

Parental alienation and family law

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While many children with separated parents maintain good and positive relationships with both parents, some can become resistant or estranged from one parent. In extreme cases, this can be referred to as 'parental alienation'. In this blog, we define parental alienation and explore its impact in family law matters.

What is parental alienation?

Parental alienation (sometimes referred to as parental alienation syndrome) is unique as it refers to circumstances where one parent (the 'alienating' or 'preferred' parent) drastically undermines the child's relationship with the other parent (the 'alienated' or 'rejected' parent), resulting in the child's rejection of that parent.

In parental alienation matters, the child's rejection of one parent is not based on the child's own experiences with that rejected parent but rather, it reflects the attitude of the preferred parent. In other words, the preferred parent behaves in a way to turn the child against the alienated parent, by using strategies like lying to, manipulating and brainwashing the child. Parental alienation is exercised by both mothers and fathers.

Importantly, parental alienation does not refer to circumstances where a child 'rejects' a parent based on their own experiences; for example, because of instances of family violence or bad experiences with said parent.

Is parental alienation recognised in Australia?

There is often a perception in family law that parental alienation is not recognised by the Federal Circuit and Family Court of Australia. While the term parental alienation is not specified or defined in the *Family Law Act 1975* (Cth), it can and has been

recognised in the Courts.

Parental alienation is sometimes referred to through different language such as psychological abuse, estrangement, preferred alignment etc. However, at its core, it remains parental alienation. These circumstances are recognised by the Court while not always explicitly being referred to as parental alienation.

There have also been many matters where the Court has recognised and referred to cases of parental alienation explicitly, rather than using a different term.

What does the Court think about parental alienation?

For any matter involving children, the Court's primary consideration is the best interests of the child. In determining a child's best interests, the Court will take into account the benefit of the child having a meaningful relationship with both parents along with the need to protect the child from any harm. This can include psychological harm in the form of parental alienation.

The Court does not look favourably on parents who alienate or fail to promote the child's relationship with the other parent.

While there are many different outcomes of parenting proceedings (should the matter be litigated), it is certainly possible that if the Court concludes that a parent has truly alienated the child from the other parent, there is a significant likelihood that the Court will consider a residence change.

However, this will depend entirely on the individual circumstances of the matter and we recommend that you seek legal advice before issuing any Court proceedings.

The Court will rely on the evidence before it to determine whether a child has been alienated. This means evidence provided by the parties, for example:

- reports from the child's treating mental health practitioners;
- reports from the child's school; as well as
- any family reports.

Family reports are completed by a 'family consultant' (usually child psychologists) who meet with the parties (and children where appropriate) to help the Court determine the issues and recommended way forward.

More information about family reports can be found on the Court's website.

The Court wants to make sure that parties have exhausted every possible avenue to resolve the issue before they go to Court.

What should I do if my children are being alienated from me?

It is important to take a step back from the situation and determine whether there is any reasonable explanation for why your child may be acting as though they are alienated, or becoming alienated, from you.

This is particularly relevant when children become teenagers and their actions, attitudes and behaviour begin to change as they grow up; for example, teenage children preferring to spend time with their friends or ignoring their parents.

If it is parental alienation, the effects can have long-lasting and profoundly negative impacts on the children and the parents. It is important to intervene early so that there isn't time for your child's negative feelings and resentment to grow and become entrenched within them.

Parenting courses

It may be worthwhile to consider attending a parenting course in the first instance to help you, your child, and the other parent adjust to parenting while navigating new circumstances and to reduce conflict. It may be that what appears to be the early stages of parental alienation is actually another issue that hasn't been communicated properly.

These courses are also helpful for parents that aren't separated and would simply like some support to assist them with connecting and communicating with their children.

There are many different types of courses that you can attend, many of which are free or subsidised by the government. You do not need a referral to access these courses.

For example, Relationship Matters offer a 'Tuning into Teens' program which assists parents to help their teenagers develop emotional intelligence and communicate more effectively.

Counselling/family therapy

If it still appears that your child is being alienated from you, it may be prudent to consider engaging in counselling – either individual counselling for your child to help them navigate their emotions, or child-inclusive/family therapy.

Child-inclusive/family therapy is a model of psychological counselling that can help families improve their communication and resolve conflicts. It will involve the child and at least one parent (if not both). In some circumstances, it may even be beneficial to involve siblings or extended family members, such as grandparents, in the process.

Whether or not you believe there is any basis for your child's negative feelings (or purported negative feelings) towards you, the bottom line is that they exist. As such, work needs to be done to help rebuild the relationship. It is not appropriate, (and it is not likely to be successful), to merely dismiss or invalidate your child's feelings, no matter how baseless you think they may be. The

effects of alienation can be long-lasting and are unlikely to go away without professional intervention.

In some circumstances, families may find it beneficial to engage in a family therapy model that focuses on identifying what the issues are and how best to work together to repair the relationship.

Family dispute resolution

If your direct communications with the other parent are not productive, the next step would be to engage in mediation, or family dispute resolution, in an attempt to open up the lines of communication.

Mediation can be a great tool for families to voice their concerns, work through the barriers that are obstructing resolution and figure out the way forward. If appropriate, parties may benefit from engaging in a child-inclusive model of mediation.

Where mediation is unsuccessful, you can consider issuing parenting proceedings. We recommend that you seek legal advice before doing so to determine what the likely outcome of any proceedings would be.

How a family lawyer can help

Parental alienation is a complex issue that often requires more than just a legal solution. It may require psychological intervention and mental health support so that all parties (and, if applicable the Court) can gain insight into what the child is going through, and what the best path forward will be.

Dealing with parental alienation can often be a slow and frustrating process, which can be compounded by the behaviour of the alienating parent. It is important to remember that the Court places significant weight on the right of a child to have a meaningful relationship with both parents. The Court does not look kindly on parents who alienate or fail to promote their child's relationship with the other parent.

Contact us to discuss your situation and determine the best way forward. We can help prepare your matter from a tactical perspective so that should you need to litigate, you are in the best position from a family law perspective.

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