the need to protect the children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.

The Court does not look favourably on parents who alienate or fail to provide an opportunity for a child to have a meaningful relationship with the other parent (or other significant people in their lives, like grandparents). That being said, the Court has many approaches to cases where parental alienation has been alleged.

Where it has been proven that a parent has alienated the child from the other parent, it is likely that the Court will consider a residence change for that child. However, the one thing every family law matter has in common is that each case is different. How the Court responds to parental alienation will depend on the individual circumstances of the case.

We recommend that you seek legal advice before issuing any Court proceedings regarding parental alienation. The Court will need

a substantial volume of evidence to determine whether your child has been alienated from you. This includes reports from the child's treating mental practitioners or from their school.

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The Court may also order a Family Report or Child Impact Report to be completed by a 'family consultant'. Family consultants conduct child and family assessments for the purpose of preparing reports that have been ordered by the Court under specific sections of the Act. More information about their role can be found in our earlier blog, "What is a Child Impact Report?".

What to do if your child does not want to spend time with you

If you suspect parental alienation after separation, you should spend time reflecting on your situation and what events involving your child have led up until now. It is important to reflect on your situation and ask yourself if there is a reasonable explanation for why your child is acting the way they are.

You should also consider any steps you could take to rebuild the relationship with your child. These may include the following:

> Seeking parenting advice from a relationship counsellor or parenting service. This can be a helpful way to identify specific issues and to learn new strategies to engage with your child.

> Attending parenting courses which can help parents navigate new circumstances and reduce conflict.

> Seeking counselling or child-inclusive/family therapy. It could be that you organise individual counselling for your child, or child-inclusive/family therapy. This is a model of counselling that can help families improve their communication and resolve conflicts.

Whether you believe that you or your family need support, the key message is that there is a conflict that needs to be addressed. It is not appropriate (or effective in any event) to dismiss or invalidate your child's feelings regardless of your belief about the origin of those feelings or your child's behaviour. Remember, not having any contact with your child for an extended period of time will mean more time in re-establishing and repairing your relationship.

Family Dispute Resolution (FDR) to address parental alienation

If you are unable to reach an agreement with the other parent about contact with your child, you do have the option of attending Family Dispute Resolution ("FDR"). You can find out more about FDR by reading our blog, "What is Family Dispute Resolution (FDR)?".

FDR can be a great tool for parents to open up the lines of communication, work through any barriers in the way of resolution, and find a way forward. Some organisations also offer child-inclusive FDR, which (if appropriate to proceed) may give you some insight into your child's experience. You can read more about this in our blog, "What is child inclusive family dispute resolution?".

Family Relationships Centres across Australia offer FDR at a low cost, or you can use a private mediator.

Get help from a family lawyer

Parental alienation often requires a multi-faceted solution. Parenting orders may be a suitable solution, or psychological intervention and mental health support could assist. It is important that everyone involved gets the support that they need to be able to reduce conflict and move forward.

Contact us to discuss your circumstances, and we can help determine the best steps forward. If litigation is required, we can help you prepare so that you are in the best position from a family law perspective.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.